

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
REALTECH FINANCIAL)
CORPORATION,) NO. H-6913 SF
PETER PAUL TRAVALINI)
MELVIN DONALD MARCAL,)
)
Respondents.)
_____)

PROPOSED DECISION

This matter was presided over as an uncontested case by Robert E. McCabe, Regional Manager, Department of Real Estate, as the designee of the Real Estate Commissioner, in Sacramento, California, on January 20, 1994.

Susan Y. Bennett, Counsel, represented the Complainant.

No appearance was made by or on behalf of respondent REALTECH FINANCIAL CORPORATION. On proof of compliance with Government Code Section 11505, the matter proceeded as a default pursuant to Government Code Section 11520.

The following Decision is proposed, certified, and recommended for adoption:

FINDINGS OF FACT

1.

The Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, made this Accusation in his official capacity and not otherwise.

2.

Respondents REALTECH FINANCIAL CORPORATION (hereinafter Respondent RFC), PETER PAUL TRAVALINI (hereinafter Respondent TRAVALINI), and MELVIN DONALD MARCAL (hereinafter Respondent MARCAL) are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code").

3.

At all times mentioned herein, Respondent RFC was licensed by the Department as a real estate corporation. From August 25, 1992 through November 23, 1992, Respondent RFC was acting by and through Respondent TRAVALINI.

4.

From August 25, 1992 through November 23, 1992, Respondent TRAVALINI was licensed by the Department as a real estate broker and as the broker-officer of Respondent RFC.

5.

On or about November 16, 1992, Respondent MARCAL became licensed as a real estate salesperson in the employ of Respondent RFC. Within the three-year period immediately preceding November 16, 1992, Respondent MARCAL was employed by Respondent RFC without having obtained a real estate broker or salesperson license from the Department of Real Estate, State of California.

6.

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

7.

At all times herein mentioned, Respondent RFC engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property or a business opportunity, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation.

8.

Within the three year period immediately preceding the filing of the Accusation, Respondent RFC collected appraisal and credit report fees in connection with the mortgage loan brokerage activities described in Paragraph 7, above. Said appraisal and credit report fees were trust funds pursuant to Section 10145 of the Code. Respondent RFC deposited said trust funds into an account known as

Realtech Financial Corporation Trust Account, Account Number 01415-03168, Bank of America, Los Angeles, California.

9.

In connection with the collection and disbursement of said trust funds, Respondent RFC failed to deposit and maintain said funds in said bank account, or disbursed said funds in such a manner that as of November 25, 1992, there was a shortage of at least \$11,273.15 of trust funds in said bank account.

10.

Respondent RFC failed to obtain the prior written consent of its principals for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds.

11.

In connection with the trust funds account described in Paragraph 8, above, Respondent RFC permitted its employees, Joyce Frampton and Susan Manning, persons who at all times mentioned herein were unlicensed, to be signatories on the trust fund account without obtaining fidelity bond on said employees for coverage at least equal to the maximum amount of the trust funds to which each had access at any time.

12.

From on or about November 1, 1991 to the present, Respondent RFC failed to maintain adequate separate records for each beneficiary or transaction, accounting therein for all trust funds received, deposited, and disbursed, in the manner required by Section 2831.1 of the Regulations.

13.

From on or about November 1, 1991, Respondent RFC failed to perform a monthly reconciliation of the receipt and disposition of all trust funds deposited into said trust fund account, against the balance of all separate beneficiary or transaction records in conformance with Section 2831.2 of the Regulations.

14.

Within the three-year period immediately preceding the filing of the Accusation, while acting in the employ of Respondent RFC but without being licensed as a real estate salesperson or real estate broker, Respondent MARCAL performed the activities described in Paragraph 7, above, for or in expectation of compensation, including but not limited to the following transactions:

<u>BORROWER</u>	<u>PROPERTY LOCATION</u>	<u>LOAN AMOUNT</u>
a. Michael & Susan Longo	1704 Freeport Ct. Oakley, California	\$165,000
b. Thomas & Gwen Place	376 Virginia Dr. Livermore, California	\$231,000
c. Cruz & Marylou Cisneros	33542 Inculo Lane Fremont, California	\$217,000

15.

Within the three-year period immediately preceding the filing of the Accusation, Respondent RFC failed to notify the Department of Real Estate that it met the threshold criteria provided for in Section 10232 of the Code in conformance with Section 10232.2 of the Code.

