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MAR 12 1999

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-2319 SD

WINDSOR CAPITAL MORTGAGE
CORPORATION and MARK AARON RHODA,

L-1998 070 158

Respondents.

ORDER GRANTING RECONSIDERATION

On February 4, 1999, a Decision After Rejection was rendered in the above-entitled matter. The Decision After Rejection is to become effective on March 2, 1999.

On February 17, 1999, Respondent MARK AARON RHODA petitioned for reconsideration of said Decision.

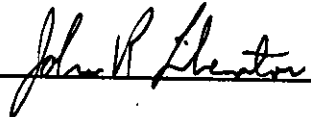
I find that there is good cause to reconsider the Decision After Rejection of February 4, 1999. Reconsideration is hereby granted, and it is hereby ordered that the disciplinary action therein imposed against Respondent RHODA by said Decision After Rejection should be reduced, so that Paragraph 4 of the Order is amended to read in its entirety as follows:

1 "4. During the time this restricted license is in
2 effect Respondent RHODA cannot serve as the designated broker
3 officer for any licensed real estate broker corporation in which
4 he is less than a 100% shareholder."

5 As hereby modified and amended the Decision After
6 Rejection shall become effective at 12 o'clock noon on March 2,
7 1999.

8 IT IS SO ORDERED February 24, 1999.

9 JOHN R. LIBERATOR
10 Acting Real Estate Commissioner

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SACTD

FILED
FEB 10 1999

DEPARTMENT OF REAL ESTATE

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	
)	NO. H-2319 SD
WINDSOR CAPITAL MORTGAGE)	
CORPORATION and MARK AARON RHODA,)	L-1998 070 158
)	
Respondents.)	
)	

DECISION AFTER REJECTION

The above-entitled matter came on for hearing before Joseph D. Montoya, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on May 28 and 29, 1998.

Complainant was represented by James R. Peel, Counsel. Respondent MARK AARON RHODA was present at the hearing and was represented by Steven Gourley, Esq. Evidence was received and the matter stood submitted on August 19, 1998.

On September 18, 1998, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as the

1 Decision of the Real Estate Commissioner as to respondent MARK
2 AARON RHODA. (Respondent WINDSOR CAPITAL MORTGAGE was
3 dismissed from this matter.) Pursuant to Section 11517(c) of
4 the Government Code of the State of California, Respondent was
5 served with a copy of the Proposed Decision dated September 18,
6 1998, and with Notice that the case would be decided by me upon
7 the record including the transcript of proceedings held on May
8 28 and 29, 1998 and upon any written argument offered by the
9 parties.

10 Argument has been submitted on behalf of the
11 parties. I have given careful consideration to the record in
12 this case including the transcript of proceedings of May 28 and
13 29, 1998.

14 I have determined that the Findings of Fact and
15 Determination of Issues in the Proposed Decision of the
16 Administrative Law Judge dated September 18, 1998, are
17 appropriate in all respects and they are adopted as the
18 Findings of Fact and Determination of Issues of the Real Estate
19 Commissioner in this proceeding.

20 ORDER

21 All licenses and licensing rights of Respondent MARK
22 AARON RHODA under the Real Estate Law are revoked; provided,
23 however, a restricted real estate broker license shall be
24 issued to Respondent pursuant to Section 10156.5 of the
25 Business and Professions Code if Respondent makes application
26 therefor and pays to the Department of Real Estate the
27 appropriate fee for the restricted license within 90 days from

1 the effective date of this Decision. The restricted license
2 issued to Respondent shall be subject to all of the provisions
3 of Section 10156.7 of the Business and Professions Code and to
4 the following limitations, conditions and restrictions imposed
5 under authority of Section 10156.6 of that Code:

6 1. The restricted license issued to Respondent may
7 be suspended prior to hearing by Order of the Real Estate
8 Commissioner in the event of Respondent's conviction or plea of
9 nolo contendere to a crime which is substantially related to
10 Respondent's fitness or capacity as a real estate licensee.

11 2. The restricted license issued to Respondent may
12 be suspended prior to hearing by Order of the Real Estate
13 Commissioner on evidence satisfactory to the Commissioner that
14 Respondent has violated provisions of the California Real
15 Estate Law, the Subdivided Lands Law, Regulations of the Real
16 Estate Commissioner or conditions attaching to the restricted
17 license.

