

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

FILED
OCT 10 2001

DEPARTMENT OF REAL ESTATE

By *Laurie G. Zan*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-7937 SF
12	BAR K INC.,)	OAH No. N-2001040371
13	BARNEY JOE NG,)	
14	Respondents.)	<u>STIPULATION AND AGREEMENT</u>

15 It is hereby stipulated by and between BAR K INC.
16 (hereinafter "BAR K") and BARNEY JOE NG (hereinafter "Respondent
17 NG") (sometimes herein referred to as "Respondents") and their
18 attorney, Thomas C. Lasken; and the Complainant, acting by and
19 through David A. Peters, Counsel for the Department of Real
20 Estate; as follows, for the purpose of settling and disposing of
21 the First Amended Accusation filed on July 12, 2001 (hereinafter
22 "the Accusation").

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

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

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

7 3. On April 5, 2001, Respondents 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. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that
12 Respondents understand that by withdrawing said Notice of
13 Defense they will thereby waive their 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 Respondents will waive other rights afforded to
17 Respondents 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. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondents chose not to contest these
23 allegations, but to remain silent and understand that, as a
24 result thereof, these factual allegations, without being
25 admitted or denied, will serve as a prima facie basis for the
26 disciplinary action stipulated to herein. The Real Estate

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

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

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

20 7. Respondents understand that be agreeing to this
21 Stipulation and Agreement in Settlement, Respondents agree to
22 pay, pursuant to Section 10148 of the Business and Professions
23 Code, the cost of the audits which led to this disciplinary
24 action. The amount of said costs is \$9,574.93.

25 8. Respondents have received, read, and understand
26 the "Notice Concerning Costs of Subsequent Audit.". Respondents
27 further understand that by agreeing to this Stipulation and

1 Agreement in Settlement, the findings set forth below in the
2 DETERMINATION OF ISSUES become final, and that the Commissioner
3 may charge Respondents for the costs of any subsequent audit
4 conducted pursuant to Section 10148 of the Business and
5 Professions Code to determine if the violations have been
6 corrected. the maximum costs of said audit will not exceed
7 \$9,574.93.

8 DETERMINATION OF ISSUES

9 By reason of the foregoing stipulations, admissions
10 and waivers, and solely for the purpose of settlement of the
11 pending Accusation without a hearing, it is stipulated and
12 agreed that the following determination of issues shall be made:

13 I

14 The conduct of Respondents as described in the First
15 Amended Accusation, constitute cause for the suspension or
16 revocation of the real estate licenses and license rights of
17 Respondents under the provisions of Business and Professions
18 Code Section 10177(d) of the Business and Professions Code ^{in conjunction with} ~~and~~
19 Section 2832 of Title 10, California Code of Regulations. TCL

20 ORDER

21 I

22 A. All licenses and licensing rights of Respondent
23 BAR K INC. under the Real Estate Law are suspended for a period
24 of one hundred and eighty (180) days from the effective date of
25 this Decision.

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1 B. One hundred and forty (140) days of said
2 suspension are stayed for a period of two (2) years upon the
3 following terms and conditions:

4 (1) Respondent shall obey all laws, rules and
5 regulations governing the rights, duties and
6 responsibilities of a real estate licensee in the
7 State of California; and

8 (2) If the Real Estate Commissioner determines that
9 further cause for disciplinary actions against
10 Respondent has occurred within two (2) years from
11 the effective date of the Decision, the stay of
12 suspension hereby granted to Respondent, or such
13 portion of the stay as the Real Estate
14 Commissioner shall deem appropriate, shall be
15 vacated.

16 C. If Respondent BAR K petitions the Department in
17 writing pursuant to Section 10175.2 of the Code prior to the
18 effective date of the Decision, the remaining forty (40) days of
19 said suspension shall be stayed upon condition that:

20 (1) Respondent BAR K pays a monetary penalty pursuant
21 to Section 10175.2 of the Business and
22 Professions Code at a rate of \$250.00 for each
23 day of the suspension for a total monetary
24 penalty of \$10,000.00.

