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DEPARTMENT OF REAL ESTATE

By Lucie A. Jan

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of  
  
WINDSOR CAPITAL MORTGAGE  
CORPORATION,  
  
Respondent.

) No. H-2547 SD  
)  
) OAH NO. L-2000030246  
)  
)  
)

ORDER DENYING RECONSIDERATION

On November 14, 2000, a Decision was rendered in the above-entitled matter. The Decision is to become effective January 5, 2001.

On November 30, 2000, Respondent petitioned for reconsideration of the Decision of November 14, 2000.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of November 14, 2000, and reconsideration is hereby denied.

IT IS HEREBY ORDERED January 4, 2001.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish Zinnemann

1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

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JAN - 3 2001

DEPARTMENT OF REAL ESTATE

By Laurie J. [Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

10	In the Matter of the Accusation of	)	No. H-2547 SD
11	WINDSOR CAPITAL MORTGAGE CORPORATION and	)	OAH No. L-2000030246
12	BRIAN DOUGLAS ROSS,	)	<u>STIPULATION AND AGREEMENT</u>
13	Respondents.	)	

14  
15 It is hereby stipulated by and between Respondent  
16 BRIAN DOUGLAS ROSS (hereinafter "ROSS" or "Respondent"),  
17 individually and by and through Frank M. Buda, Esq., attorney of  
18 record herein for Respondent, and the Complainant, acting by and  
19 through James L. Beaver, Counsel for the Department of Real  
20 Estate, as follows for the purpose of settling and disposing of  
21 the Accusation filed on February 15, 2000 in this matter  
22 (hereinafter "the Accusation"):

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

1 submitted solely on the basis of the provisions of this  
2 Stipulation and Agreement.

3           2. Respondent has received, read and understands the  
4 Statement to Respondent, the Discovery Provisions of the APA and  
5 the Accusation filed by the Department of Real Estate in this  
6 proceeding.

7           3. On March 7, 2000, Respondent filed a Notice of  
8 Defense pursuant to Section 11505 of the Government Code for the  
9 purpose of requesting a hearing on the allegations in the  
10 Accusation. Respondent hereby freely and voluntarily withdraws  
11 said Notice of Defense. Respondent acknowledges that Respondent  
12 understands that by withdrawing said Notice of Defense  
13 Respondent will thereby waive Respondent's right to require the  
14 Commissioner to prove the allegations in the Accusation at a  
15 contested hearing held in accordance with the provisions of the  
16 APA and that Respondent will waive other rights afforded to  
17 Respondent in connection with the hearing such as the right to  
18 present evidence in defense of the allegations in the Accusation  
19 and the right to cross-examine witnesses.

20           4. Respondent, pursuant to the limitations set forth  
21 below, hereby admits that the factual allegations in the  
22 Accusation as to Respondent are true and correct and stipulates  
23 and agrees that the Real Estate Commissioner shall not be  
24 required to provide further evidence of such allegations.

25 ///

26 ///

27           5. It is understood by the parties that the Real



1 and waivers and solely for the purpose of settlement of the  
2 pending Accusation without hearing, it is stipulated and agreed  
3 that the following Determination of Issues shall be made:

4 I

5 The acts and omissions of Respondent ROSS as described  
6 in the Accusation are grounds for the suspension or revocation  
7 of the licenses and license rights of Respondent ROSS under the  
8 provisions of Section 10177(h) of the Code and Section 10159.2  
9 of the Code in conjunction with Section 10177(d) of the Code.

10 ORDER

11 I

12 All licenses and licensing rights of Respondent BRIAN  
13 DOUGLAS ROSS under the Real Estate Law are suspended for sixty  
14 (60) days from the effective date of this Decision; provided,  
15 however, that the suspension shall be stayed for a term of two  
16 (2) years upon the following terms and conditions:

17 1. Respondent's license and license rights shall be  
18 actually suspended for a period of thirty (30) days. If  
19 Respondent petitions, said thirty (30) day suspension ~~for a~~  
20 ~~portion thereof~~ <sup>FUB</sup> shall be stayed upon condition that Respondent  
21 pays a monetary penalty pursuant to Section 10175.2 of the Code  
22 at the rate of \$100.00 for each day of the suspension for a  
23 total monetary penalty of \$3,000.00.

24 ///

25 2. Respondent shall obey all laws, rules and  
26 regulations governing the rights, duties and responsibilities of  
27 a real estate licensee in the State of California.

1                   3.    The Commissioner may, if a final subsequent  
2 determination is made, after hearing or upon stipulation, that  
3 cause for disciplinary action occurred during the two-year term  
4 of the stay provided for above, vacate and set aside the stay  
5 order, including any further stay imposed pursuant to Section  
6 10175.2. Should no order vacating the stay be made pursuant to  
7 this condition or condition (4) below, the stay imposed herein  
8 shall become permanent.