18 3. Respondent shall not be eligible to apply for
19 the issuance of an unrestricted real estate license nor for the
20 removal of any of the conditions, limitations or restrictions
21 of a restricted license until two years have elapsed from the
22 effective date of this Decision.

23 4. During the time this restricted license is in
24 effect respondent Rhoda cannot serve as the designated broker
25 officer for any real estate broker corporation.

26 5. Respondent shall, within nine months from the
27 effective date of this Decision, present evidence satisfactory

*Modified
See Order
Granting
Recon.*

1 to the Real Estate Commissioner that Respondent has, since the
2 most recent issuance of an original or renewal real estate
3 license, taken and successfully completed the continuing
4 education requirements of Article 2.5 of Chapter 3 of the Real
5 Estate Law for renewal of a real estate license. If Respondent
6 fails to satisfy this condition, the Commissioner may order the
7 suspension of the restricted license until the Respondent
8 presents such evidence. The Commissioner shall afford
9 Respondent the opportunity for a hearing pursuant to the
10 Administrative Procedure Act to present such evidence.

11 6. Respondent shall, within six months from the
12 effective date of this Decision, take and pass the Professional
13 Responsibility Examination administered by the Department
14 including the payment of the appropriate examination fee. If
15 Respondent fails to satisfy this condition, the Commissioner
16 may order suspension of Respondent's license until Respondent
17 passes the examination.

18 Petition for reinstatement of a revoked real estate
19 license is controlled by Section 11522 of the Government Code.
20 A copy of Section 11522 is attached hereto for the information
21 of respondent.

22 If and when application is made for a real estate
23 license through a petition for reinstatement, all competent
24 evidence of rehabilitation presented by the respondent will be
25 considered by the Real Estate Commissioner. A copy of the
26 Commissioner's Criteria of Rehabilitation is attached hereto.

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This Decision shall become effective at 12 o'clock
noon on March 2, 1999.

IT IS SO ORDERED February 4, 1999.

JOHN R. LIBERATOR
Acting Commissioner

John R. Liberator

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FILED
OCT 19 1998
DEPARTMENT OF REAL ESTATE
By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-2319 SD
WINDSOR CAPITAL MORTGAGE)	
CORPORATION and MARK AARON RHODA,)	
Respondents.)	L-1997 070 158
_____)	

NOTICE

TO: Respondent: MARK AARON RHODA, and his attorney Steve Gourley,

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 18, 1998, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 18, 1998, is attached hereto for your information.

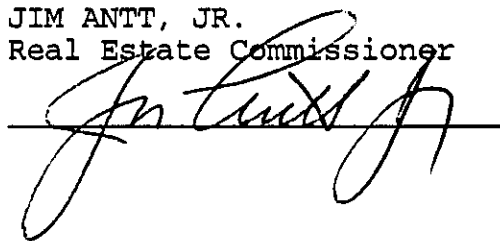
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 28 and 29, 1998, and any written argument hereafter submitted on behalf of Respondent and Complainant.

1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript of
3 the proceedings of May 28 and 29, 1998 at the Los Angeles office of
4 the Department of Real Estate unless an extension of the time is
5 granted for good cause shown.

6 Written argument of Complainant to be considered by me
7 must be submitted within 15 days after receipt of the argument of
8 Respondent at the Los Angeles office of the Department of Real
9 Estate unless an extension of the time is granted for good cause
10 shown.

11 DATED 10/7/98

12 JIM ANTT, JR.
13 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	Case No. H-2319 SD
Against:)	
WINDSOR CAPITAL MORTGAGE CORP-)	OAH No. L-1997070158
ORATION and MARK AARON RHODA,)	
)	
Respondents.)	
<hr/>		

PROPOSED DECISION

On May 28 and 29, 1998, at Los Angeles, California, Joseph D. Montoya, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, heard this matter.

Mr. James R. Peel, Staff Counsel, Department of Real Estate, represented the Complainant. Mr. Mark Rhoda appeared personally and with his attorney, Mr. Steven Gourley.¹

Evidence was received at the hearing, and the record was held open for the submission of written argument and briefs. Complainant's written argument was received on June 22, 1998, and is made part of the record as Exhibit 8. Respondent's written argument was received on July 7, 1998, and is hereby made part of the record as Exhibit "B".