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1 (2) Said payment shall be in the form of a cashier's
2 check or certified check made payable to the
3 Recovery Account of the Real Estate Fund. Said
4 check must be received by the Department prior to
5 the effective date of the Decision in this
6 matter.

7 (3) No further cause for disciplinary action against
8 the real estate license of Respondent BAR K
9 occurs within two (2) years from the effective
10 date of the Decision in this matter.

11 (4) If Respondent BAR K fails to pay the monetary
12 penalty in accordance with the terms and
13 conditions of the Decision, the Commissioner may,
14 without a hearing, order the immediate execution
15 of all or any part of the stayed suspension in
16 which event Respondent BAR K shall not be
17 entitled to any repayment nor credit, prorated or
18 otherwise, for money paid to the Department under
19 the terms of this Decision.

20 (5) If Respondent pays the monetary penalty and if no
21 further cause for disciplinary action against the
22 real estate license of Respondent BAR K occurs
23 within two (2) years from the effective date of
24 the Decision, the stay hereby granted shall
25 become permanent.

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1 D. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondent BAR K and/or Respondent NG shall
3 pay the Commissioner's reasonable cost for: a) the audits which
4 led to this disciplinary action, and b) a subsequent audit to
5 determine if Respondents have corrected the trust fund
6 violations found in paragraph I of the Determination of Issues.
7 In calculating the amount of the Commissioner's reasonable cost,
8 the Commissioner may use the estimated average hourly salary for
9 all persons performing audits of real estate brokers, and shall
10 include an allocation for travel costs, including mileage, time
11 to and from the auditor's place of work and per diem.
12 Respondent BAR K and/or Respondent NG shall pay such cost
13 within sixty (60) days of receiving an invoice from the
14 Commissioner detailing the activities performed during the audit
15 and the amount of time spent performing those activities. The
16 Commissioner may, in her discretion, vacate and set aside the
17 stay order, if payment is not timely made as provided for
18 herein, or as provided for in a subsequent agreement between the
19 Respondent BAR K and the Commissioner. The vacation and the set
20 aside of the stay shall remain in effect until payment is made
21 in full, or until Respondent BAR K enters into an agreement
22 satisfactory to the Commissioner to provide for payment. Should
23 no order vacating the stay be issued, either in accordance with
24 this condition or condition "C", the stay imposed herein shall
25 become permanent.

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(1) Respondent NG pays a monetary penalty pursuant to
Section 10175.2 of the Business and Professions
Code at a rate of \$250.00 for each day of the
suspension for a total monetary penalty of
\$10,000.00.

(2) Said payment shall be in the form of a cashier's
check or certified check made payable to the
Recovery Account of the Real Estate Fund. Said
check must be received by the Department prior to
the effective date of the Decision in this
matter.

(3) No further cause for disciplinary action against
the real estate license of Respondent NG occurs
within two (2) years from the effective date of
the Decision in this matter.

(4) If Respondent NG fails to pay the monetary
penalty in accordance with the terms and
conditions of the Decision, the Commissioner may,
without a hearing, order the immediate execution
of all or any part of the stayed suspension in
which event Respondent NG shall not be entitled
to any repayment nor credit, prorated or
otherwise, for money paid to the Department under
the terms of this Decision.

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1 (5) If Respondent pays the monetary penalty and if no
2 further cause for disciplinary action against the
3 real estate license of Respondent NG occurs
4 within two (2) years from the effective date of
5 the Decision, the stay hereby granted shall
6 become permanent.