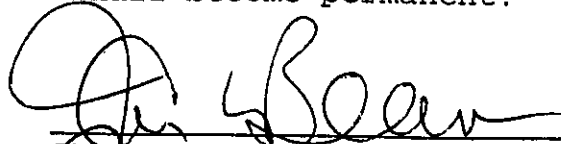
9                   4.    Pursuant to Section 10148 of the Code, Respondent  
10 shall pay the Commissioner's reasonable cost, not to exceed  
11 \$7,600.00, for an audit to determine if Respondent WINDSOR  
12 CAPITAL MORTGAGE CORPORATION has corrected any trust fund  
13 violation(s) found in a final Decision entered in these  
14 proceedings as to WINDSOR CAPITAL MORTGAGE CORPORATION. In  
15 calculating the amount of the Commissioner's reasonable cost,  
16 the Commissioner may use the estimated average hourly salary for  
17 all persons performing audits of real estate brokers, and shall  
18 include an allocation for travel time to and from the auditor's  
19 place of work. Respondent shall pay such cost within sixty (60)  
20 days of receiving an invoice from the Commissioner detailing the  
21 activities performed during the audit and the amount of time  
22 spent performing those activities. The Commissioner may, in his  
23 or her discretion, vacate and set aside the stay order, if  
24 payment is not timely made as provided for herein, or as  
25 provided for in a subsequent agreement between the Respondent  
26 and the Commissioner. The vacation and the set aside of the  
27 stay shall remain in effect until payment is made in full or

1 until Respondent enters into an agreement satisfactory to the  
2 Commissioner to provide for payment. Should no order vacating  
3 the stay be made pursuant to this condition or condition (3)  
4 above, the stay imposed herein shall become permanent.

5  
6 12-5-00

7 DATED

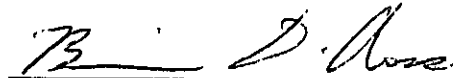
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JAMES L. BEAVER, Counsel  
Department of Real Estate  
\* \* \*

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

21  
22 11/15/00

23 DATED



BRIAN DOUGLAS ROSS  
Respondent

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

11-11-00  
DATED

Frank M. Buda  
FRANK M. BUDA  
Attorney for Respondent

\* \* \*

The foregoing Stipulation and Agreement for Settlement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on January 24, 2001.

IT IS SO ORDERED December 13, 2000.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish Zinnemann



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DEC - 4 2000

DEPARTMENT OF REAL ESTATE

By *Lauriel J. Jain*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-2547 SD
WINDSOR CAPITAL MORTGAGE CORPORATION and	)	OAH No. L-2000030246
BRIAN DOUGLAS ROSS,	)	
Respondents.	)	

ORDER STAYING EFFECTIVE DATE

On November 14, 2000, a Decision was rendered in the above-entitled matter to become effective December 6, 2000.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of November 14, 2000 as to Respondent WINDSOR CAPITAL MORTGAGE CORPORATION only, is stayed for a period of thirty (30) days.

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The Decision of the Real Estate Commissioner of  
November 14, 2000, shall become effective at 12 o'clock noon on  
January 5, 2001.

DATED: 11/30/00

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

  
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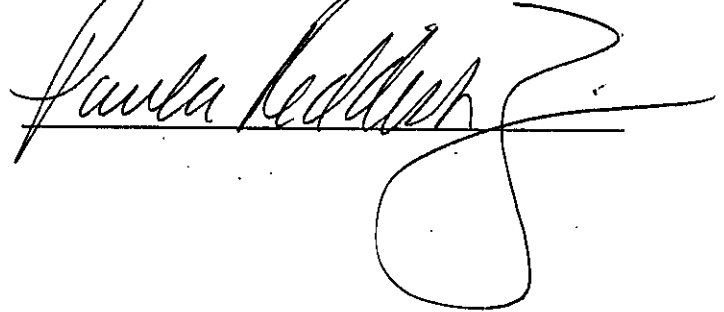
the terms and provisions of the settlement described in Paragraph 10 of the "Factual Findings" in the Proposed Decision, and to prepare a revised proposed decision as to Respondent BRIAN DOUGLAS ROSS only based upon the additional evidence and the transcript and other papers that are part of the record of the hearing held in this case on July 17, 18, 19 and 20, 2000.

This Decision shall become effective at 12 o'clock noon  
on December 6, 2000

IT IS SO ORDERED

November 14, 2000

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish Zinnemann", written over a horizontal line.

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

In the Matter of the Accusation Of:

WINDSOR CAPITAL MORTGAGE  
CORPORATION, a corporation, and  
BRIAN DOUGLAS ROSS

Respondents.

Case No. H-2547 SD

OAH No. L-2000030246

**PROPOSED DECISION**

On July 17, 18, 19, and 20, 2000, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James L. Beaver, Staff Counsel, represented complainant.

Frank M. Buda, Attorney At Law, represented respondent Brian Douglas Ross. Michael J. Rubino, Attorney at Law, represented respondent Windsor Capital Mortgage Corporation.

The matter was submitted on September 13, 2000.

**FACTUAL FINDINGS**

1. Daniel M. Hatt, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-2547 SD in his official capacity on January 3, 2000. Respondents filed timely Notices of Defense.

After the hearing, the parties filed closing briefs which were marked Exhibits 10 and O, respectively.

2. The Department issued real estate broker license number 01170552 to respondent Brian Douglas Ross on November 3, 1993. The Department issued corporation license number 01050210 to respondent Windsor on November 1, 1989, with Mark Aaron Rhoda the designated officer. On October 22, 1997, respondent Ross became the designated officer of respondent Windsor. He ceased being the designated officer of respondent

Windsor on October 13, 1998, at which time Naomi Yael Bar-Lev became the designated officer.

