

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
MAR 25 2004

DEPARTMENT OF REAL ESTATE

By *Laurie G. [Signature]*

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10
11 In the Matter of the Accusation of) NO. H-1627 FR
12)
13 BANKERS FINANCIAL GROUP,)
14 BANKERS HOME LOANS and) STIPULATION AND AGREEMENT
15 KENT MAX GRADOWITZ,)
16 Respondents.) IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between KENT MAX
18 GRADOWITZ, BANKERS FINANCIAL GROUP and BANKERS HOME LOANS
19 (Respondents) and their attorney of record, John Fu of Borton,
20 Petrini & Conron, LLP, and the Complainant, acting by and through
21 David B. Seals, Counsel for the Department of Real Estate, as
22 follows for the purpose of settling and disposing of the First
23 Amended Accusation filed on November 21, 2003, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondents
26 at a formal hearing on the First Amended Accusation, which
27 hearing was to be held in accordance with the provisions of the
Administrative Procedure Act (APA), shall instead and in place

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

3 2. Respondents have received, read and understand the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the First Amended Accusation filed by the Department of Real
6 Estate in this proceeding.

7 3. A Notice of Defense was filed on October 10, 2003
8 by Respondents, pursuant to Section 11505 of the Government Code
9 for the purpose of requesting a hearing on the allegations in the
10 First Amended Accusation. Respondents hereby freely and
11 voluntarily withdraw said Notice of Defense. Respondents
12 acknowledge that they understand that by withdrawing said Notice
13 of Defense they will thereby waive their right to require the
14 Commissioner to prove the allegations in the First Amended
15 Accusation at a contested hearing held in accordance with the
16 provisions of the AFA and that they will waive other rights
17 afforded to them in connection with the hearing such as the right
18 to present evidence in defense of the allegations in the
19 Accusation and the right to cross-examine witnesses.

20 4. This Stipulation is based solely on the factual
21 allegations contained in Paragraphs I through XVII of the First
22 Amended Accusation. In the interests of expedience and economy,
23 Respondents choose not to contest these allegations, but to
24 remain silent and understand that, as a result thereof, these
25 factual allegations, without being admitted or denied, will serve
26 as a prima facie basis for the disciplinary action stipulated to

27 ///

1 herein. The Real Estate Commissioner shall not be required to
2 provide further evidence to prove said factual allegations.

3 5. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation and Agreement in
5 Settlement as his decision in this matter thereby imposing the
6 penalty and sanctions on Respondents' real estate licenses and
7 license rights as set forth in the below "Order". In the event
8 that the Commissioner in his discretion does not adopt the
9 Stipulation and Agreement in Settlement, it shall be void and of
10 no effect, and Respondents shall retain the right to a hearing
11 and proceeding on the First Amended Accusation under all the
12 provisions of the APA and shall not be bound by any admission or
13 waiver made herein.

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement in Settlement shall not constitute an estoppel, merger
17 or bar to any further administrative or civil proceedings by the
18 Department of Real Estate with respect to any matters which were
19 not specifically alleged to be causes for accusation in this
20 proceeding.

21 7. Respondents have received, read and understand the
22 "Notice Concerning Costs of Subsequent Audits". Respondents
23 understand that by agreeing to this Stipulation and Agreement in
24 Settlement, the findings set forth below in the DETERMINATION OF
25 ISSUES become final, and that the Commissioner may charge
26 Respondents for the costs of any audit for which they are charged
27 pursuant to Section 10148 of the Business and Professions Code

1 (hereinafter the "Code"): The reasonable cost of the audits
2 which led to this disciplinary action is \$4,556.13. The maximum
3 cost of the subsequent audits will not exceed \$4,556.13.