7 D. Pursuant to Section 10148 of the Business and
8 Professions Code, Respondent NG and/or Respondent BAR K shall
9 pay the Commissioner's reasonable cost for: a) the audits which
10 led to this disciplinary action, and b) a subsequent audit to
11 determine if Respondents have corrected the trust fund
12 violations found in paragraph I of the Determination of Issues.
13 In calculating the amount of the Commissioner's reasonable cost,
14 the Commissioner may use the estimated average hourly salary for
15 all persons performing audits of real estate brokers, and shall
16 include an allocation for travel costs, including mileage, time
17 to and from the auditor's place of work and per diem.
18 Respondent NG and/or Respondent BAR K shall pay such cost within
19 sixty (60) days of receiving an invoice from the Commissioner
20 detailing the activities performed during the audit and the
21 amount of time spent performing those activities. The
22 Commissioner may, in her discretion, vacate and set aside the
23 stay order, if payment is not timely made as provided for
24 herein, or as provided for in a subsequent agreement between
25 Respondent NG and the Commissioner. The vacation and the set
26 aside of the stay shall remain in effect until payment is made
27 in full, or until Respondent NG enters into an agreement

1 satisfactory to the Commissioner to provide for payment. Should
2 no order vacating the stay be issued, either in accordance with
3 this condition or condition "C", the stay imposed herein shall
4 become permanent.

5 E. Respondent NG shall, within six (6) months from
6 the effective date of this Decision, take and pass the
7 Professional Responsibility Examination administered by the
8 Department including the payment of the appropriate examination
9 fee. If Respondent NG fails to satisfy this condition, the
10 Commissioner may order suspension of Respondent's license until
11 Respondent passes the examination.

12
13 SEPTEMBER 13, 2001
14 DATED

13 Larry Alamos
14 for DAVID A. PETERS, Counsel
15 DEPARTMENT OF REAL ESTATE

15 * * *

16 I have read the Stipulation and Agreement, have
17 discussed it with my counsel, and its terms are understood by
18 me and are agreeable and acceptable to me. I understand that I
19 am waiving rights given to me by the California Administrative
20 Procedure Act (including but not limited to Sections 11506,
21 11508, 11509, and 11513 of the Government Code), and I
22 willingly, intelligently, and voluntarily waive those rights,
23 including the right of requiring the Commissioner to prove the
24 allegations in the Accusation at a hearing at which I would
25 have the right to cross-examine witnesses against me and to
26 present evidence in defense and mitigation of the charges.

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AUGUST 30, 2001
DATED

Barney Joe Ng
BAR K INC., Respondent
By: Barney Joe Ng

AUGUST 30, 2001
DATED

Barney Joe Ng
BARNEY JOE NG
Respondent

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

August 29, 2001
DATED

Thomas C. Lasken
THOMAS C. LASKEN
Attorney for Respondents

* * *

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 OCTOBER 31, 2001.

IT IS SO ORDERED September 26, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)

FILED
JUL 12 2001

DEPARTMENT OF REAL ESTATE
Muriel A. Zia

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BAR K INC.,) No. H-7937 SF
13 BARNEY JOE NG,) FIRST AMENDED
14 Respondents.) ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 accusation against BAR K INC (hereinafter "Respondent BAR K")
18 and BARNEY JOE NG (hereinafter "Respondent NG"), is informed and
19 alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

25 Respondents BAR K and NG are presently licensed and/or
26 have license rights under the Real Estate Law (Part 1 of

27 ///

1 Division 4 of the California Business and Professions
2 Code) (hereinafter "Code") as follows:

3 BAR K INC - as a real estate broker corporation.

4 BARNEY JOE NG - as a real estate broker and as
5 designated broker-officer for Respondent BAR K.

6 III

7 Whenever reference is made in an allegation in this
8 Accusation to an act or omission of "Respondents", such
9 allegation shall be deemed to mean the act or omission of each
10 of the Respondents named in the caption hereof, acting
11 individually, jointly, and severally.

12 IV

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

24 V

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

1 in connection with the solicitation, negotiation, processing,
2 packaging and consummation of mortgage loans by Respondents as
3 alleged herein.

4 VI

5 The aforesaid trust funds accepted or received by
6 Respondents were deposited or caused to be deposited by
7 Respondents into one of more bank accounts (hereinafter "trust
8 fund accounts") maintained by Respondents for the handling of
9 trust funds.

10 VII

11 During the course of the mortgage loan brokerage
12 activities described in Paragraph IV above, Respondents received
13 and disbursed funds held in trust on behalf of another or
14 others.