3. During 1998, respondent Windsor was in the business of negotiating loans secured by liens on real property between borrowers and lenders for compensation. It had three licensed dbas: Windsor Capital, Orion Pacific and Pacific Real Estate Network. Fred Thrane was the owner and president of the corporation, with Joy Harnsanamyxay vice president and controller, and Paul Kennelly and respondent Ross vice presidents. Respondent Windsor had approximately 212 licenses working under its license, 115 of whom were salespersons, 85 of whom were real estate brokers, and 12 of whom were corporate brokers. It had 20 to 25 branch offices located in California and also conducted real estate activities outside California.

Respondent Windsor negotiated approximately 200 loans per month for a total loan amount of approximately \$18 million. Loan proceeds were normally handled through outside escrow or title companies while loan proceeds for junior trust deeds were normally disbursed through respondent Windsor. Equity loans were normally funded after respondent Windsor obtained loan commitments from prospective lenders and after the lenders received all additional documentation from the borrowers through respondent Windsor.

Respondent Windsor had a policy of writing loan proceed checks and sending copies of these checks to lenders who previously made commitments to fund the loans because lenders normally required copies of the loan proceed checks before they wired the funds for the loans to respondent Windsor. Respondent Windsor also sent a "Loan Proceeds Disbursement Certification" to the lender certifying the proceeds of the note were disbursed to the borrower on a given date. Loan proceed checks which were written before the funding date were normally released on the date the funds were wired by the lenders to respondent Windsor. Respondent Windsor maintained a log of unreleased checks but the only documents respondent Windsor maintained to support the released dates were the overnight delivery receipts provided by couriers such as UPS.

4. Between March 3, 1998 and May 19, 1998, Edilberto Datan, an auditor with the Department, conducted an audit of the books and records of respondent Windsor as of February 28, 1998. During this period, respondent Windsor maintained seven bank checking accounts which were trust accounts. Each was in the name of Windsor Capital Mortgage Corporation dba: Orion Pacific, Pacific Real Estate Network, Windsor Capital Trust Account; each was at the Union Bank of California at its office in Rancho Santa Fe; Thrane, respondent Ross, and David Warth were the signatories on the accounts; and one signature was required unless the amount exceeded \$50,000, when two signatures were required.<sup>1</sup> TA 4 was a clearing account for all funds received from lenders and TA 5 was used for receipts and disbursements of funds other than funds from lenders. All the other trust accounts were

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<sup>1</sup> At the hearing, each of the trust accounts was abbreviated as TA followed by numbers 1 through 7.

for receipts and disbursements of funds from lenders. Each trust account handled funds from only one lender.

Datan examined cash receipts and disbursement records, bank statements and cancelled checks, deposit records and bank memos, bank reconciliations, trust account reconciliations, separate records, licenses and agreements, transactions records, and other related documents. Much of the information he obtained came from Harnsanamyxay. He determined the adjusted bank balance of each account as of February 28, 1998, and compared that to the trust fund liability of each account. In arriving at the adjusted bank balance, Datan added any deposits in transit and subtracted any outstanding checks from the bank balance. He subtracted any checks which were written but not released from the list of outstanding checks. After he completed a reconciliation of an account and if he found any discrepancies between the adjusted bank balance and the trust fund liability, he spoke to Harnsanamyxay and gave her an opportunity to provide further information. With the new information she provided, Datan would determine if the new figures were reasonable and if they were, he would make changes in the reconciliation.

Based on all the information he examined, Datan determined there were trust fund shortages in the following accounts:

TA 1: \$ 20,119.26  
TA 3: \$ 29,486.91  
TA 5: \$ 5,995.21  
TA 6: \$ 32,202.31  
TA 7: \$110,063.71

Datan found a \$200.00 overage in TA 2 which he attributed to broker's fund and an overage of \$6,519.92 in TA 4 which he could not identify. The total of the shortages was \$197,867.40. Datan did not offset the shortages with the overages.

Respondent Windsor did not have prior authorization from the beneficiaries to have their trust fund balances reduced below the trust fund liability.

5. The trust fund records maintained by respondent Windsor were inadequate or incomplete in the following respects:

a. Funds in borrowers' accounts were disbursed from the records without the funds actually being disbursed. Liability on the list of outstanding checks was transferred on the affected accounts without respondent Windsor actually writing checks on behalf of the borrowers. Balances for funds that needed to be disbursed in the future had been zeroed out from the separate records and control records by including them in the total amount of outstanding checks. In some cases, the records failed to include information sufficient to identify the transaction and parties to it and instead were labeled "General Journal."

b. Respondent Windsor did not maintain a separate record for TA 4 to show trust funds received and disbursed.

c. Respondent Windsor failed to reconcile the control records of TA 4 with the corresponding separate records at least once a month.

