

FROM :

JUDGE DAVID C. LEE  
ALAMEDA COUNTY SUPERIOR COURT  
ADMINISTRATION BUILDING  
1221 OAK ST., DEPARTMENT 18  
OAKLAND, CA 94612

1997-10-30

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#532 P.02/02

Hong

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October 30, 1997

Hong v FAMCO  
# 784938-3

Mr. Phillip M. Steinbok  
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San Jose, CA 95113

Mr. Steven J. Johnson  
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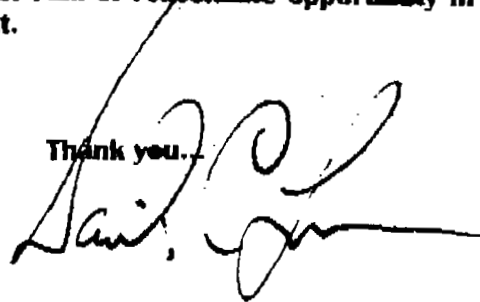
Gentlemen:

Upon review of my notes and the decision given from the bench I discovered an oversight which should be made part of the record in the judgment and statement of decision which Mr. Steinbock is to prepare. I forgot to make the following finding:

In analyzing Rosenthal v Great Western Financial Securities and its ruling I find that, from the evidence, reconciling the evidence in favor of the testimony of Mr. and Ms Hong, that they, the Hong's, did not have a reasonable opportunity to read the "arbitration" document when it was signed by them and were not given the document after its signing so that they had no opportunity to review it at home.

Mr. Steinbock is to include the finding of lack of reasonable opportunity in his draft of the Statement of Decision and Judgment.

Thank you.



COURTROOM CLERK: MS HOLLIE M. ADAMIC  
COURT ATTENDANT: MR. D.J. HARRISON  
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5 Attorneys for Plaintiffs  
6 HENRY M. HONG and  
CAROL J. HONG  
7

ENDORSED  
FILED  
ALAMEDA COUNTY

LEO 0 3 1997

RONALD G. OVERHOLT, Exec. Off./Clerk  
By Hollio Adams

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA

10  
11 HENRY M. HONG, CAROL J. HONG, as  
individuals and Private Attorneys General,

No. 784938-3

12 Plaintiffs,

**ORDER DENYING PETITION TO  
COMPEL ARBITRATION AND MOTION  
FOR STAY.**

13 vs.

14 FIRST ALLIANCE MORTGAGE  
15 COMPANY, a Corporation, DIANE CLARK  
WEST, an individual, and DOES 1-50,  
16 inclusive,

17 Defendants.  
18

19 The above action concerning an evidentiary hearing on Defendants Petition to Compel  
20 Arbitration and Motion for Stay was tried before the court without a jury, commencing October 27,  
21 1997, Plaintiffs Henry M. Hong and Carol J. Hong, (collectively, Hong), appeared personally and  
22 by counsel Phillip M. Steinbock and Sheila Canavan. Defendants First Alliance Mortgage Company,  
23 (FAMCO) and Diane Clark West (collectively, Defendants), appeared personally and by counsel  
24 Martin C. Washton and Steven J. Johnson.

25 Evidence, oral and documentary, was presented and the matter was argued and submitted.  
26 Thereafter, the court announced its tentative decision orally in open court in the presence of all  
27 parties. Following which the defendants orally requested a statement of decisions. Accordingly, it  
28 is ordered adjudicated and decreed as follows:

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1. The defendants Petition to Compel Arbitration is denied.
2. Defendants Motion for a Stay pursuant to CCP §1281.4 is denied.

Dated: **DEC 03 1997**

**DAVID C. LEE**  
\_\_\_\_\_  
Judge of the Superior Court

APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Martin Washton, Esq.

C:\S&HHONG\PROPOSED.JDG

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11 CAROL J. HONG

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 03 1997

DONALD G. OVERMOLT, Exec. Off./Clerk  
By Hollie Adams

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF ALAMEDA

14 HENRY M. HONG, CAROL J. HONG, as  
15 individuals and Private Attorneys General,

No. 784938-3

STATEMENT OF DECISION

16 Plaintiffs,

17 vs.