15 VIII

16 Beginning on or before January 1, 1999 through on or
17 about December 31, 1999, Respondents maintained the following
18 trust fund accounts:

19	<u>TITLE AND ACCOUNT NUMBER</u>	<u>BANK</u>
20	Bar-K Inc. Funding Account	Mechanics Bank
21	Account No. 38000148 (hereinafter "Account #1")	Walnut Creek, California
22	Bar-K Inc. Investors	Mechanics Bank
23	Clearing Account	Walnut Creek, California
24	Account No. 38001233 (hereinafter "Account #2")	
25	Bar-K Inc. Pymt Processing Acct.	Mechanics Bank
26	Account No. 38000113 (hereinafter "Account #3")	Walnut Creek, California

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IX

In connection with the receipt and disbursement of trust funds described in Paragraph VIII above, Respondents failed to maintain Account #1, Account #2, and Account #3 in the name of Respondent BAR K, as trustee at a bank or other financial institution as required by Section 2832 of Title 10, California Code of Regulations (hereinafter "Regulations").

X

In connection with the receipt and disbursement of trust funds described in Paragraph VIII above, Respondents permitted the withdrawals to be made from Account #1, Account #2, and Account #3 by someone other than a corporate officer designated pursuant to Sections 10158 and 10211 of the Code, or a salesperson licensed to Respondents and authorized in writing by Respondents to withdraw said funds, or an authorized unlicensed employee covered by a fidelity bond indemnifying against loss in an amount sufficient to cover the maximum amount of funds to which the employee had access at any time, in violation of Section 2834 of the Regulations.

XI

In connection with the receipt and disbursement of trust funds in Account #1, Account #2, and Account #3 described in Paragraph VIII above, Respondents failed to adequately maintain and perform a reconciliation with records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations, at least once per month, in conformance with Section 2831.2 of the Regulations.

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XII

In connection with the receipt and disbursement of trust funds in Account #1, Account #2, and Account #3 described in Paragraph VIII above, Respondents failed to maintain adequate records of trust funds received and disbursed in violation of Section 2831 of the Regulations.

XIII

In connection with the receipt and disbursement of trust funds in Account #1, Account #2, and Account #3 described in Paragraph VIII above, Respondents failed to maintain a separate record for each beneficiary or transaction, accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

XIV

Beginning on or before January 1, 1999 and continuing thereafter, Respondents failed to record deeds of trust in the name of lenders as beneficiaries as required by Section 10234 of the Code in connection with the following loans:

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			<u>DATE</u>
<u>LOAN NO.</u>	<u>BORROWER</u>	<u>LOAN AMOUNT</u>	<u>FUNDED/SOLD</u>
E0038	Evangelical Methodist Church	\$450,000.00	02/02/99
R0096	Rock of Ages Missionary Church	\$70,000.00	10/25/99
T0041	David Thomas	\$82,250.00	03/01/99
R0093	Rennick Trust	\$650,000.00	05/05/99
F0059	Frigate Ltd. Corp.	\$1,350,000.00	04/19/99
P0076	Hoyt Pardee, Inc.	\$3,200,000.00	10/19/99
G0109	GMFC, Inc.	\$1,200,000.00	10/29/99
H0075	K. Mariani	\$100,016.00	12/13/99
T0439	M. Levy	\$89,440.00	05/05/99

XV

Beginning on or before January 1, 1999 and continuing thereafter, Respondents failed to prepare and deliver to lenders, a written Lender Purchaser Disclosure Statements as required by Section 10232.4 of the Code prior to the lender becoming obligated to make the loan, and/or failed to retain executed copies of such statements with the records of the company.

XVI

Beginning on or before January 1, 1999 and continuing thereafter, Respondents loan servicing agreements with borrowers failed to include a statement that all payments received would be deposited into a trust account; that all payments would not be mixed with Respondents' general funds; and that all payments

1 received would be transmitted to the lender within twenty-five
2 (25) days after receipt in violation of Section 10233(a) of the
3 Code in conjunction with Section 10229(j) of the Code.

