

ELLIOTT MAC LENNAN, SBN 66674  
Department of Real Estate  
320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)  
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**FILED**

MAR 26 2009

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of  
  
CAPITAL DIRECT LENDING CORPORATION  
doing business as Preferred;  
and MICHAEL HULBERT, individually  
and as designated officer of  
Capital Direct Lending Corporation,

Respondents.

No. H-35819 LA

A C C U S A T I O N

The Complainant, Robin Trujillo, a Deputy Real Estate  
Commissioner of the State of California, for cause of Accusation  
against CAPITAL DIRECT LENDING CORPORATION aka Preferred, and  
MICHAEL HULBERT, individually and as designated officer of  
Capital Direct Lending Corporation, alleges as follows:

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1.

The Complainant, Robin Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against CAPITAL DIRECT LENDING CORPORATION (CDLC) and MICHAEL HULBERT (HULBERT).

2.

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

#### LICENSE HISTORY

3.

A. At all times mentioned, CDLC and HULBERT were licensed or had license rights issued by the Department of Real Estate (Department) as real estate brokers.

B. At all times material herein, CDLC was licensed by the Department as a corporate real estate broker by and through HULBERT, pursuant to Code Sections 10211 and 10159.2 for supervising the activities requiring a real estate license conducted on behalf CDLC.

#### BROKERAGE

#### CAPITAL DIRECT LENDING CORPORATION

4.

At all times mentioned, in the City of Newport Beach, County of Orange, CDLC and HULBERT acted as real estate brokers and conducted licensed activities within the meaning of Code Section 10131(d). CDLC operated a mortgage and loan brokerage

1 engaging in activities with the public wherein lenders and  
2 borrowers were solicited for loans secured directly or  
3 collaterally by liens on real property, wherein such loans were  
4 arranged, negotiated, processed and consummated on behalf of  
5 others for compensation or in expectation of compensation and for  
6 fees often collected in advance as well as at the conclusion of  
7 transactions.

#### 8 AUDIT EXAMINATION

##### 9 5.

10 On February 27, 2009, the Department completed an audit  
11 examination of the books and records of CDLC pertaining to the  
12 resale and mortgage loan activities described in Paragraph 4 that  
13 require a real estate license. The audit examination covered a  
14 period of time beginning on July 1, 2008 to December 31, 2008.  
15 The audit examination revealed violations of the Code and the  
16 Regulations as set forth in the following paragraphs, and more  
17 fully discussed in Audit Report LA 080152 and the exhibits and  
18 work papers attached to said audit report.  
19

#### 20 TRUST ACCOUNT

##### 21 6.

22 No trust account was maintained during the audit period.

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VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents CDLC and HULBERT, acted in violation of the Code and the Regulations in that they:

(a)(1) Failed to provide and/or maintain an approved Mortgage Loan Disclosure Statement containing all the information required by Code Section 10241(c) before borrowers Murray and Deborah Rotbert, Hung An and Olivia Lan Hung Nguyen, Christopher Viegas and Angela Lawrence became obligated to perform under the terms of their respective loans, as required by Code Section 10240 and Regulations 2840 and 2840.1; and

(a)(2) Failed to provide or retain a true and correct copy of a Good Faith Estimate that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A 2601 et seq.), that (1) sets forth the broker's real estate license number; and (2) a clear and conspicuous statement on the face of the document stating that the Good Faith Estimate does not constitute a loan commitment; and, further sets forth all applicable disclosures including for borrowers Kalman Kiss and Jorge and Priscilla Ramirez, in violation of Code Section 10240(c).

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1 (b) Failed to display the Department's license number  
2 on CDLC's Mortgage Loan Disclosure Statements to Rotbert and  
3 Lawrence, in violation of Code Section 10236.4.

4 (c) Used the fictitious name of "Capital Direct  
5 Lending" to conduct licensed activities including brokering  
6 mortgage loans without holding a license bearing said fictitious  
7 business name, in violation of Code Section 10159.5 and  
8 Regulation 2731; and

9 (d) After notice and subpoena on December 19, 2008,  
10 failed to retain all records of CDLC's activity during the audit  
11 period requiring a real estate broker license, as required by  
12 Code Section 10148.

13 DISCIPLINARY STATUTES AND REGULATIONS

14 8.

15 The conduct of Respondents CDLC and HULBERT described  
16 in Paragraph 7, above, violated the Code and the Regulations as  
17 set forth below:

18 PARAGRAPH

19 PROVISIONS VIOLATED

20  
21 7(a)

Code Section 10240 Regulation 2840

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23  
24 7(b)

Code Section 10236.4

1 7(c)

Code Section 10159.5 and Regulation  
2731

5 7(d)

Code Sections 10148

6  
7 The foregoing violations constitute cause for the suspension or  
8 revocation of the real estate license and license rights of CDLC  
9 and HULBERT, under the provisions of Code Sections 10177(d)  
10 and/or 10177(g).

11 9.

12 The overall conduct of Respondents CDLC and HULBERT  
13 constitutes negligence. This conduct and violation are cause for  
14 the suspension or revocation of the real estate license and  
15 license rights of Respondents CDLC and HULBERT pursuant to Code  
16 Section 10177(g).