Thereafter, further briefing was requested of the parties. The Supplement to Complainant's Argument was received on August 17, 1998, and is made part of the record as Exhibit "9". Respondent's Reply to Complainant's Supplement to Written Argument was received on August 19, 1998, and is made part of the record as Exhibit "C".

The case was deemed submitted for decision effective August 19, 1998.

¹ There was no appearance by Windsor Capital Mortgage Corporation, which had been dismissed from the proceeding prior to the hearing date.

FINDINGS OF FACT

1. Complainant J. Chris Graves filed the Accusation in the above-captioned matter while he was acting in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate ("the Department"), State of California.

2. (A) Respondent Windsor Capital Mortgage Company (sometimes hereafter "Windsor") is a California corporation. At all times relevant hereto it was licensed by the Department as a corporate real estate broker, holding license number 01050210. It was originally licensed on November 1, 1989.²

(B) As its name implies, Windsor was in the business of mortgage brokering. Windsor's stock was completely owned by Mr. Fredric Trane, Jr., who was President, Treasurer, and Secretary of the firm.

3. Respondent Mark Aaron Rhoda (sometimes hereafter "Rhoda") is an individual presently licensed as a real estate broker. Mr. Rhoda holds license no. 01135678. Mr. Rhoda was the designated officer of Windsor from July 1, 1994, until October 10, 1997.

4. Between September 13, 1996, and December 5, 1996, the Department conducted an audit of Windsor's books and records. The audit was for the period from January 1996 through August 1996. That audit revealed the following business practices by Windsor:

(A) Windsor maintained a bank account, designated as a trust account by Windsor, at Union Bank. The account number was 830018026, and it was held at the Oceanside, California branch of Union Bank. This account was in fact a trust account, but will simply be referred to hereafter as "Account no. 1."

(B) Windsor utilized another bank account in the course of its business, which was also held at Union Bank's Oceanside branch. That account, number 830018166, was held in the name of Trane Corporation, another firm controlled by Mr. Fredric Trane, Jr. That account was not denominated as a trust account. That account will be referred to as "Account no. 2."

(C) Account no. 1 was an interest-bearing account, but Windsor had not obtained the written consent of any beneficiaries to maintain their funds in such an account.

² Although Complainant moved to dismiss Windsor, findings as to some of its activities are necessary in order to make findings regarding Mr. Rhoda.

(D) Windsor did not use adequate columnar records in the course of managing Account number 1. This failure made it difficult to determine from whom funds were received, and when such funds were received.

(E) Separate records from Account number 1 did not reflect from whom funds were received.

(F) The columnar records for Account number 1 were not reconciled to separate records on a monthly basis.

(G) As to Account number 1, a Mr. Paul Kennelly was a signatory on the account, along with Mr. Fredric Trane, Jr. Respondent Rhoda was not a signatory on the account. Mr. Kennelly was not a licensee, and he had no fidelity bond coverage.

(H) Windsor utilized a written advance fee form without prior authorization from the Department.

(I) Windsor maintained two separate unlicensed branch offices in the area of San Diego, California.

(J) Windsor failed to provide some borrowers with the disclosure statements required by law, or by providing such statements which were incomplete.

(K) Respondent Rhoda failed to review, initial, and date numerous material documents prepared by salespersons in the employ of Windsor.

5. Windsor exercised dominion and control over the monies placed in account number 2. Monies from that account were used to pay the obligations of Windsor, including Windsor's payroll obligations. Movement of money into and out of Account number 2 was integral to Windsor's operations as a mortgage broker; Trane Corporation also engaged in the business of mortgage brokering.

6. (A) In mitigation, there was no evidence that any member of the public was damaged by the violations found herein. Further, effective January 1997, the Department no longer requires the designated officer to review, initial, and date material documents prepared by salespersons. Finally, there was no evidence of prior discipline by Mr. Rhoda.

(B) In aggravation, there was evidence that Mr. Rhoda abrogated his duties in favor of Mr. Trane and other unlicensed officers of the two related corporations.

7. The testimony of Respondent's expert, Mr. Loughran, was largely discredited, primarily because the foundation for his expert testimony was weak. Mr. Loughran had not reviewed all of the pertinent documents, and in analyzing the nature of the

transactions in question, was relying upon statements made to him by officers of Windsor and Trane Corporation. Those statements tended to contradict the statements made by such persons to the Department's auditor nearly two years previously.