4 DETERMINATION OF ISSUES

5 I

6 By reason of the foregoing stipulations and waivers and
7 solely for the purpose of settlement of the pending First Amended
8 Accusation without a hearing, it is stipulated and agreed that
9 the facts alleged above are grounds for the suspension or
10 revocation of the licenses and license rights of Respondent KENT
11 MAX GRADOWITZ under Section 10177(h) of the Code and, as to
12 Respondents BANKERS FINANCIAL GROUP and BANKERS HOME LOANS under
13 Sections 10145, 10232.2, 10236.4 and 10240 of the Code and
14 Sections 2831.1 and 2831.2 of the Regulations all in conjunction
15 with Section 10177(d) of the Code.

16 ORDER

17 I

18 All licenses and licensing rights of Respondents KENT
19 MAX GRADOWITZ and BANKERS FINANCIAL GROUP and BANKERS HOME LOANS
20 under the Real Estate Law are suspended for a period of ninety
21 (90) days from the effective date of this Order; provided,
22 however, that:

23 1. Sixty (60) days of said suspension shall be stayed
24 for two (2) years upon the following terms and conditions:

25 A. Respondents shall obey all laws, rules and
26 regulations governing the rights, duties and
27

1 responsibilities of a real estate licensee in the
2 State of California; and,

3 B. That no final subsequent determination be
4 made, after hearing or upon stipulation, that cause
5 for disciplinary action occurred within two (2) years
6 from the effective date of this Order. Should such a
7 determination be made, the Commissioner may, in her
8 discretion, vacate and set aside the stay order and
9 reimpose all or a portion of the stayed suspension.
10 Should no such determination be made, the stay imposed
11 herein shall become permanent.

12 2. The remaining thirty (30) days of said 90-day
13 suspension shall be stayed, as to each Respondent individually,
14 upon the condition that each Respondent petition pursuant to
15 Section 10175.2 of the Business and Professions Code and each
16 pays a monetary penalty pursuant to Section 10175.2 of the
17 Business and Professions Code at a rate of \$100 for each day of
18 the suspension for a total monetary penalty of \$3,000 for each
19 Respondent:

20 A. Said payment shall be in the form of a
21 cashier's check or certified check made payable to the
22 Recovery Account of the Real Estate Fund. Said check
23 must be delivered to the Department prior to the
24 effective date of the Order in this matter.

25 B. No further cause for disciplinary action
26 against the Real Estate licenses of said Respondent
27

1 occurs within two (2) years from the effective date of
2 the decision in this matter.

3 C. If any Respondent fails to pay the monetary
4 penalty as provided above prior to the effective date
5 of this Order, the stay of the suspension shall be
6 vacated as to that Respondent and the order of
7 suspension shall be immediately executed, under this
8 Paragraph 2 of this Order, in which event the said
9 Respondent shall not be entitled to any repayment nor
10 credit, prorated or otherwise, for the money paid to
11 the Department under the terms of this Order.

12 D. If said Respondents pay the monetary penalty
13 and any other moneys due under this Stipulation and
14 Agreement and if no further cause for disciplinary
15 action against the real estate licenses of said
16 Respondents occurs within two (2) years from the
17 effective date of this Order, the entire stay hereby
18 granted under Paragraphs 1 and 2 of this Order, as to
19 said Respondents only, shall become permanent.


20 3. Respondent KENT MAX GRADOWITZ shall, prior to the
21 effective date of this Decision, submit proof satisfactory to the
22 Commissioner of having taken and successfully completed the
23 continuing education course on trust fund accounting and handling
24 specified in subdivision (a) of Section 10170.5 of the Business
25 and Professions Code. Proof of satisfaction of this requirement
26 includes evidence that Respondent KENT MAX GRADOWITZ has
27 successfully completed the trust fund account and handling

1 continuing education course within 120 days prior to the
2 effective date of the Decision in this matter. If Respondent
3 fails to satisfy this condition, the Commissioner may order the
4 suspension of Respondent's license until Respondent presents
5 proof that he has successfully completed the trust fund course.