6. Respondent Windsor failed to comply with the requirements of the Written Disclosure Statement statutes (Business and Professions Code sections 10240 et seq.) in the following respects:

a. On the Weiner, Butler, and Mike loans, the statement did not include the borrower's signature.

b. On the Butler and Mike loans, the first lien holder was not identified.

c. On the Etheridge loan, the entire form was left blank except for the signature of the borrower.

d. Respondent did not have the Macias and Boland loan transaction files available for examination.

7. Between September 4, 1997 and November 3, 1997, in the course of its real estate activities, respondent Windsor maintained a place of business and was doing a real estate brokerage business at 765 Third Avenue, Suite 300C, Chula Vista, California, but failed to procure a branch office license from the Department for such location. Respondent Windsor submitted a Branch Office Application to the Department for this address on February 26, 1998.

8. Datan conducted an exit interview with representatives of respondent Windsor on June 12, 1998 and explained his findings. Thereafter, respondent Windsor retained Keith Loughran, a former auditor and supervisor with the Department, to review Datan's findings and examine the seven trust accounts. He obtained the same information and likewise spoke to Harnsanamyxay. His review agreed with Datan's in most respects, but he made several adjustments which resulted in a determination that there was no overall shortage. He sent a letter to the Department dated July 16, 1998 which contained his findings but it did not cause the Department to change Datan's findings.

With respect to TA 1, Loughran found four checks which were written to Windsor Capital-3 but were not deposited into TA 3 until March 3, 1998. Three of the checks were written on October 30, 1997 and one was written on November 10, 1997. The four checks totaled \$78,473.67. Datan included them on the outstanding check list and therefore subtracted that total from the bank balance. He did not know that respondent Windsor was



holding these checks. He did not add them to the bank balance in TA 3 as deposits in transit. In Loughran's view, the four checks represented loan proceeds transferred to another account and should either have been listed as a deposit in transit for TA 3 or removed from the outstanding check list of TA 1. If the checks were removed from the outstanding check list, the adjusted trust fund balance of TA 1 on February 28, 1998 would have been \$58,354.41.

With respect to TA 5, Datan first determined there was an overage of \$6,654.38 which he could not identify. He asked for more information from Harnsanamyxay and found there were some accounts which had negative balances. When he added those negative balances and the amount of the overage to the trust fund liability, he arrived at the shortage of \$5,995.21. Loughran believed Datan should have determined to whom the funds belonged and in lieu of that, he should not have said it was a liability and arbitrarily said it belonged to someone else.

With respect to TA 6, Loughran believed the bank balance should have been increased by \$37,400.95, thereby creating an overage of \$5,198.64. He determined that check number 14079 in the amount of \$9,808.95 had been voided and replaced by check 14117 in the same amount, but Datan included check 14079 on the outstanding check list. Two other checks totaling \$27,592.00, numbers 14679 and 14680 were issued on February 27, 1998 but were not released until March 2, 1998. Loughran found a UPS delivery notification dated March 3, 1998 showing a delivery to the borrower on March 3, 1998. These two checks were listed on the outstanding check list but were not on the unreleased check list.

Harnsanamyxay did not provide any information to Datan showing check 14079 had been voided or checks 14679 and 14680 should be treated as unreleased checks.

With respect to TA 7, Loughran made several adjustments which resulted in an overage of \$10,689.99. He found check number 12200 payable to borrower Yap in the amount of \$34,805.00 had been voided and a wire transfer in that amount was made on February 17, 1998 to replace the check. That check was listed on the outstanding check list and therefore reduced the bank balance twice. Then, Datan used the wire transfer to increase the trust fund liability. The wire transfer was not posted to the control record and the other records did not show what loan the wire transfer pertained to, so Datan had to add it back to the trust fund liability.

The control and separate records of the Guillory loan showed a wire transfer of \$25,745.88 to Balboa Thrift and Loan on February 3, 1998. The wire transfer represented the loan proceeds for the Guillory loan transaction. The trust fund liability of the Guillory loan should have been zero according to Loughran, but Datan listed the liability as \$25,745.88.

Because the control and separate records of respondent Windsor were incomplete, Datan did not know the purpose of the wire transfer and was unable to account for it as Loughran did.

Loughran also found a journal entry on February 28, 1998 totaling \$48,621.90. Of that amount, \$34,805.00 was an adjustment because the Yap loan wire transfer of February 17 had not been posted to the control record. The error was Harnsanamyxay's but Datan used it to again increase the trust fund liability in that amount.

Loughran learned respondent Windsor has become a true mortgage banker and is no longer handling lender funds as it was in 1998, all of the trust accounts have been closed and it has no present need for a trust account, no trust funds were lost or misappropriated, and respondent Windsor did not have to add any of its own funds to the trust accounts to make up the alleged shortage. There was no evidence of any complaints filed by any borrowers relating to lost or missing trust funds.

9. The manner in which respondent maintained its books and records, and the manner by which it wrote checks but did not disburse them in a timely fashion, resulted in records which were incomplete and inaccurate in many respects, as Datan's audit established. Over the course of the audit, he gave respondent Windsor ample opportunities to present him with more and accurate information. The timeframe within which he operated was reasonable in nature; respondent could not expect it to be open-ended. Datan's audit established that as of February 2, 1998, the balance of funds in the trust account was less than the aggregate liability of respondent Windsor to all the owners of the funds.