8. All other matters alleged in the First Cause for Discipline are deemed surplusage, or unproven.

CONCLUSIONS OF LAW

1. Windsor Corporation, in its capacity as a licensed real estate broker engaged in the business of a mortgage broker, committed the following violations of the Real Estate Laws and Regulations, while Respondent Rhoda was its designated officer:

(A) Windsor violated Business and Professions Code section 10145(d) by maintaining Account no. 1 as an interest-bearing trust account, without the written consent of the beneficiaries, based on Findings of Fact 4(A) and 4(C);

(B) Windsor violated Title 10, California Code of Regulations ("CCR"), section 2831,³ by failing to use adequate columnar records in the course of managing Account number 1, based on Findings 4(A) and (D);

(C) Windsor violated CCR section 2831.1 by failing to maintain separate records in the management of Account number 1 which reflected from whom funds were received, based on Findings 4(A) and (E);

(D) Windsor violated CCR section 2831.2 by failing to reconcile the columnar records for Account number 1 with the separate records on a monthly basis, based on Findings 4(A) and (F);

(E) Windsor violated CCR section 2834 by allowing a non-licensee to be a signatory on the trust account, account no. 1, without a fidelity bond, and by failing to have Mr. Rhoda as a signatory on that account, based on Findings 4(A) and (G);

(F) Windsor violated CCR section 2970 by utilizing a written advance fee form without prior authorization from the Department, based on Finding 4(H);

(G) Windsor violated Code section 10163 by

³ Hereafter all citations to the CCR shall be to Title 10 thereof, unless otherwise noted. Hereafter all statutory references shall be to the Business and Professions Code, cited as "Code", along with the section number, unless otherwise noted.

maintaining two separate unlicensed branch offices in the area of San Diego, California, based on Finding 4(I);

(H) Windsor violated Code section 10240 by failing to utilize proper or complete disclosure forms, based on Finding 4(J).

2. Respondent Rhoda violated CCR section 2725 by failing to review, initial, and date material documents prepared by salespersons, based on Findings 3 and 4(K).

3. It was not established that the Account number 2 was a trust account, based on Finding of Fact 4(B).

4. But for the disassociation of Respondents Rhoda and Windsor, Windsor's corporate real estate license would be subject to discipline pursuant to Code sections 10177(d) and 10177(g), based on Conclusions of Law 1(A) through (H), and each of them, and the Findings in support thereof.

5. The individual broker's license issued to Respondent Rhoda is subject to discipline pursuant to Code sections 10177(d) and 10177(h), for the violations of law committed by Windsor while he was that firm's designated officer, as well as for his violation of CCR section 2725, based on Conclusions of Law 1(A) through 2, and each of them, as well as the Findings in support of those legal conclusions.

6. Pursuant to the Complainant's motion, the Second Cause of Discipline is hereby dismissed.

7. As to those workpapers and documents generated by the Department's auditor and contained in Exhibit 7, only those actually referred to in the audit report (Exhibit 6), or the auditor's testimony, are in evidence. All other such documents were and are excluded.

8. There are mitigating and aggravating facts to consider in imposing discipline, based on Finding of Fact 6.

9. Under all of the facts and circumstances, appropriate discipline is to revoke Respondent Rhoda's license, on the condition that he be allowed to obtain a restricted license if he so desires.

Discussion and Rationale:

The Accusation against Windsor was dismissed due to Mr. Rhoda's disassociation from the firm. This was in compliance with the rule set forth in Amvest Mortgage Corporation v. Antt (1997) 58 Cal. App. 4th 1239. However, the evidence did establish numerous

violations by Windsor, while Mr. Rhoda was the designated officer of the firm. Mr. Rhoda's disassociation may bar discipline against the corporation's license, but not against his own license.

Mr. Rhoda contended that Windsor was not really brokering mortgages, but was a direct lender. He argued it was therefore not holding the funds of others, but its own funds, in the two accounts. Thus, it was asserted that Account number 1 wasn't really a trust account, as the name of the account stated. It was posited that Account 2, held by Trane Corporation, was not designated as a trust account, and was not holding the funds of others in any event.

The argument was not based on any testimony by Mr. Rhoda, who did not take the stand. It was not based on the testimony of Windsor's controller or President, both of whom made statements to the Department's auditor which contradicted Mr. Rhoda's position. Instead, Respondent's contention was based on the testimony of an expert hired within days of the hearing, who did not conduct the thorough review conducted by the Department's auditor. That testimony was substantially discredited.