4 XVII

5 Beginning on or about January 1, 1999 and continuing
6 thereafter, Respondents failed to provide to the Department the
7 Multi-Lender Notification required pursuant to Section 10229(a)
8 of the Code.

9 XVIII

10 Within the three year period immediately preceding the
11 filing of this Accusation, Respondents failed to obtain a signed
12 statement from their investors acknowledging that the investors
13 satisfied either the income or net worth qualifications for
14 multi-lender loans in which lenders were part owners of the note
15 as required by Section 10229(e) of the Code.

16 XIX

17 Within the three-year period immediately preceding the
18 filing of this Accusation, Respondents negotiated multi-lender
19 loans with more than ten (10) investors listed on the note
20 securing the deed of trust on the subject real property in
21 violation of Section 10229(e) of the Code as follows:

<u>LOAN NO.</u>	<u>BORROWER</u>	<u>LOAN AMOUNT</u>	<u>NUMBER OF INVESTORS</u>
24 F0059	Frigate Ltd. Corp.	\$1,350,000.00	12
25 P0076	Hoyt Pardee, Inc.	\$3,200,000.00	21
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XX

Within the three-year period immediately preceding the filing of this accusation, Respondents negotiated a multi-lender loan (Loan # G0109) where the property securing the note was located outside California in Reno, Nevada in violation of Section 10229(c) of the Code.

XXI

Beginning on or about January 1, 1999 and continuing thereafter, Respondents failed to submit to the Department Quarterly Trust Fund Status Reports required pursuant to Section 10232.25 of the Code.

XXII

Respondents failed to submit to the Department an Annual Report of Review of Trust Fund Financial Statements for fiscal year 1998-1999 as required pursuant to Section 10232.2(a) of the Code.

XXIII

Within the three-year period immediately preceding the filing of this Accusation, Respondents failed to submit to the Department Quarterly Trust Account Records (Multi-Lender Transactions) required pursuant to Section 10229(j)(3) of the Code.

XXIV

Beginning on or about January 1, 2000 through on or about February 28, 2001, in connection with the receipt and disbursement of trust funds described in Paragraphs VIII above,

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1 Respondent failed to deposit trust funds into a trust account as
2 required by Section 10229(j)(1)(A) of the Code.

3 XXV

4 The facts alleged above, are grounds for the
5 suspension or revocation of Respondents' licenses and/or license
6 rights under the following sections of the Code and Regulations:

7 (1) As to Paragraph IX, under Section 10177(d) of the
8 Code in conjunction with Section 2832 of the Regulations;

9 (2) As to Paragraph X, under Section 10177(d) of the
10 Code in conjunction with Section 2834 of the Regulations;

11 (3) As to Paragraph XI, under Section 10177(d) of the
12 Code in conjunction with Section 2831.2 of the Regulations;

13 (4) As to Paragraph XII, under Section 10177(d) of
14 the Code in conjunction with Section 2831 of the Regulations;

15 (5) As to Paragraph XIII, under Section 10177(d) of
16 the Code in conjunction with Section 2831.1 of the Regulations;

17 (6) As to Paragraph XIV, under Section 10177(d) of
18 the Code in conjunction with Section 10234 of the Code;

19 (7) As to Paragraph XV, under Section 10177(d) of the
20 Code in conjunction with Section 10232.4 of the Code;

21 (8) As to Paragraph XVI, under Section 10177(d) of
22 the Code in conjunction with Sections 10233(a) and 10229(j) of
23 the Code;

24 (9) As to Paragraph XVII, under Section 10177(d) of
25 the Code in conjunction with Section 10229(a) of the Code;

26 (10) As to Paragraph XVIII, under Section 10177(d) of
27 the Code in conjunction with Section 10229(e) of the Code;

1 (11) As to Paragraph XIX , under Section 10177(d) of
2 the Code in conjunction with Section 10229(e) of the Code;

3 (12) As to Paragraph XX, under Section 10177(d) of the
4 Code in conjunction with Section 10229(c) of the Code;

5 (13) As to Paragraph XXI, under Section 10177(d) of
6 the Code in conjunction with Section 10232.25 of the Code;

7 (14) As to Paragraph XXII, under Section 10177(d) of
8 the Code in conjunction with Section 10232.2(a) of the Code;

9 (15) As to Paragraph XXIII, under Section 10177(d) of
10 the Code in conjunction with Section 10229(j)(3) of the Code;

11 and

12 (16) As to Paragraph XXIV, under Section 10177(d) of
13 the Code in conjunction with Section 10229(j)(1)(A) of the Code.