6 4. Pursuant to Section 10148 of the Business and
7 Professions Code, Respondents KENT MAX GRADOWITZ, BANKERS
8 FINANCIAL GROUP and BANKERS HOME LOANS shall pay the
9 Commissioner's reasonable cost for the audit which led to this
10 disciplinary action and a subsequent audit to determine if
11 Respondents BANKERS FINANCIAL GROUP and BANKERS HOME LOANS have
12 corrected the trust fund violation(s) found in paragraph I of the
13 Determination of Issues. In calculating the amount of the
14 Commissioner's reasonable cost, the Commissioner may use the
15 estimated average hourly salary for all persons performing audits
16 of real estate brokers, and shall include an allocation for
17 travel time to and from the auditor's place of work. Respondents
18 KENT MAX GRADOWITZ, BANKERS FINANCIAL GROUP and BANKERS HOME
19 LOANS shall pay such cost within 60 days of receiving an invoice
20 from the Commissioner detailing the activities performed during
21 the audit and the amount of time spent performing those
22 activities. The Commissioner may suspend the licenses of
23 Respondents KENT MAX GRADOWITZ, BANKERS FINANCIAL GROUP and
24 BANKERS HOME LOANS pending a hearing held in accordance with
25 Section 11500, et seq., of the Government Code, if payment is not
26 timely made as provided for herein, or as provided for in a
27 subsequent agreement between Respondents KENT MAX GRADOWITZ,

1 BANKERS FINANCIAL GROUP and BANKERS HOME LOANS and the
 2 Commissioner. The suspension shall remain in effect until
 3 payment is made in full or until Respondents KENT MAX GRADOWITZ,
 4 BANKERS FINANCIAL GROUP and BANKERS HOME LOANS enter into an
 5 agreement satisfactory to the Commissioner to provide for
 6 payment, or until a decision providing otherwise is adopted
 7 following a hearing held pursuant to this condition.

8
 9 DATED: 2/24/2004




 DAVID B. SEALS, Counsel
 DEPARTMENT OF REAL ESTATE

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* * *

I have read the Stipulation and Agreement, have
 discussed it with my counsel, and its terms are understood by me
 and are agreeable and acceptable to me. I understand that I am
 waiving rights given to me by the California Administrative
 Procedure Act (including but not limited to Sections 11506,
 11508, 11509, and 11513 of the Government Code), and I willingly,
 intelligently, and voluntarily waive those rights, including the
 right of requiring the Commissioner to prove the allegations in
 the First Amended Accusation at a hearing at which I would have
 the right to cross-examine witnesses against me and to present
 evidence in defense and mitigation of the charges.

DATED: 2-11-04



 KENT MAX GRADOWITZ
 Respondent

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DATED: 2-11-04

[Signature]
BANKERS FINANCIAL GROUP
Respondent

DATED: 2-11-04

[Signature]
BANKERS HOME LOANS
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

DATED: 2/19/04

[Signature]
JOHN FU
Borton, Petrini & Conron, LLP
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement in Settlement
is hereby adopted by the Real Estate Commissioner as his
Decision and Order and shall become effective at 12 o'clock noon
on APRIL 15, 2004.

IT IS SO ORDERED March 10, 2004.

[Signature]
JOHN R. LIBERATOR
Acting Real Estate Commissioner

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
NOV 21 2003

DEPARTMENT OF REAL ESTATE

Shelley Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BANKERS FINANCIAL GROUP,)
13 BANKERS HOME LOANS and,)
14 KENT MAX GRADOWITZ,)
15 Respondents.)

NO. H-1627 FR

FIRST AMENDED
ACCUSATION

16 The Complainant, John Sweeney, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against BANKERS FINANCIAL GROUP (hereinafter "Respondent BFG"),
19 BANKERS HOME LOANS (hereinafter "Respondent BHL"), and KENT MAX
20 GRADOWITZ (hereinafter "Respondent GRADOWITZ") is informed and
21 alleges as follows:

22 FIRST CAUSE OF ACCUSATION

23 I

24 The Complainant, John Sweeney, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation in
26 his official capacity.

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II

Respondents BFG and BHL are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code"), as corporate real estate brokers. Respondent BHL also has a dba of Exchange Realty.