16.

Within the three-year period immediately preceding the filing of the Accusation, in connection with the mortgage loan brokerage activities described in Paragraph 7, above, Respondent RFC failed to provide the written mortgage loan disclosure statement prescribed by Section 10240(a) of the Code before the borrower became obligated to complete the loan, including, but not limited to the following transactions:

<u>BORROWER</u>	<u>DATE FUNDED</u>	<u>LOAN AMOUNT</u>
a. Phillip & Kimberly Hoagland	April 2, 1992	\$140,000
b. Louis Flores	July 24, 1992	\$117,000
c. Brian & Vicki Barret	September 18, 1992	\$149,500

DETERMINATION OF ISSUES

1.

The standard of proof applied at the hearing was clear and convincing proof to a reasonable certainty.

2.

Cause for discipline against Respondent REALTECH FINANCIAL CORPORATION for violation of Sections 2830, 2831.1, 2831.2, 2832.1 and 2834 of the Regulations, and Section 10145 of the Code in conjunction with Section 10177(d) of the Code was established by reason of Findings 7 through 13.

3.

Cause for discipline against Respondent REALTECH FINANCIAL CORPORATION for violations of Sections 10130, 10131, and 10137 of the Code in conjunction with Section 10177(d) of the Code was established by reason of Finding 14.

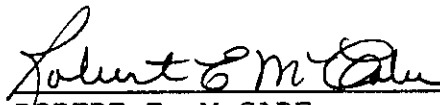
4.

Cause for discipline against Respondent REALTECH FINANCIAL CORPORATION for violations of Sections 10232.2 and 10240 in conjunction with Section 10177(d) of the Code was established by reason of Findings 15 and 16.

ORDER

All licenses and licensing rights of Respondent REALTECH FINANCIAL CORPORATION, under the Real Estate Law are revoked.

DATED: January 20, 1994



ROBERT E. McCABE
Northern Area Regional Manager
Department of Real Estate

1 Procedure Act (APA), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation.

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

8 3. On May 12, 1993, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense he waives
14 his right to require the Commissioner to prove the allegations in
15 the Accusation at a contested hearing held in accordance with the
16 provisions of the APA and that he waives other rights afforded to
17 him in connection with the hearing such as the right to present
18 evidence in defense of the allegations in the Accusation and the
19 right to cross-examine witnesses.

20 4. Respondent, pursuant to the limitations set forth
21 below, hereby admits that there is a factual basis for the
22 allegations in Paragraphs 15 and 16 of the Accusation filed in
23 this proceeding are correct and the Real Estate Commissioner shall
24 not be required to provide further evidence to prove such
25 allegations.

26 5. It is understood by the parties that the Real Estate
27 Commissioner may adopt the Stipulation and Agreement as his

1 decision in this matter thereby imposing the penalty and sanctions
2 on Respondent's real estate license and license rights as set
3 forth in the below "Order". In the event that the Commissioner in
4 his discretion does not adopt the Stipulation and the Agreement in
5 Settlement, it shall be void and of no effect, and Respondent
6 shall retain the right to a hearing and proceeding on the
7 Accusation under all the provisions of the APA and shall not be
8 bound by any admission or waiver made herein.

9 6. The Order or any subsequent Order of the Real Estate
10 Commissioner made pursuant to this Stipulation and Agreement in
11 Settlement shall not constitute an estoppel, merger or bar to any
12 further administrative or civil proceedings by the Department of
13 Real Estate with respect to any matters which were not specific-
14 ally alleged to be causes for accusation in this proceeding.

15 7. Pursuant to this Stipulation, the Determination of
16 Issues and Order are agreed to only for the purpose of this
17 proceeding between Respondent and the Department. The parties
18 hereto intend that the Decision not be given res judicata/
19 collateral estoppel effect except as between them. The order
20 based hereon shall not be treated as an admission of liability or
21 responsibility in any other proceeding not involving these same
22 parties.

23 DETERMINATION OF ISSUES

24 By reason of the foregoing stipulations, admissions and
25 waivers and solely for the purpose of settlement of the pending
26 Accusation without a hearing, it is stipulated and agreed that the
27 following determination of issues shall be made:

1. 1

2 The conduct of respondent MELVIN DONALD MARCAL, as
3 described in Paragraphs 15 and 16 of the Accusation is grounds for
4 the suspension or revocation of all of the real estate licenses
5 and license rights of Respondent under the provisions of Section
6 10130, 10131 and 10137 of the Business and Professions Code in
7 conjunction with Section 10177(d) of the Business and Professions
8 Code.