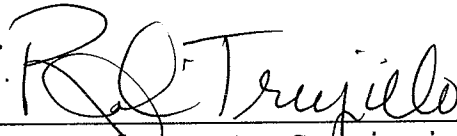
18 10.

19 The overall conduct of Respondent HULBERT constitutes a  
20 failure on Respondent's part, as officer designated by a  
21 corporate broker licensee, to exercise the reasonable supervision  
22 and control over the licensed activities of CDLC as required by  
23 Code Section 10159.2, and to keep CDLC in compliance with the  
24 Real Estate Law, and is cause for the suspension or revocation of  
25 the real estate license and license rights of HULBERT pursuant to  
26 the provisions of Code Section 10177(h).

1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondents  
5 CAPITAL DIRECT LENDING CORPORATION and MICHAEL HULBERT, under the  
6 Real Estate Law (Part 1 of Division 4 of the Business and  
7 Professions Code) and for such other and further relief as may be  
8 proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this

18 day of March 2009. 

Deputy Real Estate Commissioner

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23 cc: Capital Direct Lending Corporation  
24 c/o Michael Hulbert D.O.  
25 Robin Trujillo  
26 Sacto  
27 Audits - Dorcas Cheng

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Department of Real Estate  
320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105  
Telephone: (213) 576-6982

**FILED**

SEP 16 2009

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-35819 LA
	)	
CAPITAL DIRECT LENDING CORPORATION,	)	
doing business as Preferred;	)	
and MICHAEL HULBERT, individually	)	
and as designated officer of	)	
Capital Direct Lending Corporation,	)	
	)	
Respondents.	)	
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STIPULATION  
AND  
AGREEMENT

It is hereby stipulated by and between Respondents  
CAPITAL DIRECT LENDING CORPORATION and MICHAEL HULBERT,  
individually and as designated officer of Capital Direct Lending  
Corporation, (sometimes collectively referred to as  
"Respondents"), and the Complainant, acting by and through  
Elliott Mac Lennan, Counsel for the Department of Real Estate, as  
follows for the purpose of settling and disposing of the  
Accusation ("Accusation") filed on March 26, 2009, in this  
matter:



1           1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and Respondents  
3 at a formal hearing on the Accusation, which hearing was to be  
4 held in accordance with the provisions of the Administrative  
5 Procedure Act ("APA"), shall instead and in place thereof be  
6 submitted solely on the basis of the provisions of this  
7 Stipulation and Agreement ("Stipulation").

8           2. Respondents have received, read and understand the  
9 Statement to Respondent, the Discovery Provisions of the APA and  
10 the Accusation filed by the Department of Real Estate in this  
11 proceeding.

12           3. Respondents timely filed a Notice of Defense  
13 pursuant to Section 11506 of the Government Code for the purpose  
14 of requesting a hearing on the allegations in the Accusation.  
15 Respondents hereby freely and voluntarily withdraw said Notice of  
16 Defense. Respondents acknowledge that they understand that by  
17 withdrawing said Notice of Defense they thereby waive their right  
18 to require the Commissioner to prove the allegations in the  
19 Accusation at a contested hearing held in accordance with the  
20 provisions of the APA and that they will waive other rights  
21 afforded to them in connection with the hearing such as the right  
22 to present evidence in their defense and the right to cross-  
23 examine witnesses.  
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1                   4. This Stipulation is based on the factual  
2 allegations contained in the Accusation. In the interest of  
3 expedience and economy, Respondents choose not to contest these  
4 allegations, but to remain silent and understand that, as a  
5 result thereof, these factual allegations, without being admitted  
6 or denied, will serve as a prima facie basis for the disciplinary  
7 action stipulated to herein. The Real Estate Commissioner shall  
8 not be required to provide further evidence to prove said factual  
9 allegations.

10                   5. This Stipulation is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Department of Real Estate ("Department"), the  
14 state or federal government, or any agency of this state, another  
15 state or federal government is involved.

16                   6. It is understood by the parties that the Real  
17 Estate Commissioner may adopt this Stipulation as his Decision in  
18 this matter thereby imposing the penalty and sanctions on  
19 Respondents' real estate licenses and license rights as set forth  
20 in the "Order" herein below. In the event that the Commissioner  
21 in his discretion does not adopt the Stipulation, it shall be  
22 void and of no effect and Respondents shall retain the right to a  
23 hearing and proceeding on the Accusation under the provisions of  
24 the APA and shall not be bound by any stipulation or waiver made  
25 herein.  
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1           7. The Order or any subsequent Order of the Real  
2 Estate Commissioner made pursuant to this Stipulation shall not  
3 constitute an estoppel, merger or bar to any further  
4 administrative or civil proceedings by the Department of Real  
5 Estate with respect to any matters which were not specifically  
6 alleged to be causes for Accusation in this proceeding but do  
7 constitute a bar, estoppel and merger as to any allegations  
8 actually contained in the Accusations against Respondent herein.