III

Respondent GRADOWITZ is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as real estate broker and as the designated officer of both Respondent BFG and Respondent BHL.

IV

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent BFG, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent BFG committed such act or omissions while engaged in furtherance of the business or operation of Respondent BFG and while acting within the course and scope of their corporate authority and employment.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent BHL, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent BHL committed such act or omissions while engaged in furtherance of the business or operation of

1 Respondent BHL and while acting within the course and scope of
2 their corporate authority and employment.

3 VI

4 That at all times herein mentioned, Respondent BFG,
5 engaged in the business of, acted in the capacity of, advertised,
6 or assumed to act as a real estate broker in the State of
7 California within the meaning of Section 10131(d) of the Code,
8 for or in expectation of compensation, by soliciting borrowers or
9 lenders for or negotiating loans or collecting payments or
10 performing services for borrowers or lenders or note owners in
11 connection with loans secured directly or collaterally by liens
12 on real property or on a business opportunity.

13 VII

14 That at all times mentioned herein, Respondent BFG
15 accepted or received funds in trust (hereafter trust funds) from
16 and on behalf of its principals placing them in bank accounts and
17 at times thereafter made disbursements of such funds.

18 VIII

19 From November 13, 2001 through November 15, 2001 an
20 investigative audit was performed by the Department of the
21 records and bank records of Respondent BFG (Audit# FR 010002) for
22 the period from November 1, 1999 through October 31, 2001, as
23 said records related to its activities as a real estate broker.

24 IX

25 Respondent BFG maintained one bank account into which
26 trust funds were placed for its loan servicing activities. The
27 account was located at Union Bank of California, Stockdale

1 Village Branch 441, 5400 Stockdale Hwy., Bakersfield, CA 93309-
2 2502, Account No. 3875-500723 in the name of Bankers Financial
3 Group, A Cal Corp. Client Trust Account.

4 X

5 For the period covered by the audit Respondent BFG
6 failed to maintain their separate records for each beneficiary or
7 transaction in a format that would readily enable tracing and
8 reconciliation in accordance with Section 2831.2, Title 10,
9 California Code of Regulations (hereinafter the "Regulations") in
10 violation of Section 2831.1 of the Regulations.

11 XI

12 For the period covered by the audit Respondent BFG
13 failed to maintain their separate records for each beneficiary or
14 transaction in a format that would readily enable tracing and
15 reconciliation in accordance with Section 2831.2 and thus failed
16 to maintain a reconciliation of such records with the record of
17 all trust funds received and disbursed on a monthly basis in
18 violation of Section 2831.2 of the Regulations.

19 XII

20 At all times mentioned herein, Respondent GRADOWITZ
21 failed to exercise reasonable supervision over the activities of
22 Respondent BFG, and permitted, ratified and/or caused the conduct
23 described above. Respondent GRADOWITZ failed to reasonably or
24 adequately review, oversee, inspect and manage the personnel and
25 activities of Respondent BFG, and/or to establish reasonable
26 policies, rules, procedures and systems for such review,
27 oversight, inspection and management.

1 XIII

2 The acts and/or omissions of Respondents BFG and
3 GRADOWITZ described above are grounds for the revocation or
4 suspension of the licenses of Respondent BFG under Section
5 10177(d) of the Code in conjunction with Sections 2831.1 and
6 2831.2 of the Regulations and are grounds for the revocation or
7 suspension of the licenses of Respondent GRADOWITZ, only, under
8 Section 10177(h) of the Code and Section 10159.2 of the Code and
9 Section 2725 of the Regulations both in conjunction with Section
10 10177(d) of the Code.

11 SECOND CAUSE OF ACCUSATION

12 XIV

13 There is hereby incorporated in this Second, separate
14 and distinct, Cause of Accusation all of the allegations
15 contained in Paragraphs I through V of the First Cause of
16 Accusation with the same force and effect as if herein fully set
17 forth.