It took further investigation by an auditor hired by respondent Windsor to locate additional records and information relating to the trust accounts. Loughran accused Datan of making unwarranted assumptions based on the information he had, but in many respects, Loughran did the same thing to justify respondent Windsor's handling of the trust accounts. It is indeed fortunate that at the time all the trust accounts were closed, none of respondent Windsor's clients suffered any financial loss, and that fact may be considered a mitigating factor. The testimony of both Datan and Loughran clearly established how poorly respondent Windsor maintained its books and records. For this reason, the Department must be permitted to monitor respondent Windsor's real estate activities.

10. During the hearing, the Department and respondent Ross arrived at a settlement. The settlement provided respondent Ross would withdraw his Notice of Defense and would admit the violations relating to inadequate records (Finding 5), maintaining a place of business without a branch office license (Finding 7), and failing to comply with the Written Disclosure Statement law (Finding 6). Respondent Ross admitted he failed to exercise reasonable supervision over the acts of respondent Windsor in such a manner as to allow the acts to occur.

11. After respondent Ross assumed the position of designated broker of respondent Windsor in October 1997, his primary duties were supervising the 200 to 300 people who worked for respondent Windsor. His name was on the trust accounts and he

worked with Harnsanamyxay, but his focus was to determine if she could be trusted. In reality, he knew little about how the trust funds operated and had no control over what Harnsanamyxay did. He did not review the records to determine if there were sufficient funds to cover the trust fund liability and he never verified her calculations. Respondent Ross is not an accountant and knew Harnsanamyxay had an accounting background. The accounting department of respondent Windsor was in a suite of offices separate from his.

Fred Thrane is the owner and president of respondent Windsor. He delegated the responsibility of managing the trust accounts to Harnsanamyxay, and it was to Thrane that she reported. A CPA hired by respondent Windsor also advised Harnsanamyxay. Harnsanamyxay answered to Thrane, not respondent Ross.

12. Since October 12, 1998, respondent Ross has been dissociated from respondent Windsor. He is not an officer or employee or on the board of directors and he does not participate in the management of respondent Windsor or in its day to day activities.

13. Respondent Windsor contends this proceeding should be dismissed because respondent Ross has been completely dissociated from it since October 1998, and points to the second paragraph of Business and Professions Code section 10177(o) and the case of *Amvest Mortgage Corp. v. Antt* (1997) 58 Cal.App.4<sup>th</sup> 1239 for support. At the time of the audit and respondent Ross' association with respondent Windsor, the second paragraph of section 10177(o) read:

"The commissioner may not deny or suspend the license of a corporate real estate broker if the offending officer, director, or stockholder has been completely disassociated from any affiliation or ownership in the corporation."<sup>2</sup>

In *Amvest*, the Department alleged the violations against the designated broker/officer in the accusation resulted from his negligent supervision of Amvest employees and Amvest did not contend otherwise. The evidence established the broker was responsible for the supervision and control of Amvest's activities. There is no indication in the opinion that the other officer of the corporation, its owner/president, committed the violations or was in any way personally responsible for them.

That is a far cry from this case. Based on respondent Ross' testimony, it is clear he had nothing to do with the trust accounts operated by respondent Windsor. He knew nothing about how they operated, did not even know how many there were, did not know what they were used for, was wholly unfamiliar with the books and records used by respondent

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<sup>2</sup> Section 10177(o) was amended effective January 1, 1999. The parties debate whether the amended statute covers the factual situation and further debate whether it should be applied retroactively. Respondent Windsor argues the previous version of section 10177(o) should be applied. For purposes of this decision, and without deciding whether the amended statute does apply and could be applied, the version of section 10177(o) as it read in 1998 will be used.

Windsor in connection with the trust accounts, and deferred to Thrane and Harnsanamyxay for their operation. Rather, the evidence established Harnsanamyxay managed the trust accounts and she was supervised by Thrane.

The accusation charges respondent Windsor with trust account and other records violations and the evidence established those violations were committed by two officers of the corporation: Harnsanamyxay who was the vice president/controller and Thrane who was the president/treasurer and who owned 100 percent of the stock. There was no evidence that both Harnsanamyxay and Thrane dissociated from the corporation. Respondent Ross committed the separate violation of failing to exercise reasonable supervision over the acts of respondent Windsor as to allow the violations to occur. Section 10177(o) as it read in 1998 permitted respondent Windsor to avoid suspension of its corporate real estate broker license only if the "offending officer...or stockholder has been completely dissociated from any affiliation or ownership in the corporation." While one of the offending officers of the corporation has completely dissociated from the corporation, two others have not. Indeed, the two primary actors remain with respondent Windsor. Accordingly, section 10177(o) and *Amvest* do not apply and the commissioner may impose discipline against the license of respondent Windsor.

14. In June 1998, Loughran was hired by respondent Windsor in part to assist it in implementing policies and procedures which would ensure compliance with the real estate laws. Since then, he has worked with respondent Windsor and met many times with the officers and employees of the corporation. In April 2000, he wrote "Broker Supervision Guidelines" for brokers to follow to secure compliance with applicable laws and regulations. In his opinion, respondent Windsor is in compliance with applicable laws and regulations.