14 In the alternative, the acts and/or omissions of
15 Respondent NG described above, constitute failure on the part of
16 Respondent NG, as designated broker-officer for Respondent
17 BAR K, to exercise reasonable supervision and control over the
18 licensed activities of Respondent BAR K required by Section
19 10159.2 of the Code, and is cause for the suspension or
20 revocation of Respondent NG's license and or license rights
21 under Section 10177(h) of the Code.

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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 provisions of law.

8
9 
10 LES R. BETTENCOURT
 Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 25th day of June, 2001.

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

MAY - 2 2001

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zin*

Case No. H-7937 SF

OAH No. N-2001040371

In the Matter of the Accusation of

BAR K INC.,
BARNEY JOE NG,

}

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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on SEPTEMBER 5-7, 2001, at the hour of 9:00 A.M., 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 2, 2001

By *David A. Peters*

DAVID A. PETERS Counsel

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

APR 20 2001

DEPARTMENT OF REAL ESTATE

[Signature]

In the Matter of the Accusation of

BAR K INC.,
BARNEY JOE NG,

}
}

Case No. H-7937 SF

OAH No. N-2001040371

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, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on FRIDAY, JUNE 1, 2001, at the hour of 9:00 A.M., 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: APRIL 20, 2001

By

[Signature]

DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
MAR 22 2001

DEPARTMENT OF REAL ESTATE
Laurie G. Zan

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BAR K INC.,) No. H-7937 SF
13 BARNEY JOE NG,) ACCUSATION
14 Respondents.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 accusation against BAR K INC (hereinafter "Respondent BAR K")
18 and BARNEY JOE NG (hereinafter "Respondent NG"), is informed and
19 alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

25 Respondents BAR K and NG are presently licensed and/or
26 have license rights under the Real Estate Law (Part 1 of

27 ///

1 Division 4 of the California Business and Professions
2 Code) (hereinafter "Code") as follows:

3 BAR K INC - as a real estate broker corporation.

4 BARNEY JOE NG - as a real estate broker and as
5 designated broker-officer for Respondent BAR K.

6 III

7 Whenever reference is made in an allegation in this
8 Accusation to an act or omission of "Respondents", such
9 allegation shall be deemed to mean the act or omission of each
10 of the Respondents named in the caption hereof, acting
11 individually, jointly, and severally.

12 IV

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

24 V

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

1 in connection with the solicitation, negotiation, processing,
2 packaging and consummation of mortgage loans by Respondents as
3 alleged herein.

4 VI

5 The aforesaid trust funds accepted or received by
6 Respondents were deposited or caused to be deposited by
7 Respondents into one of more bank accounts (hereinafter "trust
8 fund accounts") maintained by Respondents for the handling of
9 trust funds.

10 VII

11 During the course of the mortgage loan brokerage
12 activities described in Paragraph IV above, Respondents received
13 and disbursed funds held in trust on behalf of another or
14 others.

15 VIII

16 Beginning on or before January 1, 1999 through on or
17 about December 31, 1999, Respondents maintained the following
18 trust fund accounts:

19	<u>TITLE AND ACCOUNT NUMBER</u>	<u>BANK</u>
20	Bar-K Inc. Funding Account	Mechanics Bank
21	Account No. 38000148	Walnut Creek, California
	(hereinafter "Account #1")	
22	Bar-K Inc. Investors	Mechanics Bank
23	Clearing Account	Walnut Creek, California
	Account No. 38001233	
24	(hereinafter "Account #2")	
25	Bar-K Inc. Pymt Processing Acct.	Mechanics Bank
	Account No. 38000113	Walnut Creek, California
26	(hereinafter "Account #3")	

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IX

In connection with the receipt and disbursement of trust funds described in Paragraph VIII above, Respondents failed to maintain Account #1, Account #2, and Account #3 in the name of Respondent BAR K, as trustee at a bank or other financial institution as required by Section 2832 of Title 10, California Code of Regulations (hereinafter "Regulations").