18 XV

19 That at all times herein mentioned, Respondent BHL,
20 engaged in the business of, acted in the capacity of, advertised,
21 or assumed to act as a real estate broker in the State of
22 California within the meaning of Section 10131(a) of the Code for
23 or in expectation of compensation, by selling or offering to
24 sell, buying or offering to buy, soliciting prospective sellers
25 or purchasers of, soliciting or obtaining listings of, or
26 negotiating the purchase, sale or exchange of real property or a
27 business opportunity and Section 10131(d) of the Code, for or in

1 expectation of compensation, by soliciting borrowers or lenders
2 for or negotiating loans or collecting payments or performing
3 services for borrowers or lenders or note owners in connection
4 with loans secured directly or collaterally by liens on real
5 property or on a business opportunity.

6 XVI

7 From November 13, 2001 through November 15, 2001 an
8 investigative audit was performed by the Department of the
9 records and bank records of Respondent BHL (Audit# FR 010026) for
10 the period from November 1, 1999 through October 31, 2001, as
11 said records related to its activities as a real estate broker.

12 XVII

13 Respondent BHL maintained two bank accounts into which
14 trust funds were placed for its activities. Both accounts were
15 located at Union Bank of California, Stockdale Village Branch
16 441, 5400 Stockdale Hwy., Bakersfield, CA 93309-2502. The first
17 account (hereinafter TA1) was Account No. 3870-112172 in the name
18 of Bankers Home Loans dba Exchange Realty Trust Account. The
19 second account (hereinafter TA2) was Account No. 3875-500790 in
20 the name of Bankers Home Loans dba Exchange Realty Trust Account.

21 XVIII

22 Respondent BHL collected and kept excess credit report
23 fees from borrowers and did not disclose such excess compensation
24 or secret profit to the borrowers in violation of Section
25 10176(g) of the Code.

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XIX

Respondent BHL failed to retain a copy of the Mortgage Loan Disclosure Statement in the file of all borrowers during the period covered by the audit in violation of Section 10240 of the Code.

XX

Respondent BHL failed to include the Department's licensing telephone number with the Mortgage Loan Disclosure Statement of all borrowers during the period covered by the audit in violation of Section 10236.4 of the Code.

XXI

For the period covered by the audit Respondent BHL failed to maintain on a monthly basis a reconciliation of their separate records for each beneficiary or transaction with the record of all trust funds received and disbursed in violation of Section 2831.2 of the Regulations.

XXII

At all times mentioned herein, Respondent GRADOWITZ failed to exercise reasonable supervision over the activities of Respondent BHL, and permitted, ratified and/or caused the conduct described above. Respondent GRADOWITZ failed to reasonably or adequately review, oversee, inspect and manage the personnel and activities of Respondent BHL, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

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XXIII

The acts and/or omissions of Respondents BHL and GRADOWITZ described above are grounds for the revocation or suspension of the licenses of Respondent BHL under Section 10176(g) of the Code and Section 10177(d) of the Code in conjunction with Sections 10236.4 and 10240 of the Code and Section 2831.2 of the Regulations and are grounds for the revocation or suspension of the licenses of Respondent GRADOWITZ, only, under Section 10177(h) of the Code and Section 10159.2 of the Code and Section 2725 of the Regulations both in conjunction with Section 10177(d) of the Code.

THIRD CAUSE OF ACCUSATION

XXIV

There is hereby incorporated in this Third, separate and distinct, Cause of Accusation all of the allegations contained in Paragraphs I through V of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XXV

An investigative audit of the records and bank records of Respondent BFG was conducted by the Department from May 23, 2003 to September 15, 2003 covering the period from December 1, 2000 to July 31, 2003 as said records related to its activities as a real estate broker.

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XXVI

Respondent BFG maintained one bank account into which trust funds were placed for its activities. The account was located at Union Bank of California, 5400 Stockdale Hwy., Bakersfield, CA 93309. The Account No. was 3875500723 in the name of Bankers Financial Group A Cal Corp Client Trust Account.