9                           DETERMINATION OF ISSUES

10           By reason of the foregoing, it is stipulated and agreed  
11 that the following determination of issues shall be made:

12           The conduct, acts or omissions of CAPITAL DIRECT  
13 LENDING CORPORATION. and MICHAEL HULBERT, as described in  
14 Paragraph 4, above, are in violation of Sections 10159.5, 10236.4  
15 and 10240 of the Business and Professions Code ("Code") and  
16 Sections 2731 and 2840 of Title 10, Chapter 6 of the California  
17 Code of Regulations ("Regulations") and is a basis for discipline  
18 of Respondents' license and license rights as violation of the  
19 Real Estate Law pursuant to Code Sections 10177(d) and 10177(g).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and licensing rights of Respondents CAPITAL  
DIRECT LENDING CORPORATION and MICHAEL HULBERT, under the Real  
Estate Law, are suspended for a period of sixty (60) days from  
the effective date of this Decision.

A. Provided, however, that if Respondents request, the  
initial thirty (30) days of said suspension (or a portion  
thereof) shall be stayed for two (2) years upon condition that:

1. Each Respondent pays a monetary penalty pursuant to  
Section 10175.2 of the Business and Professions Code at the rate  
of \$33.33 per day for each day of the suspension for a monetary  
penalty of \$1,000 each, or \$2,000 total.

2. Said payment shall be in the form of a cashier's  
check or certified check made payable to the Recovery Account of  
the Real Estate Fund. Said check must be received by the  
Department prior to the effective date of the Decision in this  
matter.

3. No further cause for disciplinary action against  
the real estate license of Respondents occur within two (2) years  
from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in  
accordance with the terms of the Decision, the Commissioner may,  
without a hearing, order the immediate execution of all or any

1 part of the stayed suspension, in which event the Respondent  
2 shall not be entitled to any repayment nor credit, prorated or  
3 otherwise, for money paid to the Department under the terms of  
4 this Decision.

5 5. If Respondents pay the monetary penalty and if no  
6 further cause for disciplinary action against the real estate  
7 license of Respondent occurs within two (2) years from the  
8 effective date of the Decision, the stay hereby granted shall  
9 become permanent.

10 B 1. The remaining thirty (30) days of the sixty (60)  
11 day suspension shall be stayed for two (2) years upon the  
12 following terms and conditions:

13 2. Respondents shall obey all laws, rules and  
14 regulations governing the rights, duties and responsibilities of  
15 a real estate licensee in the State of California; and

16 3. That no final subsequent determination be made after  
17 hearing or upon stipulation, that cause for disciplinary action  
18 occurred within two (2) years from the effective date of this  
19 Decision. Should such a determination be made, the Commissioner  
20 may, in his discretion, vacate and set aside the stay order and  
21 reimpose all or a portion of the stayed suspension. Should no  
22 such determination be made, the stay imposed herein shall become  
23 permanent.  
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II.

All licenses and licensing rights of Respondent MICHAEL HULBERT are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that Respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision.

III.

Respondent MICHAEL HULBERT shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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4 DATED: 8-12-89

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ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

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6 \* \* \*

7 EXECUTION OF THE STIPULATION

8 We have read the Stipulation. Its terms are understood  
9 by us and are agreeable and acceptable to us. We understand that  
10 we are waiving rights given to us by the California  
11 Administrative Procedure Act (including but not limited to  
12 Sections 11506, 11508, 11509 and 11513 of the Government Code),  
13 and we willingly, intelligently and voluntarily waive those  
14 rights, including the right of requiring the Commissioner to  
15 prove the allegations in the Accusation at a hearing at which we  
16 would have the right to cross-examine witnesses against us and to  
17 present evidence in defense and mitigation of the charges.  
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MAILING AND FACSIMILE

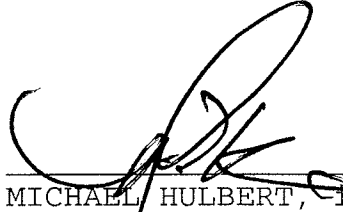
Respondents (1) shall mail the original signed signature page of the stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Respondents shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan.

A facsimile constitutes acceptance and approval of the terms and conditions of this stipulation. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile copy of Respondents' actual signature as it appears on the stipulation that receipt of the facsimile copy by the Department shall be as binding on Respondents as if the Department had received the original signed stipulation.

DATED: May 26, 2009

  
CAPITAL DIRECT LENDING CORPORATION., a corporate real estate broker,  
BY: MICHAEL HULBERT D.O.,  
Respondent

DATED: May 26, 2009

  
MICHAEL HULBERT, individually and as designated officer of Capital Direct Lending Corporation,  
Respondent



\* \* \*

1                   The foregoing Stipulation and Agreement is hereby  
2  
3 adopted as my Decision as to Respondents CAPITAL DIRECT LENDING  
4 CORPORATION. and MICHAEL HULBERT, individually and as designated  
5 officer of Capital Direct Lending Corporation Inc. and shall  
6 become effective at 12 o'clock noon on October 16, 2009,  
7 2009.

8                   IT IS SO ORDERED                   9-2                  , 2009.

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10                   JEFF DAVI  
11                   Real Estate Commissioner

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