X

In connection with the receipt and disbursement of trust funds described in Paragraph VIII above, Respondents permitted the withdrawals to be made from Account #1, Account #2, and Account #3 by someone other than a corporate officer designated pursuant to Sections 10158 and 10211 of the Code, or a salesperson licensed to Respondents and authorized in writing by Respondents to withdraw said funds, or an authorized unlicensed employee covered by a fidelity bond indemnifying against loss in an amount sufficient to cover the maximum amount of funds to which the employee had access at any time, in violation of Section 2834 of the Regulations.

XI

In connection with the receipt and disbursement of trust funds in Account #1, Account #2, and Account #3 described in Paragraph VIII above, Respondents failed to adequately maintain and perform a reconciliation with records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations, at least once per month, in conformance with Section 2831.2 of the Regulations.

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XII

In connection with the receipt and disbursement of trust funds in Account #1, Account #2, and Account #3 described in Paragraph VIII above, Respondents failed to maintain adequate records of trust funds received and disbursed in violation of Section 2831 of the Regulations.

XIII

In connection with the receipt and disbursement of trust funds in Account #1, Account #2, and Account #3 described in Paragraph VIII above, Respondents failed to maintain a separate record for each beneficiary or transaction, accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

XIV

Beginning on or before January 1, 1999 and continuing thereafter, Respondents failed to record deeds of trust in the name of lenders as beneficiaries as required by Section 10234 of the Code in connection with the following loans:

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			<u>DATE</u>
<u>LOAN NO.</u>	<u>BORROWER</u>	<u>LOAN AMOUNT</u>	<u>FUNDED/SOLD</u>
E0038	Evangelical Methodist Church	\$450,000.00	02/02/99
R0096	Rock of Ages Missionary Church	\$70,000.00	10/25/99
T0041	David Thomas	\$82,250.00	03/01/99
R0093	Rennick Trust	\$650,000.00	05/05/99
F0059	Frigate Ltd. Corp.	\$1,350,000.00	04/19/99
P0076	Hoyt Pardee, Inc.	\$3,200,000.00	10/19/99
G0109	GMFC, Inc.	\$1,200,000.00	10/29/99
H0075	K. Mariani	\$100,016.00	12/13/99
T0439	M. Levy	\$89,440.00	05/05/99

XV

Beginning on or before January 1, 1999 and continuing thereafter, Respondents failed to prepare and deliver to lenders, a written Lender Purchaser Disclosure Statements as required by Section 10232.4 of the Code prior to the lender becoming obligated to make the loan, and/or failed to retain executed copies of such statements with the records of the company.

XVI

Beginning on or before January 1, 1999 and continuing thereafter, Respondents loan servicing agreements with borrowers failed to include a statement that all payments received would be deposited into a trust account; that all payments would not be mixed with Respondents' general funds; and that all payments

1 received would be transmitted to the lender within twenty-five
2 (25) days after receipt in violation of Section 10233(a) of the
3 Code in conjunction with Section 10229(j) of the Code.

4 XVII

5 Beginning on or about January 1, 1999 and continuing
6 thereafter, Respondents failed to provide to the Department the
7 Multi-Lender Notification required pursuant to Section 10229(a)
8 of the Code.

9 XVIII

10 Within the three year period immediately preceding the
11 filing of this Accusation, Respondents failed to obtain a signed
12 statement from their investors acknowledging that the investors
13 satisfied either the income or net worth qualifications for
14 multi-lender loans in which lenders were part owners of the note
15 as required by Section 10229(e) of the Code.