The evidence clearly showed that Windsor utilized Account number 2 as if it were its own. That account was controlled by Windsor's personnel, and paid, directly, Windsor's obligations. It was integral to Windsor's business operations in the audit period. However, it was not denominated as a trust account, and tended to be used by Windsor as a general account.

Respondent argued that Windsor's act of naming Account number 1 a trust account did not make it a trust account, which contention must be rejected. The naming of the account a trust account was a statement of intent, a declaration of trust. It was done in writing on the various bank cards made part of the audit file. Each time a check was endorsed and deposited into that account, Windsor was declaring that the funds deposited were funds held in trust. (See 11 B. Witkin, Summary of California Law (9th Ed.), Trusts, section 26.) If Windsor's own funds were deposited therein and held there more than twenty-five days, then Windsor was guilty of commingling funds.

Although it was not found that Account number 2 was a trust account, or holding trust funds, numerous other violations were established, all of which occurred on Mr. Rhoda's "watch". Code section 10177(h) makes the designated officer responsible to supervise the licensed activities of the corporation; the record establishes Mr. Rhoda failed to do so, and that numerous violations resulted. Indeed, given the amount of control asserted over the corporation by Mr. Trane, it appears Mr. Rhoda was no more than a "rent-a-broker."

While the purpose of this proceeding is to protect the

public, and not to punish Respondent (Camacho v. Youde (1978) 95 Cal. App. 3d 161, 164), discipline is in order to deter both the Respondent and other licensees from future misconduct. Because no actual harm to the public was demonstrated, and because Mr. Rhoda has no prior discipline, discipline less than outright revocation of his license is appropriate.

ORDER

All licenses and licensing rights of Respondent Mark Aaron Rhoda under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

Not adopted

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine 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 the Respondent presents such evidence.

The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

September 18, 1998



Joseph D. Montoya,
Administrative Law Judge

SACTO
FLAG

1 JAMES R. PEEL, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012

5 (213) 897-3937

FILED
JAN 27 1998
DEPARTMENT OF REAL ESTATE

By [Signature]

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

11	In the Matter of the Accusation of)	NO. H-2319 SD
12	WINDSOR CAPITAL MORTGAGE)	
13	CORPORATION and MARK AARON)	
14	RHODA)	<u>DISMISSAL</u>
15	Respondents.)	

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17
18 The Accusation herein filed on May 8, 1997 against
19 WINDSOR CAPITAL MORTGAGE CORPORATION, is DISMISSED.

20 IT IS SO ORDERED this 22ND day of JANUARY 1998.

21
22 JIM ANTT, JR.

[Signature]
23
24 Real Estate Commissioner

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27 JP:rd

Sacts

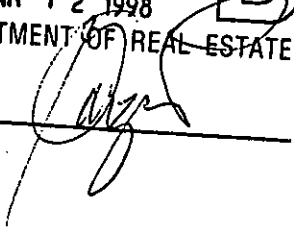
396-0808-003
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAR 12 1998
DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
WINDSOR CAPITAL MORTGAGE)
CORPORATION, and MARK AARON RHODA,)
Respondents.)

) Case No. H-2319 SD
) L- 1997-070-158



NOTICE OF TRIAL AND SETTLEMENT CONFERENCE

To the above-named Respondent(s):

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, 2nd. Floor, Los Angeles, California 90012 on MAY 28 & 29 1998. at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you. A settlement conference will take place on May 15, 1998 at 1:30 p.m.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: March 12, 1998

DEPARTMENT OF REAL ESTATE

cc: WINDSOR CAPITAL MORTGAGE.
STEVEN GOURLEY, ESQ.
PI, OAH & SACTO
Bobby Datan, & Dock Matthews

By: James R. Peel
JAMES R. PEEL
DRE, Counsel

Sacto

396-0808-003

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 11 1998
DEPARTMENT OF REAL ESTATE

By [Signature]

* * *

In the Matter of the Accusation of)
WINDSOR CAPITAL MORTGAGE)
CORPORATION, and MARK AARON RHODA,)
)
Respondent.)