18 FIRST ALLIANCE MORTGAGE  
19 COMPANY, a Corporation, DIANE CLARK  
20 WEST, an individual, and DOES 1-50,  
21 inclusive,

22 Defendants.

23 The Petition of Defendants FIRST ALLIANCE MORTGAGE COMPANY (hereafter  
24 "FAMCO") and DIANE CLARK WEST (hereafter "CLARK-WEST") To Compel Arbitration And  
25 To Stay Proceedings came on regularly for an evidentiary hearing on October 27, 1997, before this  
26 Court in Department No. 18, Hon. David C. Lee, Judge Presiding, and was heard on that date and  
27 on October 28, 1997. Phillip M. Steinbock and Sheila Canavan appeared as counsel for Plaintiffs  
28 HENRY HONG and CAROL HONG (hereafter collectively "HONGS"). Martin C. Washton and  
Steven J. Johnson appeared as counsel for Defendants FAMCO and CLARK-WEST.

Oral and documentary evidence was introduced on behalf of the respective parties and the  
cause was argued and submitted for decision. The court, having considered the evidence and heard  
the documents of counsel and being fully advised, issues the following statement of decision:

1           With regard to the issue of whether the "Mediation and Arbitration Agreement" (hereafter  
2 the "Arbitration Agreement"), which was signed by the HONGS, and which Defendants here seek  
3 to enforce, is unconscionable and should not be enforced, the court finds that the Arbitration  
4 Agreement is a contract of adhesion and is unconscionably one-sided and unfair in failing to require  
5 mutuality of arbitral obligation. The Court also finds the Arbitration Agreement void and  
6 unenforceable in that the Honggs were not aware of the nature of the document and had no reasonable  
7 opportunity to read it before or after it was signed nor to learn of the character of the documents. The  
8 court's decision is, therefore, that the Arbitration Agreement is unenforceable in its entirety and will  
9 not be judicially enforced herein.

10           The court bases its decision on the following facts and legal basis:

11           1)       The testimony of Defendant CLARK-WEST and Scott Gardner, both of whom were  
12 called as witnesses on behalf of the Defendants, along with FAMCO's answers to interrogatories  
13 propounded by HONGS, established that the Arbitration Agreement was a "contract of adhesion".

14           2)       The evidence in its entirety established that there was both oppression and surprise  
15 in connection with the execution of the Arbitration Agreement by the HONGS.

16           More particularly, the evidence as a whole established a vast inequality of bargaining power  
17 between FAMCO, a sophisticated lender, and the HONGS, unsophisticated borrowers, which resulted  
18 in no negotiation of the terms of the Arbitration Agreement and absence of meaningful choice on the  
19 part of the HONGS, i.e., oppression.

20           More particularly, the above-referenced testimony and other evidence established that the  
21 Arbitration Agreement contained standard provisions drafted by FAMCO that were not negotiable,  
22 and was a compulsory agreement imposed by FAMCO on its borrowers.

23           In addition, the testimony of the HONGS established that the signature process employed  
24 by FAMCO, through its agent CLARK-WEST, did not afford HONGS a reasonable opportunity to  
25 read the Arbitration Agreement before it was signed, and thereby permit discovery of the disparity  
26 of obligations prescribed by its terms, i.e., surprise.

27           In sum, the HONGS were presented with a veritable blizzard of documents for signing and  
28 initialing at one sitting, including the Arbitration Agreement. The Arbitration Agreement had not been

1 previously discussed with, or disclosed to, the HONGS, and was treated as an inconsequential part  
2 of the loan transaction during the signature process.

3 3) The Arbitration Agreement on its face discloses substantive unconscionability. The  
4 Arbitration Agreement exempts from arbitration the significant every-day claims of FAMCO while  
5 all disputes of borrowers are exclusively subject to mandatory arbitration.

6 With respect to the claims and disputes of FAMCO that are exempted from arbitration, the  
7 court has never seen, over the past 24 years, a lending institution bring any other cause of action,  
8 and/or seek any other recourse to the Courts. Thus, what FAMCO has done is preserve all legal  
9 rights and remedies that it would ever have occasion to use, and concomitantly deprive its borrowers  
10 of all the significant rights and remedies that they would normally enjoy, i.e., a manifest undue  
11 advantage to one party at the expense of the other. The court finds no evidence or justification for  
12 the obvious disparity in available remedies.

13 4) In considering Rosenthal v. Great Western Securities and the Supreme Court's Ruling  
14 therein, the court reconciled the evidence in favor of the testimony of the Hong's. The testimony of  
15 defendant CLARK-WEST, as well as the recitation of defendant GARDNER as to what they explain  
16 to customers concerning the Arbitration Agreement is incomplete and misleading.