16 XIX

17 Within the three-year period immediately preceding the
18 filing of this Accusation, Respondents negotiated multi-lender
19 loans with more than ten (10) investors listed on the note
20 securing the deed of trust on the subject real property in
21 violation of Section 10229(e) of the Code as follows:

22

			<u>NUMBER OF</u>
<u>LOAN NO.</u>	<u>BORROWER</u>	<u>LOAN AMOUNT</u>	<u>INVESTORS</u>
23 F0059	Frigate Ltd. Corp.	\$1,350,000.00	12
24 P0076	Hoyt Pardee, Inc.	\$3,200,000.00	21

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XX

Within the three-year period immediately preceding the filing of this accusation, Respondents negotiated a multi-lender loan (Loan # G0109) where the property securing the note was located outside California in Reno, Nevada in violation of Section 10229(c) of the Code.

XXI

Beginning on or about January 1, 1999 and continuing thereafter, Respondents failed to submit to the Department Quarterly Trust Fund Status Reports required pursuant to Section 10232.25 of the Code.

XXII

Respondents failed to submit to the Department an Annual Report of Review of Trust Fund Financial Statements for fiscal year 1998-1999 as required pursuant to Section 10232.2(a) of the Code.

XXIII

Within the three-year period immediately preceding the filing of this Accusation, Respondents failed to submit to the Department Quarterly Trust Account Records (Multi-Lender Transactions) required pursuant to Section 10229(j)(3) of the Code.

XXIV

The facts alleged above, are grounds for the suspension or revocation of Respondents' licenses and/or license rights under the following sections of the Code and Regulations:

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- 1 (1) As to Paragraph IX, under Section 10177(d) of the
2 Code in conjunction with Section 2832 of the Regulations;
- 3 (2) As to Paragraph X, under Section 10177(d) of the
4 Code in conjunction with Section 2834 of the Regulations;
- 5 (3) As to Paragraph XI, under Section 10177(d) of the
6 Code in conjunction with Section 2831.2 of the Regulations;
- 7 (4) As to Paragraph XII, under Section 10177(d) of
8 the Code in conjunction with Section 2831 of the Regulations;
- 9 (5) As to Paragraph XIII, under Section 10177(d) of
10 the Code in conjunction with Section 2831.1 of the Regulations;
- 11 (6) As to Paragraph XIV, under Section 10177(d) of
12 the Code in conjunction with Section 10234 of the Code;
- 13 (7) As to Paragraph XV, under Section 10177(d) of the
14 Code in conjunction with Section 10232.4 of the Code;
- 15 (8) As to Paragraph XVI, under Section 10177(d) of
16 the Code in conjunction with Sections 10233(a) and 10229(j) of
17 the Code;
- 18 (9) As to Paragraph XVII, under Section 10177(d) of
19 the Code in conjunction with Section 10229(a) of the Code;
- 20 (10) As to Paragraph XVIII, under Section 10177(d) of
21 the Code in conjunction with Section 10229(e) of the Code;
- 22 (11) As to Paragraph XIX , under Section 10177(d) of
23 the Code in conjunction with Section 10229(e) of the Code;
- 24 (12) As to Paragraph XX, under Section 10177(d) of the
25 Code in conjunction with Section 10229(c) of the Code;
- 26 (13) As to Paragraph XXI, under Section 10177(d) of
27 the Code in conjunction with Section 10232.25 of the Code;

1 (14) As to Paragraph XXII, under Section 10177(d) of
2 the Code in conjunction with Section 10232.2(a) of the Code; and

3 (15) As to Paragraph XXIII, under Section 10177(d) of
4 the Code in conjunction with Section 10229(j)(3) of the Code.

5 In the alternative, the acts and/or omissions of
6 Respondent NG described above, constitute failure on the part of
7 Respondent NG, as designated broker-officer for Respondent
8 BAR K, to exercise reasonable supervision and control over the
9 licensed activities of Respondent BAR K required by Section
10 10159.2 of the Code, and is cause for the suspension or
11 revocation of Respondent NG's license and or license rights
12 under Section 10177(h) of the Code.

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

20 
21 LES R. BETTENCOURT
22 Deputy Real Estate Commissioner

23 Dated at Oakland, California,
24 this 14th day of March, 2001.