## LEGAL CONCLUSIONS

1. Cause to revoke or suspend the licenses and licensing rights of respondent Ross for violation of Business and Professions Code sections 10159.2 and 10177(d) and (h) was established by reason of Findings 5, 6, 7, and 10, based upon violations by respondent Windsor of sections 10145, 10163, 10165, 10177(d) and 10240, and Title 10, California Code of Regulations, sections 2831 and 2831.1.

2. Cause to revoke or suspend the licenses and licensing rights of respondent Windsor for violation of Business and Professions Code sections 10145 and 10177(d) was established by reason of Finding 5 based upon violations by respondent Windsor of Title 10, California Code of Regulations, sections 2831 and 2831.1.

3. Cause to revoke or suspend the licenses and licensing rights of respondent Windsor for violation of Business and Professions Code sections 10145 and 10177(d) was established by reason of Findings 4 and 9 based upon violations by respondent Windsor of Title 10, California Code of Regulations, section 2832.1.

4. Cause to revoke or suspend the licenses and licensing rights of respondent Windsor for violation of Business and Professions Code sections 10163 and 10177(d) was established by reason of Finding 7.

5. Cause to revoke or suspend the licenses and licensing rights of respondent Windsor for violation of Business and Professions Code sections 10240 and 10177(d) was established by reason of Finding 6.

### ORDER

1. All licenses and license rights of respondent Brian Douglas Ross under the Real Estate Law are suspended for a period of sixty (60) days from the effective date of this Decision; provided, however, that:

a. Thirty (30) days of said suspension shall be stayed for a period of two (2) years upon the following terms and conditions:

i. Respondent Ross shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

ii. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

b. Thirty (30) days of said suspension shall be stayed for a period of two (2) years upon the following terms and conditions:

i. Pursuant to Section 10148 of the Business and Professions Code, respondent Ross shall pay the Commissioner's reasonable cost for an audit to determine if respondent Windsor has corrected the trust fund violations found in paragraphs 4 and 9 of the Factual Findings. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may charge \$100.00 per day for up to thirty (30) days for a total maximum cost of \$3000.00. Respondent Ross shall pay such cost within 45 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided herein, or as provided for in a subsequent agreement between respondent Ross and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is

NOT ADDED

made in full, or until respondent Ross enters into an agreement satisfactory to the Commissioner to provide for payment. Should no order vacating the stay be issued, the stay imposed herein shall become permanent.

2. All licenses and license rights of respondent Windsor under the Real Estate Law are suspended for a period of two (2) years from the effective date of this Decision; provided, however, that the suspension shall be stayed upon following terms and conditions:

a. Respondent Windsor's license and license rights shall be actually suspended for a period of 60 days. Respondent Windsor may, pursuant to Section 10175.2, petition the Commissioner to pay a monetary penalty and thereby further stay imposition of the term of the actual suspension.

b. Respondent Windsor shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee of the State of California.

c. The Commissioner may, if a final subsequent determination is made, after hearing or upon stipulation, that cause for disciplinary action occurred during the term of the suspension provided for in condition "a," vacate and set aside the stay order including any further stay imposed pursuant to Section 10175.2. Should no order vacating the stay be made pursuant to this condition, the stay imposed herein shall become permanent.

DATED: October 12, 2000



ALAN S. METH

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
MAY 11 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

WINDSOR CAPITAL MORTGAGE  
CORPORATION, a corporation, and  
BRIAN DOUGLAS ROSS,

}

Case No. H-2547 SD

OAH No. L-200030246

By Laurie A. Zai

Respondent

FIRST AMENDED  
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  
Office of Administrative Hearings, 1350 Front Street, Room 6022,  
San Diego, CA 92101

on July 17 through 21, 2000, at the hour of 9:00 AM,  
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.

DEPARTMENT OF REAL ESTATE

Dated: May 9, 2000

By James L. Beaver  
JAMES L. BEAVER Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
MAR 28 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

WINDSOR CAPITAL MORTGAGE  
CORPORATION, a corporation, and  
BRIAN DOUGLAS ROSS,

Case No. H-2547 SD

OAH No. L-2000030246

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

Office of Administrative Hearings, 1350 Front Street, Room 6022,

San Diego, CA 92101

on May 22 through 25, 2000, at the hour of 9:00 AM,  
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: March 28, 2000

DEPARTMENT OF REAL ESTATE

By James L. Beaver  
JAMES L. BEAVER

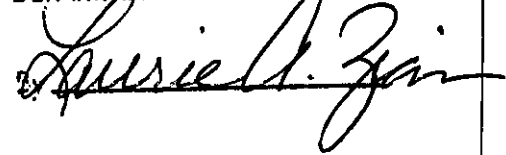
Counsel



1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 DEPARTMENT OF REAL ESTATE  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5 Telephone: (916) 227-0789  
6 (916) 227-0788 (Direct)

FILED  
FEB 15 2000

DEPARTMENT OF REAL ESTATE



8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No.: H-2547 SD  
12 WINDSOR CAPITAL MORTGAGE CORPORATION, )  
13 a corporation, and BRIAN DOUGLAS ROSS, ) ACCUSATION  
14 Respondents. )

15 The Complainant, Daniel M. Hatt, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against WINDSOR CAPITAL MORTGAGE CORPORATION (herein "WINDSOR")  
18 and BRIAN DOUGLAS ROSS (herein "ROSS"), is informed and alleges  
19 as follows:

20 I

21 The Complainant, Daniel M. Hatt, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Accusation  
23 in his official capacity.