9 ORDER

10 RESPONDENT MELVIN DONALD MARCAL

11 1. All licenses and licensing rights of respondent MELVIN
12 DONALD MARCAL under the Real Estate Law are revoked; provided,
13 however, a restricted real estate salesperson license shall be
14 issued to Respondent pursuant to Section 10156.5 of the Business
15 and Professions Code if Respondent makes application therefor and
16 pays to the Department of Real Estate the appropriate fee for the
17 restricted license within ninety (90) days from the effective date
18 of this Decision. The restricted license issued to Respondent
19 shall be subject to all of the provisions of Section 10156.7 of
20 the Business and Professions Code and to the following
21 limitations, conditions and restrictions imposed under authority
22 of Section 10156.6 of that Code:

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

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

7 C. Respondent shall not be eligible to apply for the
8 issuance of an unrestricted real estate license nor for the
9 removal of any of the conditions, limitations or restrictions of a
10 restricted license until one (1) year has elapsed from the
11 effective date of this Order.

12 D. Respondent shall submit with any application for
13 license under an employing broker, or any application for transfer
14 to a new employing broker, a statement signed by the prospective
15 employing real estate broker on a form approved by the Department
16 of Real Estate which shall certify:

17 (i) That the employing broker has read the Order of the
18 Commissioner which granted the right to a restricted
19 license; and

20 (ii) That the employing broker will exercise close
21 supervision over the performance by the restricted
22 licensee relating to activities for which a real estate
23 license is required.

24 E. Respondent shall, within six (6) months from the
25 effective date of this Order, take and pass the Professional
26 Responsibility Examination administered by the Department
27 including the payment of the appropriate examination fee. If

1 Respondent fails to satisfy this condition, the Commissioner may
2 order suspension of Respondent's license until Respondent passes
3 the examination.

4 2. Respondent's original real estate salesperson license was
5 issued subject to the provisions of Section 10153.4 of the
6 Business and Professions Code, and the restricted real estate
7 salesperson license issued to Respondent shall be similarly
8 limited, to wit: Respondent shall, within eighteen (18) months of
9 the issuance of Respondent's original real estate salesperson
10 license under the provisions of Section 10153.4 of the Business
11 and Professions Code, submit evidence satisfactory to the
12 Commissioner of successful completion, at an accredited
13 institution, of two (2) of the courses listed in Section 10153.2,
14 other than real estate principles, advanced legal aspects of real
15 estate, advanced real estate finance or advanced real estate
16 appraisal. If Respondent fails to present satisfactory evidence
17 of successful completion of said courses, the restricted license
18 shall be automatically suspended effective eighteen (18) months
19 after issuance of Respondent's original real estate salesperson
20 license. Said suspension shall not be lifted until Respondent has
21 submitted the required evidence of course completion and the
22 Commissioner has given written notice to the Respondent of lifting
23 of the suspension.

24
25 November 14, 1993
26 DATED

Susan Y. Bennett
27 SUSAN Y. BENNETT
Counsel for Complainant

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

12/13/93

DATED

MELVIN DONALD MARCAL
Respondent

Approved as to form:

12/13/93

DATED

GORDON F. BOWLEY
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 February 9, 1994.

IT IS SO ORDERED December 22, 1993.

CLARK WALLACE
Real Estate Commissioner

BY: John R. Liberator

Chief Deputy Commissioner
PETER PAUL TRAVALINI
MELVIN DONALD MARCAL

FILE NO. H-6913 SF

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

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 May 17, 1993, 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 he
12 understands that by withdrawing said Notice of Defense he waives
13 his right to require the Commissioner to prove the allegations in
14 the Accusation at a contested hearing held in accordance with the
15 provisions of the APA and that he waives other rights afforded to
16 him in connection with the hearing such as the right to present
17 evidence in defense of the allegations in the Accusation and the
18 right to cross-examine witnesses.

19 4. Respondent, pursuant to the limitations set forth
20 below, hereby admits that the factual allegations in Paragraphs 22
21 through 25 of the Accusation filed in this proceeding are true and
22 correct and the Real Estate Commissioner shall not be required to
23 provide further evidence to prove such allegations.