) NOTICE OF HEARING ON ACCUSATION
) Case No. H-2319 SD
) L- 1997-070-158
)

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 107 South Broadway, 2nd. Floor, Los Angeles, California 90012 on March 31, 1998. at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: February 11, 1998

DEPARTMENT OF REAL ESTATE

By: [Signature]
JAMES R. PEEL
DRE, Counsel

cc: MARK AARON RHODA.
STEVEN GOURLEY, ESQ.
PI, OAH & SACTO

X SACTO

396-0808-003
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 22 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation and

WINSOR CAPITAL MORTGAGE CORPORATION,

Respondent.

) CONTINUANCE
) NOTICE OF HEARING ON ACCUSATION
)
) Case No. H-2319 SD
) L- 199-7070-158
)
)
)

[Handwritten Signature]

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 1350 Front Street Room 6022 San Diego, CA 92101 on JANUARY 30, 1998 . at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: October 22, 1997

DEPARTMENT OF REAL ESTATE

By: *James R. Peel*
JAMES R. PEEL
DRE, Counsel

cc: WINDSOR CAPITAL
MARK AARON RHODA
HERMAN THORSEN, ESQ.
STEVEN GOURLEY, ESQ.
PI, OAH & SACTO

SACTO

396-0808-003
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 22 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation and
WINSOR CAPITAL MORTGAGE CORPORATION,

Respondent.

) CONTINUANCE
) NOTICE OF HEARING ON ACCUSATION
)
) Case No. H-2319 SD
) L- 199-7070-158
)
)
)

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 1350 Front Street Room 6022 San Diego, CA 92101 on JANUARY 30, 1998 at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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.

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Dated: October 22, 1997

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL
DRE, Counsel

cc: WINDSOR CAPITAL
MARK AARON RHODA
HERMAN THORSEN, ESQ.
STEVEN GOURLEY, ESQ.
PI, OAH & SACTO

SACTO

396-0808-003
BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

FILED
JUL 10 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation and
WINSOR CAPITAL MORTGAGE CORPORATION,

Respondent.

)
) NOTICE OF HEARING ON ACCUSATION
)
) Case No. H-2319 SD
) L- 199-7070-158
)
)

By *R. Depdik*

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 1350 Front Street Room 6022 San Diego, CA 92101 on OCTOBER 23, 1997 at 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: July 10, 1997

DEPARTMENT OF REAL ESTATE

By: *James R. Peel*
JAMES R. PEEL
DRE, Counsel

cc: WINDSOR CAPITAL
MARK AARON RHODA
PI, OAH & SACTO

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JAMES R. PEEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAY - 8 1997
DEPARTMENT OF REAL ESTATE

By *R. Niederholt*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-2319 SD
WINDSOR CAPITAL MORTGAGE)	A C C U S A T I O N
CORPORATION and MARK AARON)	
RHODA,)	
Respondents.)	

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against WINDSOR CAPITAL MORTGAGE CORPORATION and MARK AARON RHODA, alleges as follows:

I

The Complainant, J. Chris Graves, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against WINDSOR CAPITAL MORTGAGE CORPORATION and MARK AARON RHODA.

II

WINDSOR CAPITAL MORTGAGE CORPORATION and MARK AARON RHODA (hereinafter referred to as respondents) are presently

1 license and/or have license rights under the Real Estate Law
2 (Part 1 of Division 4 of the Business and Professions Code,
3 hereinafter referred to as the "Code").
4

5 III

6 At all times herein mentioned, respondent WINDSOR
7 CAPITAL MORTGAGE CORPORATION was licensed by the Department of
8 Real Estate as a corporate real estate broker, and respondent MARK
9 AARON RHODA was licensed as the designated broker officer of said
10 corporation, and ordered, authorized or participated in the
11 illegal conduct of respondent WINDSOR CAPITAL MORTGAGE
12 CORPORATION, as alleged in this Accusation.

13 IV

14 At all times herein mentioned, respondent WINDSOR
15 CAPITAL MORTGAGE CORPORATION, on behalf of others in expectation
16 of compensation, engaged in the business, acted in the capacity
17 of, advertised or assumed to act as a real estate broker in the
18 State of California within the meaning of Section 10131(d) of the
19 Code, including soliciting borrowers and lenders and negotiating
20 loans on real property.

21 V

22 During 1996, in connection with the aforesaid real
23 estate brokerage activities, respondent WINDSOR CAPITAL MORTGAGE
24 CORPORATION accepted or received funds from borrowers and lenders
25 and thereafter made disbursements of such funds.