24 ///

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26 ///

27 ///

1  
2 II

3 At all times herein mentioned, Respondents WINDSOR and  
4 ROSS were and now are presently licensed and/or have license  
5 rights under the Real Estate Law (Part 1 of Division 4 of the  
6 Business and Professions Code) (hereinafter "the Code").

7 III

8 At all times herein mentioned, Respondent WINDSOR was  
9 and now is licensed by the Department of Real Estate of the  
10 State of California (hereinafter "the Department") as a  
11 corporate real estate broker:

12 (a) To and until October 9, 1997, Respondent WINDSOR  
13 was so licensed by and through Mark Aaron Rhoda as designated  
14 officer-broker of said corporation to qualify said corporation  
15 and to act for said corporation as a real estate broker; and

16 (b) Thereafter, from October 9, 1997 to and until  
17 October 12, 1998, Respondent WINDSOR was so licensed by and  
18 through Respondent ROSS as designated officer-broker of said  
19 corporation to qualify said corporation and to act for said  
20 corporation as a real estate broker.

21 IV

22 At all times herein mentioned, Respondent ROSS was  
23 licensed by the Department as a real estate broker, individually  
24 and, from October 9, 1997 until October 12, 1998, as designated  
25 officer-broker of Respondent WINDSOR. As said designated  
26 officer-broker, Respondent ROSS was at all times mentioned  
27 herein responsible pursuant to Section 10159.2 of the Code for  
the supervision of the activities of the officers, agents, real

1 estate licensees and employees of Respondent WINDSOR for which a  
2 license is required.

3  
4 V

5 Whenever reference is made in an allegation in this  
6 Accusation to an act or omission of Respondent WINDSOR, such  
7 allegation shall be deemed to mean that the officers, directors,  
8 employees, agents and real estate licensees employed by or  
9 associated with Respondent WINDSOR committed such act or  
10 omission while engaged in the furtherance of the business or  
11 operations of Respondent WINDSOR and while acting within the  
12 course and scope of their corporate authority and employment.

13 VI

14 At all times herein mentioned, Respondents engaged in  
15 the business of, acted in the capacity of, advertised, or  
16 assumed to act as real estate brokers within the State of  
17 California within the meaning of Section 10131(d) of the Code,  
18 including the operation and conduct of a mortgage loan brokerage  
19 business with the public wherein, on behalf of others, for  
20 compensation or in expectation of compensation, Respondents  
21 solicited lenders and borrowers for loans secured directly or  
22 collaterally by liens on real property, and wherein Respondents  
23 arranged, negotiated, processed, and consummated such loans.

24 VII

25 In so acting as mortgage loan brokers, as described in  
26 Paragraph VI, above, Respondents accepted or received funds in  
27 trust (hereinafter "trust funds") from or on behalf of lenders  
or investors, borrowers, and others in connection with the

1 solicitation, negotiation, processing, packaging, and  
2 consummation of mortgage loans by Respondents.

3  
4 VIII

5 The aforesaid trust funds accepted or received by  
6 Respondents were deposited or caused to be deposited by  
7 Respondents into one or more bank accounts (hereinafter "trust  
8 fund accounts") maintained by Respondents for the handling of  
9 trust funds, including but not necessarily limited to the  
10 following "WINDSOR CAPITAL MORTGAGE CORPORATION DBA: ORION  
11 PACIFIC, PACIFIC REAL ESTATE NETWORK, WINDSOR CAPITAL TRUST"  
12 accounts maintained by Respondents at the Rancho Santa Fe,  
13 California, offices of Union Bank of California:

- 14 (a) Account Number 6440005770 (herein "T/A #1");  
15 (b) Account Number 6440005916 (herein "T/A #2");  
16 (c) Account Number 6440004928 (herein "T/A #3");  
17 (d) Account Number 0830018026 (herein "T/A #4");  
18 (e) Account Number 6440005576 (herein "T/A #5");  
19 (f) Account Number 6440005177 (herein "T/A #6"); and  
20 (g) Account Number 0830025421 (herein "T/A #7").

21 IX

22 Between on or about October 9, 1997 and on or about  
23 October 12, 1998, in course of the activities described in  
24 Paragraph VI, above, and in connection with the collection and  
25 disbursement of said trust funds in said trust fund accounts,  
26 Respondent WINDSOR:

- 27 (a) Failed to keep a columnar record in chronological  
sequence of all trust funds received and disbursed from T/A #1,

1 T/A #2, T/A #4, T/A #6, and T/A #7 in the manner required by  
2 Section 2831 of Title 10, California Code of Regulations  
3 (hereinafter "the Regulations"), in that said columnar records  
4 failed to account for all trust funds received and disbursed  
5 from said accounts, said records included entries stating the  
6 date and check number of disbursements that had not, in fact,  
7 been made, and said records failed to include information  
8 sufficient to identify the transaction and parties to the  
9 transaction;

10 (b) Failed to keep a separate record for each  
11 beneficiary or transaction of all trust funds received and  
12 disbursed from T/A #4 as required by Section 2831.1 of the  
13 Regulations; and

14 (c) Failed to reconcile, at least once a month, the  
15 balance of all separate beneficiary or transaction records with  
16 the record of all trust funds received into and disbursed from  
17 T/A #4 as required by Section 2831.2 of the Regulations.