XXVII

The adjusted balance of the account as of July 31, 2003 was Eight Thousand Two Hundred Forty-Seven and 94/100 Dollars (\$8,247.94) and the trust fund accountability in the account as of July 31, 2003 was Eight Thousand Seven Hundred Fifty-Seven and 56/100 Dollars (\$8,757.56) plus company funds of Two Hundred Six and 24/100 Dollars (\$206.24). Therefore, Respondent BFG, as of July 31, 2003, had a trust fund shortage of Seven Hundred Fifteen and 86/100 Dollars (\$715.86).

XXVIII

Respondent BFG failed to timely file the annual reports due September 30, 2002 as required by subdivisions (a) and (c) of Section 10232.2 of the Code.

XXIX

During the time period covered by the audit discussed in this Third Cause of Accusation, Respondent BFG failed to prepare and maintain a reconciliation of its separate records to its record of all trust funds received and disbursed on a monthly basis prior to September 30, 2002 in violation of Section 2831.2 of the Regulations.

///

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 all licenses and license rights of Respondents
5 under the Real Estate Law (Part 1 of Division 4 of the Business
6 and Professions Code), and for such other and further relief as
7 may be proper under other provisions of law.

8 
9 _____
10 JOHN SWEENEY
11 Deputy Real Estate Commissioner

11 Dated at Fresno, California,
12 this 5th day of November, 2003.

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
NOV 21 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BANKERS FINANCIAL GROUP,
BANKERS HOME LOANS and,
KENT MAX GRADOWITZ,

}

Case No. H-1627 FR

OAH No. N2003110173

Shelly Ely

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE DEPARTMENT OF WATER RESOURCES BUILDING, CONFERENCE ROOM, 3374 E. SHIELDS, FRESNO, CALIFORNIA 93726 on TUESDAY--FEBRUARY 24, 2004, at the hour of 1:00 PM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOVEMBER 21, 2003

DEPARTMENT OF REAL ESTATE
By *David B. Seals*
DAVID B. SEALS, Counsel

filed

1 DAVID B. SEALS, Counsel (SBN 69378)
Department of Real Estate
2 P. O. Box 187000
Sacramento, CA 95818-7000
3
4 Telephone: (916) 227-0789
-or- (916) 227-0792 (Direct)

FILED
SEP 24 2003

DEPARTMENT OF REAL ESTATE

By Jean Dumont

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BANKERS FINANCIAL GROUP,)
13 BANKERS HOME LOANS and,)
14 KENT MAX GRADOWITZ,)
Respondents.)

NO. H-1627 FR
ACCUSATION

16 The Complainant, John Sweeney, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against BANKERS FINANCIAL GROUP (hereinafter "Respondent BFG"),
19 BANKERS HOME LOANS (hereinafter "Respondent BHL"), and KENT MAX
20 GRADOWITZ (hereinafter "Respondent GRADOWITZ") is informed and
21 alleges as follows:

22 FIRST CAUSE OF ACCUSATION

23 I

24 The Complainant, John Sweeney, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation in
26 his official capacity.

27 ///

1 II

2 Respondents BFG and BHL are presently licensed and/or
3 have license rights under the Real Estate Law, Part 1 of Division
4 4 of the California Business and Professions Code (hereinafter
5 "Code"), as corporate real estate brokers. Respondent BHL also
6 has a dba of Exchange Realty.

7 III

8 Respondent GRADOWITZ is presently licensed and/or has
9 license rights under the Real Estate Law, Part 1 of Division 4 of
10 the Code as real estate broker and as the designated officer of
11 both Respondent BFG and Respondent BHL.

12 IV

13 Whenever reference is made in an allegation in this
14 Accusation to an act or omission of Respondent BFG, such
15 allegation shall be deemed to mean that the officers, directors,
16 employees, agents and real estate licensees employed by or
17 associated with Respondent BFG committed such act or omissions
18 while engaged in furtherance of the business or operation of
19 Respondent BFG and while acting within the course and scope of
20 their corporate authority and employment.