26 VI

27 In connection with respondents' activities as a real
estate broker as described above, respondents acted in violation

1 of the Real Estate Law, Business and Professions Code (hereinafter
2 Code), and California Code of Regulations (hereinafter
3 Regulations), Title 10, Chapter 6, as follows:

4 1. WINDSOR CAPITAL MORTGAGE CORPORATION violated
5 Section 10145(a) of the Code and Regulation 2832.1 by maintaining
6 as of June 30, 1996, a shortage in trust account No. 830018166 in
7 the amount of \$217,878.72.

8 2. WINDSOR CAPITAL MORTGAGE CORPORATION violated
9 Section 2830/2832 in that the above trust account was not
10 maintained in the broker's name as trustee.

11 3. WINDSOR CAPITAL MORTGAGE CORPORATION violated
12 Section 10145(d) of the Code in that trust account Nos. 830018026
13 (T/A 1) and 830018166 (T/A 2) were maintained as interest bearing
14 trust accounts without the required written authorization from the
15 owners of the trust funds in the account.

16 4. WINDSOR CAPITAL MORTGAGE CORPORATION violated
17 Regulation 2831 in that the columnar records for T/A 1 and T/A 2
18 were inadequate. From whom the funds were received and the dates
19 when funds were received were not recorded.

20 5. WINDSOR CAPITAL MORTGAGE CORPORATION violated
21 Regulation 2831.1 in that the separate records for T/A 1 did not
22 reflect from whom the funds were received. Separate records for
23 T/A 2 were not maintained.

24 6. WINDSOR CAPITAL MORTGAGE CORPORATION violated
25 Regulation 2831.2 in that the columnar records for T/A 1 and T/A 2
26 were not reconciled to the separate records on a monthly basis.
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7. WINDSOR CAPITAL MORTGAGE CORPORATION violated Regulation 2834 for T/A 1 and T/A 2 in that signatory Paul Kennelly was a non-licensee with no fidelity bond coverage, Signatory Frederic W. Thrane was not authorized in writing to be a signatory, and respondent RHODA was not a signatory on the trust accounts.

8. WINDSOR CAPITAL MORTGAGE CORPORATION violated Regulation 2835 by failing to withdraw its funds from T/A 2 within the time allowed.

9. WINDSOR CAPITAL MORTGAGE CORPORATION violated Regulation 2970 by using a written advance fee form without first obtaining prior approval from the Department of Real Estate to use the form.

10. WINDSOR CAPITAL MORTGAGE CORPORATION violated Section 10163 of the Code by maintaining unlicensed branch offices at 2555 Camino Del Rio South #205, San Diego and 340 University Place, Ste. A, San Diego.

11. WINDSOR CAPITAL MORTGAGE CORPORATION violated Section 10240 of the Code by failing to provide borrowers with the required disclosure statement or by providing borrowers with a disclosure statement that was missing important information.

12. MARK AARON RHODA violated Regulation 2725 by failing to review, initial, and date numerous material documents prepared by salespersons in the employ of WINDSOR CAPITAL MORTGAGE CORPORATION.

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VII

The conduct of respondent WINDSOR CAPITAL MORTGAGE CORPORATION, as alleged above, subjects its real estate license and license rights to suspension or revocation pursuant to Sections 10177(d) and 10177(g) of the Code.

VIII

The conduct of respondent MARK AARON RHODA, as alleged above, as the responsible individual, by allowing and permitting respondent WINDSOR CAPITAL MORTGAGE CORPORATION to engage in the conduct specified in Paragraph VI above, subjects his real estate licenses and license rights to suspension or revocation pursuant to Sections 10177(d) and 10177(h) of the Code.

SECOND CAUSE OF ACCUSATION

IX

Complainant incorporates by reference paragraphs I through IV of the First Cause of Accusation.

X

On or about August 22, 1995, respondents negotiated a loan on real property located at 200 Via La Paz, San Marcos, California, on behalf of the borrowers Lars and Claire Jurgensen.

XI

Respondents, with the intent to induce the borrowers to enter into the loan transaction, represented to the borrowers that they would not have to pay "points and fees" in order to obtain the loan.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents WINDSOR CAPITAL MORTGAGE CORPORATION and MARK AARON RHODA, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California
this 8th day of May, 1997.

J. CHRIS GRAVES

Deputy Real Estate Commissioner

cc: Windsor Capital Mortgage Corporation
Mark Aaron Rhoda
Sacto
PI