18 X

19 Between on or about October 9, 1997 and on or about  
20 October 12, 1998, in course of the activities described in  
21 Paragraph VI, above, and in connection with the collection and  
22 disbursement of said trust funds in said trust fund accounts,  
23 Respondent WINDSOR caused, suffered or permitted the balance of  
24 funds in T/A #1, T/A #3, T/A #5, T/A #6, and T/A #7 to be  
25 reduced to an amount which, as of February 28, 1998, was  
26 approximately \$197,867.40 less than the aggregate liability of  
27 Respondent WINDSOR to all owners of such funds, without the

1 prior written consent of the owners of such funds, in that  
2 Respondent WINDSOR caused, suffered or permitted the balance of  
3 funds in the trust accounts tabulated below to be reduced to an  
4 amount which, as of February 28, 1998, was approximately the  
5 amount tabulated below less than the liability of Respondent  
6 WINDSOR to all owners of such funds, without the prior written  
7 consent of the owners of such funds:

	<u>ACCOUNT</u>	<u>AMOUNT</u>	
9	(A)	T/A #1	\$ 20,119.26
10	(B)	T/A #3	\$ 29,486.91
11	(C)	T/A #5	\$ 5,995.21
12	(D)	T/A #6	\$ 32,202.31
13	(E)	T/A #7	\$110,063.71

14  
15 XI

16 At all times mentioned herein between on or about  
17 September 4, 1997 and on or about November 3, 1997, in course of  
18 the activities described in Paragraph VI, above, Respondent  
19 WINDSOR maintained a place of business and was doing a real  
20 estate brokerage business at 765 Third Avenue, Suite 300C, Chula  
21 Vista, California, but failed to procure a branch office license  
22 from the Department for such location as required by Section  
23 10163 of the Code.

24 XII

25 Between on or about October 9, 1997 and on or about  
26 October 12, 1998, in course of the activities described in  
27 Paragraph VI, above, Respondent WINDSOR failed to comply with  
Section 10240 of the Code, in that Respondent WINDSOR:

1 (a) Failed to cause to be delivered to the borrowers  
2 the statement in writing containing all the information required  
3 by Section 10241 of the Code (hereinafter "Written Disclosure  
4 Statement");

5 (b) Failed to obtain the signature of the borrowers  
6 on the required Written Disclosure Statement;

7 (c) Failed to deliver a copy of the required Written  
8 Disclosure Statement to the borrowers; and

9 (d) Failed to retain on file for a period of three  
10 years a true and correct copy of the required Written Disclosure  
11 Statement signed by the borrowers.

12 XIII

13 Respondent ROSS failed to exercise reasonable  
14 supervision over the acts of Respondent WINDSOR in such a manner  
15 as to allow the acts and events described in Paragraphs IX  
16 through XII, inclusive, above, to occur.

17 XIV

18 The facts alleged above are grounds for the suspension  
19 or revocation of the licenses and license rights of Respondent  
20 WINDSOR under the following provisions of the Code and/or the  
21 Regulations:

22 (a) As to Paragraph IX(a) under Section 2831 of the  
23 Regulations in conjunction with Sections 10145 and 10177(d) of  
24 the Code;

25 (b) As to Paragraph IX(b) under Section 2831.1 of the  
26 Regulations in conjunction with Sections 10145 and 10177(d) of  
27 the Code;

1 (c) As to Paragraph IX(c) under Section 2831.1 of the  
2 Regulations in conjunction with Sections 10145 and 10177(d) of  
3 the Code;

4 (d) As to Paragraph X under Section 2832.1 of the  
5 Regulations in conjunction with Sections 10145 and 10177(d) of  
6 the Code;

7 (e) As to Paragraph XI under Section 10163 of the  
8 Code in conjunction with Sections 10165 and 10177(d) of the  
9 Code; and

10 (f) As to Paragraph XII under Section 10240 of the  
11 Code in conjunction with Section 10177(d) of the Code.

12 XV

13 The facts alleged above are grounds for the suspension  
14 or revocation of the licenses and license rights of Respondent  
15 ROSS under Section 10177(g) and/or Section 10177(h) of the Code  
16 and Section 10159.2 of the Code in conjunction with Section  
17 10177(d) of the Code.

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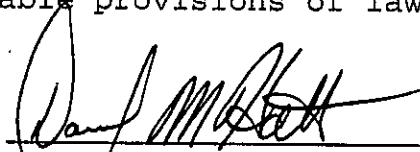
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1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents  
5 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 applicable provisions of law.  
8

9 

10 DANIEL M. HATT  
11 Deputy Real Estate Commissioner

11 *LOS ANGELES*  
12 Dated at ~~San Diego~~, California,  
13 this 3<sup>RD</sup> day of ~~December, 1999.~~  
14 *JANUARY, 2000*