21 V

22 Whenever reference is made in an allegation in this
23 Accusation to an act or omission of Respondent BHL, such
24 allegation shall be deemed to mean that the officers, directors,
25 employees, agents and real estate licensees employed by or
26 associated with Respondent BHL committed such act or omissions
27 while engaged in furtherance of the business or operation of

1 Respondent BHL and while acting within the course and scope of
2 their corporate authority and employment.

3 VI

4 That at all times herein mentioned, Respondent BFG,
5 engaged in the business of, acted in the capacity of, advertised,
6 or assumed to act as a real estate broker in the State of
7 California within the meaning of Section 10131(d) of the Code,
8 for or in expectation of compensation, by soliciting borrowers or
9 lenders for or negotiating loans or collecting payments or
10 performing services for borrowers or lenders or note owners in
11 connection with loans secured directly or collaterally by liens
12 on real property or on a business opportunity.

13 VII

14 That at all times mentioned herein, Respondent BFG
15 accepted or received funds in trust (hereafter trust funds) from
16 and on behalf of its principals placing them in bank accounts and
17 at times thereafter made disbursements of such funds.

18 VIII

19 From November 13, 2001 through November 15, 2001 an
20 investigative audit was performed by the Department of the
21 records and bank records of Respondent BFG (Audit# FR 010002) for
22 the period from November 1, 1999 through October 31, 2001, as
23 said records related to its activities as a real estate broker.

24 IX

25 Respondent BFG maintained one bank account into which
26 trust funds were placed for its loan servicing activities. The
27 account was located at Union Bank of California, Stockdale

1 Village Branch 441, 5400 Stockdale Hwy., Bakersfield, CA 93309-
2 2502, Account No. 3875-500723 in the name of Bankers Financial
3 Group, A Cal Corp. Client Trust Account.

4 X

5 For the period covered by the audit Respondent BFG
6 failed to maintain their separate records for each beneficiary or
7 transaction in a format that would readily enable tracing and
8 reconciliation in accordance with Section 2831.2, Title 10,
9 California Code of Regulations (hereinafter the "Regulations") in
10 violation of Section 2831.1 of the Regulations.

11 XI

12 For the period covered by the audit Respondent BFG
13 failed to maintain their separate records for each beneficiary or
14 transaction in a format that would readily enable tracing and
15 reconciliation in accordance with Section 2831.2 and thus failed
16 to maintain a reconciliation of such records with the record of
17 all trust funds received and disbursed on a monthly basis in
18 violation of Section 2831.2 of the Regulations.

19 XII

20 At all times mentioned herein, Respondent GRADOWITZ
21 failed to exercise reasonable supervision over the activities of
22 Respondent BFG, and permitted, ratified and/or caused the conduct
23 described above. Respondent GRADOWITZ failed to reasonably or
24 adequately review, oversee, inspect and manage the personnel and
25 activities of Respondent BFG, and/or to establish reasonable
26 policies, rules, procedures and systems for such review,
27 oversight, inspection and management.

1 XIII

2 The acts and/or omissions of Respondents BFG and
3 GRADOWITZ described above are grounds for the revocation or
4 suspension of the licenses of Respondent BFG under Section
5 10177(d) of the Code in conjunction with Sections 2831.1 and
6 2831.2 of the Regulations and are grounds for the revocation or
7 suspension of the licenses of Respondent GRADOWITZ, only, under
8 Section 10177(h) of the Code and Section 10159.2 of the Code and
9 Section 2725 of the Regulations both in conjunction with Section
10 10177(d) of the Code.

11 SECOND CAUSE OF ACCUSATION

12 XIV

13 There is hereby incorporated in this Second, separate
14 and distinct, Cause of Accusation all of the allegations
15 contained in Paragraphs I through V of the First Cause of
16 Accusation with the same force and effect as if herein fully set
17 forth.