24 5. It is understood by the parties that the Real Estate
25 Commissioner may adopt the Stipulation and Agreement as his
26 decision in this matter thereby imposing the penalty and sanctions
27 on Respondent's real estate license and license rights as set

1 forth in the below "Order". In the event that the Commissioner in
2 his discretion does not adopt the Stipulation and the Agreement in
3 Settlement, it shall be void and of no effect, and Respondent
4 shall retain the right to a hearing and proceeding on the
5 Accusation under all the provisions of the APA and shall not be
6 bound by any admission or waiver made herein.

7 6. The Order or any subsequent Order of the Real Estate
8 Commissioner made pursuant to this Stipulation and Agreement in
9 Settlement shall not constitute an estoppel, merger or bar to any
10 further administrative or civil proceedings by the Department of
11 Real Estate with respect to any matters which were not specific-
12 ally alleged to be causes for accusation in this proceeding.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and
15 waivers and solely for the purpose of settlement of the pending
16 Accusation without a hearing, it is stipulated and agreed that the
17 following determination of issues shall be made:

18 1.

19 The conduct of Respondent, as described in Paragraphs 22
20 through 25 of the Accusation is grounds for the suspension or
21 revocation of all of the real estate licenses and license rights
22 of Respondent under the provisions of Section 2725 of the
23 Regulations in conjunction with Section 10177(d) of the Business
24 and Professions Code, and Section 10177(h) of the Business and
25 Professions Code.

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ORDER

RESPONDENT PETER PAUL TRAVALINI.

1. All licenses and licensing rights of Respondent PETER PAUL TRAVALINI under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order; provided, however, that thirty (30) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

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

November 12, 1993

DATED

Susan Y. Bennett

SUSAN Y. BENNETT
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to

1 Sections 11506, 11508, 11509, and 11513 of the Government Code),
2 and I willingly, intelligently, and voluntarily waive those
3 rights, including the right of requiring the Commissioner to prove
4 the allegations in the Accusation at a hearing at which I would
5 have the right to cross-examine witnesses against me and to
6 present evidence in defense and mitigation of the charges.

7
8 11/15/93

DATED

Peter Paul Travalini

PETER PAUL TRAVALINI
Respondent

9
10 * * *

11 The foregoing Stipulation and Agreement for Settlement
12 is hereby adopted by the Real Estate Commissioner as his Decision
13 and Order and shall become effective at 12 o'clock noon on
14 February 9, 1994.

15 IT IS SO ORDERED

12/15, 1993.

16 CLARK WALLACE
17 Real Estate Commissioner

18 *Clark Wallace*
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Conteras

In the Matter of the Accusation of
REALTECH FINANCIAL CORPORATION,
PETER PAUL TRAVALINI,
MELVIN DONALD MARCAL,

}

Case No. H-6913 SF

OAH No. N-43219

Respondent

CONTINUED

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, 455 Golden Gate Avenue,
Room 2248, San Francisco, California 94102

on Tuesday, December 7, 1993, at the hour of 9:00 AM,
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.

DEPARTMENT OF REAL ESTATE

Dated: July 12, 1993

By Susan Y. Bennett
SUSAN Y. BENNETT Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 23 1993
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

REALTECH FINANCIAL CORPORATION,
PETER PAUL TRAVALINI,
MELVIN DONALD MARCAL,

}

By Kathleen Conteras

Case No. H-6913 SF

OAH No. N-43219

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, 455 Golden Gate Avenue,
Room 2248, San Francisco, California 94102

on Monday -- November 1, 1993, at the hour of 9:00 AM,
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.

DEPARTMENT OF REAL ESTATE

Dated: June 22, 1993

By Susan Y. Bennett
SUSAN Y. BENNETT Counsel

COPY

FILED
MAY 03 1993

SUSAN Y. BENNETT, Counsel
Department of Real Estate
P. O. Box 187000
Sacramento, CA 95818-7000

DEPARTMENT OF REAL ESTATE

Edward V. Chiolo

Telephone: (916) 227-0789

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
REALTECH FINANCIAL)	NO. H-6913 SF
CORPORATION,)	
PETER PAUL TRAVALINI,)	<u>ACCUSATION</u>
MELVIN DONALD MARCAL,)	
Respondents.)	

The Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against REALTECH FINANCIAL CORPORATION (hereinafter "Respondent RFC"), PETER PAUL TRAVALINI (hereinafter "Respondent TRAVALINI"), and MELVIN DONALD MARCAL (hereinafter "Respondent MARCAL"), is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

1.

The Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity and not otherwise.

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2.

Respondents **RFC**, **TRAVALINI**, and **MARCAL** are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, (hereinafter "the Code").

3.

At all times mentioned herein, Respondent **RFC** was licensed by the Department as a real estate corporation. From August 25, 1992 through November 23, 1992, Respondent **RFC** was acting by and through Respondent **TRAVALINI**.

4.

From August 25, 1992 through November 23, 1992, Respondent **TRAVALINI** was licensed by the Department as a real estate broker and as the broker-officer of Respondent **RFC**.

5.

On or about November 16, 1992, Respondent **MARCAL** became licensed as a real estate salesperson in the employ of Respondent **RFC**. Within the three-year period immediately preceding November 16, 1992, Respondent **MARCAL** was employed by Respondent **RFC** without having obtained a real estate broker or salesperson license from the Department of Real Estate, State of California.

6.

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

1 while engaged in the furtherance of the business or operations of
2 Respondent RFC and while acting within the course and scope of
3 their corporate authority and employment.

4 7.

5 At all times herein mentioned, Respondent RFC engaged in
6 the business of, acted in the capacity of, advertised or assumed
7 to act as a real estate broker in the State of California within
8 the meaning of Section 10131(d) of the Code, including the
9 operation and conduct of a mortgage loan brokerage business with
10 the public wherein lenders and borrowers were solicited for loans
11 secured directly or collaterally by liens on real property or a
12 business opportunity, wherein such loans were arranged,
13 negotiated, processed, and consummated on behalf of others for
14 compensation or in expectation of compensation.

15 8.

16 Within the three year period immediately preceding the
17 filing of the Accusation, Respondent RFC collected appraisal and
18 credit report fees in connection with the mortgage loan brokerage
19 activities described in Paragraph 7, above. Said appraisal and
20 credit report fees were trust funds pursuant to Section 10145 of
21 the Code. Respondent RFC deposited said trust funds into an
22 account known as Realtech Financial Corporation Trust Account,
23 Account Number 01415-03168, Bank of America, Los Angeles,
24 California.

25 9.

26 In connection with the collection and disbursement of
27 said trust funds, Respondent RFC failed to deposit and maintain

1 said funds in said bank account, or disbursed said funds in such a
2 manner that as of November 25, 1992, there was a shortage of at
3 least \$11,273.15 of trust funds in said bank account.

4 10.

5 Respondent RFC failed to obtain the prior written
6 consent of its principals for the reduction of the aggregate
7 balance of trust funds in said bank account to an amount less than
8 the existing aggregate trust fund liability to the owners of said
9 funds.

10 11.

11 In connection with the trust funds account described in
12 Paragraph 8, above, Respondent RFC permitted its employees, Joyce
13 Frampton and Susan Manning, persons who at all times mentioned
14 herein were unlicensed, to be signatories on the trust fund
15 account without obtaining fidelity bond on said employees for
16 coverage at least equal to the maximum amount of the trust funds
17 to which each had access at any time.

18 12.

19 From on or about November 1, 1991 to the present,
20 Respondent RFC failed to maintain adequate separate records for
21 each beneficiary or transaction, accounting therein for all trust
22 funds received, deposited, and disbursed, in the manner required
23 by Section 2831.1 of the Regulations.

24 13.

25 From on or about November 1, 1991, Respondent RFC
26 failed to perform a monthly reconciliation of the receipt and
27 disposition of all trust funds deposited into said trust fund

1 account, against the balance of all separate beneficiary or
2 transaction records in conformance with Section 2831.2 of the
3 Regulations.

4 14.

5 The facts alleged above are cause for the suspension or
6 revocation of all licenses and license rights of Respondent RFC
7 pursuant to Sections 2830, 2831.1, 2831.2, 2832.1 and Section 2834
8 of the Regulations, and Section 10145 of the Code in conjunction
9 with Section 10177(d) of the Code.

10 SECOND CAUSE OF ACCUSATION

11 15.

12 There is hereby incorporated in this Second, separate
13 and distinct, Cause of Accusation, all of the allegations
14 contained in Paragraphs 1, 2, 3, 4, 5, 6, and 7 of the First Cause
15 of Accusation with the same force and effect as if herein fully
16 set forth.