17 As noted above, the Hong's did not have a reasonable opportunity to read the Arbitration  
18 document before it was signed, therefore, they were not aware of the nature of the document.

19 Moreover, the HONGS were not given a copy of the Arbitration Agreement after it was  
20 signed, and, it follows, had no opportunity to review it and learn the character of the document after  
21 they returned home.

22 Order is to be entered as follows:

23 Pursuant to Code of Civil Procedure §1281.2(b), Defendants' Petition To Compel  
24 Arbitration and Stay Proceedings is denied on the grounds that the Arbitration Agreement sought to  
25 be enforced is a contract of adhesion and so one-sided as to be unconscionable and the Hong's did not  
26 knowingly enter into the Arbitration Agreement.

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Dated: DEC 03 1997

DAVID C. LEE  
Judge of the Superior Court

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APPROVED AS TO FORM AND CONTENT:

\_\_\_\_\_  
Martin Washton, Esq.

C:\S&HHONG\PRO-ST.DEC

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SANTA CLARA**

3 **Case Name: HONG vs. FAMCO**  
4 **Court No.: Alameda Superior Court 784938-3**

5 I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not  
6 a party to the within action; my business address is One Almaden Boulevard, Suite 200, San Jose,  
7 California 95113.

8 On December 5, 1997, I served the foregoing document, described as set forth below, on the  
9 interested parties in this action by placing a true copy thereof enclosed in a parcel at San Jose, California,  
10 and addressed as indicated below:

11 **Documents Served: NOTICE OF ENTRY OF STATEMENT OF DECISION**

12 **Parties Served:**

13 Steven J. Johnson  
14 Gibson, Dunn & Crutcher LLP  
15 One Montgomery Street  
16 Telesis Tower  
17 San Francisco, CA 94104-4505

18 xx **(By Regular Mail)** I am "readily familiar" with the firm's practice for collection and  
19 processing of correspondence for mailing. Under that practice it would be deposited with  
20 the United States Postal Service on that same day with postage thereon fully prepaid at  
21 San Jose, California, in the ordinary course of business. I am aware that on motion of the  
22 party served, service is presumed invalid if postal cancellation date or postage meter date  
23 is more than one day after deposit for mailing affidavit.

24 \_\_\_\_\_ **(By Federal Express)** I personally delivered the above document(s) to a Federal Express  
25 Station to be delivered on a priority basis on the next business day to the law offices listed  
26 above.

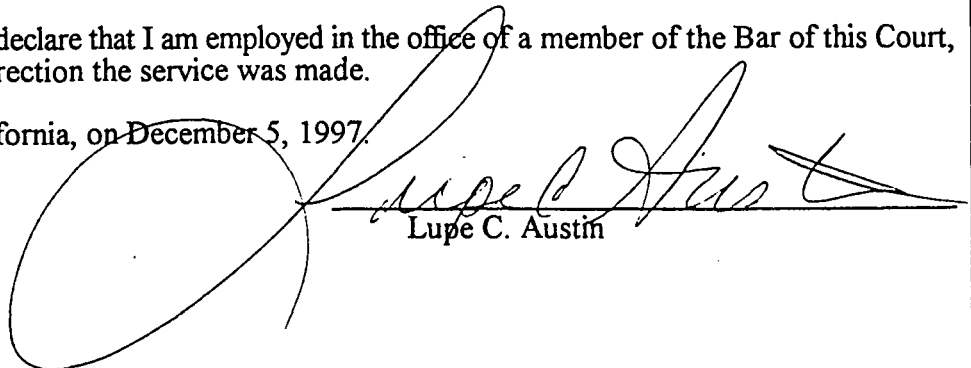
27 \_\_\_\_\_ **(By Personal Service)** I caused such document(s) to be delivered by hand to the office(s)  
28 of the addressee(s).

\_\_\_\_\_ **(By Facsimile)** I sent a true copy thereof via telephone facsimile transmission to the fax  
numbers listed above.

29 xx **(State)** I declare under penalty of perjury under the laws of the State of California that  
30 the foregoing is true and correct.

31 \_\_\_\_\_ **(Federal)** I declare that I am employed in the office of a member of the Bar of this Court,  
32 at whose direction the service was made.

33 Executed at San Jose, California, on December 5, 1997.

34   
35 \_\_\_\_\_  
36 Lupe C. Austin