18 XV

19 That at all times herein mentioned, Respondent BHL,
20 engaged in the business of, acted in the capacity of, advertised,
21 or assumed to act as a real estate broker in the State of
22 California within the meaning of Section 10131(a) of the Code for
23 or in expectation of compensation, by selling or offering to
24 sell, buying or offering to buy, soliciting prospective sellers
25 or purchasers of, soliciting or obtaining listings of, or
26 negotiating the purchase, sale or exchange of real property or a
27 business opportunity and Section 10131(d) of the Code, for or in

1 expectation of compensation, by soliciting borrowers or lenders
2 for or negotiating loans or collecting payments or performing
3 services for borrowers or lenders or note owners in connection
4 with loans secured directly or collaterally by liens on real
5 property or on a business opportunity.

6 XVI

7 From November 13, 2001 through November 15, 2001 an
8 investigative audit was performed by the Department of the
9 records and bank records of Respondent BHL (Audit# FR 010026) for
10 the period from November 1, 1999 through October 31, 2001, as
11 said records related to its activities as a real estate broker.

12 XVII

13 Respondent BHL maintained two bank accounts into which
14 trust funds were placed for its activities. Both accounts were
15 located at Union Bank of California, Stockdale Village Branch
16 441, 5400 Stockdale Hwy., Bakersfield, CA 93309-2502. The first
17 account (hereinafter TA1) was Account No. 3870-112172 in the name
18 of Bankers Home Loans dba Exchange Realty Trust Account. The
19 second account (hereinafter TA2) was Account No. 3875-500790 in
20 the name of Bankers Home Loans dba Exchange Realty Trust Account.

21 XVIII

22 Respondent BHL collected and kept excess credit report
23 fees from borrowers and did not disclose such excess compensation
24 or secret profit to the borrowers in violation of Section
25 10176(g) of the Code.

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XIX

Respondent BHL failed to retain a copy of the Mortgage Loan Disclosure Statement in the file of all borrowers during the period covered by the audit in violation of Section 10240 of the Code.

XX

Respondent BHL failed to include the Department's licensing telephone number with the Mortgage Loan Disclosure Statement of all borrowers during the period covered by the audit in violation of Section 10236.4 of the Code.

XXI

For the period covered by the audit Respondent BHL failed to maintain on a monthly basis a reconciliation of their separate records for each beneficiary or transaction with the record of all trust funds received and disbursed in violation of Section 2831.2 of the Regulations.

XXII

At all times mentioned herein, Respondent GRADOWITZ failed to exercise reasonable supervision over the activities of Respondent BHL, and permitted, ratified and/or caused the conduct described above. Respondent GRADOWITZ failed to reasonably or adequately review, oversee, inspect and manage the personnel and activities of Respondent BHL, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.


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1 XXIII

2 The acts and/or omissions of Respondents BHL and
3 GRADOWITZ described above are grounds for the revocation or
4 suspension of the licenses of Respondent BHL under Section
5 10176(g) of the Code and Section 10177(d) of the Code in
6 conjunction with Sections 10236.4 and 10240 of the Code and
7 Section 2831.2 of the Regulations and are grounds for the
8 revocation or suspension of the licenses of Respondent GRADOWITZ,
9 only, under Section 10177(h) of the Code and Section 10159.2 of
10 the Code and Section 2725 of the Regulations both in conjunction
11 with Section 10177(d) of the Code.

12 WHEREFORE, Complainant prays that a hearing be
13 conducted on the allegations of this Accusation and that upon
14 proof thereof, a decision be rendered imposing disciplinary
15 action against all licenses and license rights of Respondents
16 under the Real Estate Law (Part 1 of Division 4 of the Business
17 and Professions Code), and for such other and further relief as
18 may be proper under other provisions of law.

19 
20 _____
21 JOHN SWEENEY
22 Deputy Real Estate Commissioner

22 Dated at Fresno, California,
23 this 28th day of May, 2003.