17 16.

18 Within the three-year period immediately preceding the
19 filing of the Accusation, while acting in the employ of Respondent
20 RFC but without being licensed as a real estate salesperson or
21 real estate broker, Respondent MARCAL performed the activities
22 described in Paragraph 7, above, for or in expectation of
23 compensation, including but not limited to the following
24 transactions:

25	<u>BORROWER</u>	<u>PROPERTY LOCATION</u>	<u>LOAN AMOUNT</u>
26			
27	a. Michael & Susan Longo	1704 Freeport Ct. Oakley, California	\$165,000

	<u>BORROWER</u>	<u>PROPERTY LOCATION</u>	<u>LOAN AMOUNT</u>
1			
2	b. Thomas & Gwen Place	376 Virginia Dr. Livermore, California	\$231,000
3			
4	c. Cruz & Marylou Cisneros	33542 Iinculo Lane Fremont, California	\$217,000

5 17.

6 The facts alleged above are cause for the suspension or
7 revocation of all licenses and license rights of Respondent RFC
8 and MARCAL pursuant to Sections 10130, 10131, and 10137 of the
9 Code in conjunction with Section 10177(d) of the Code.

10 THIRD CAUSE OF ACCUSATION

11 18.

12 There is hereby incorporated in this Third, separate and
13 distinct, Cause of Accusation, all of the allegations contained in
14 Paragraphs 1, 2, 3, 4, 5, 6, and 7 of the First Cause of
15 Accusation with the same force and effect as if herein fully set
16 forth.

17 19.

18 Within the three-year period immediately preceding the
19 filing of the Accusation, Respondent RFC failed to notify the
20 Department of Real Estate that it met the threshold criteria
21 provided for in Section 10232 of the Code in conformance with
22 Section 10232.2 of the Code.

23 20.

24 Within the three-year period immediately preceding the
25 filing of the Accusation, in connection with the mortgage loan
26 brokerage activities described in Paragraph 7, above, Respondent
27 RFC failed to provide the written mortgage loan disclosure

1 statement prescribed by Section 10240(a) of the Code before the
2 borrower became obligated to complete the loan, including, but not
3 limited to the following transactions:

	<u>BORROWER</u>	<u>DATE FUNDED</u>	<u>LOAN AMOUNT</u>
4			
5			
6	a. Phillip & Kimberly Hoagland	April 2, 1992	\$140,000
7	b. Louis Flores	July 24, 1992	\$117,0000
8	c. Brian & Vicki Barret	September 18, 1992	\$149,500
9			

10 21.

11 The facts alleged above are cause for the suspension or
12 revocation of all licenses and license rights of Respondent RFC
13 pursuant to Sections 10232.2 and 10240 in conjunction with Section
14 10177(d) of the Code.

15 FOURTH CAUSE OF ACCUSATION

16 22.

17 There is hereby incorporated in this Fourth, separate
18 and distinct, Cause of Accusation, all of the allegations
19 contained in Paragraphs 1, 2, 3, 4, 5, 6, and 7 of the First Cause
20 of Accusation with the same force and effect as if herein fully
21 set forth.

22 23.

23 Within the three-year period immediately preceding the
24 filing of the Accusation, in connection with the mortgage loan
25 brokerage activities described in Paragraph 7, above, Respondent
26 TRAVALINI failed to review, initial and date within five (5)
27 working days, all instruments having a material effect upon a

1 party's rights or obligation which were prepared by the real
2 estate salespersons in Respondent's RFC's employ.

3 24.

4 Within the three-year period immediately preceding the
5 filing of the Accusation, Respondent **TRAVALINI**, while acting in
6 the capacity of designated broker-officer of Respondent **RFC**,
7 failed to exercise reasonable supervision and control over the
8 activities of Respondent **RFC** for which a real estate license is
9 required, thereby permitting or causing the violations described
10 in the Accusation to occur.

11 25.

12 The facts alleged above are grounds for the suspension
13 or revocation of all licenses and license rights of Respondent
14 **TRAVALINI** under Section 2725 of the Regulations in conjunction
15 with Section 10177(d) of the Code, and Section 10177(h) of the
16 Code.

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

24 *Edward V. Chiolo*

25 _____
EDWARD V. CHIOLO
26 Deputy Real Estate Commissioner

27 Dated at San Francisco, California
this 29th day of APRIL, 1993.