

By Hildegard Merrill

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-25691 LA  
HILDEGARD MERRILL, )  
Respondent. )

ORDER DENYING REINSTATEMENT OF LICENSE

On February 26, 1996, a Decision was rendered in Case No. H-25691 LA revoking Respondent's real estate broker license, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent or about June 21, 1996.

On or about September 11, 1997, Respondent petitioned for reinstatement of said license. An Order Granting Reinstatement of License was filed on October 27, 1998. Respondent failed to apply for a license within the time period required.

///

On or about December 14, 1999, Respondent again petitioned for reinstatement of said license. An Order Denying Reinstatement of License was filed on March 28, 2001. Respondent's petition was denied pursuant to Business and Professions Code ("Code") Section 10177(a) and Sections 2911(a), 2911(i), 2911(j) and 2911(m)(1) of Title 10, Chapter 6, California Code of Regulations ("Regulations"). On April 17, 2001, Respondent petitioned for reconsideration of the Order Denying Reinstatement of License. An Order Denying Reconsideration was filed on May 17, 2001.

On or about May 3, 2002, Respondent again petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license, in that:

I

On April 9, 1987, an Order to Desist and Refrain was filed by the Department of Real Estate ("Department") in Case No. H-22860 LA. A Department investigation had determined that Respondent had violated Regulations 2715, 2731, 2830, 2831, 2831.1, 2832.1 and 2834.

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II

In the Decision in Case no. H-25691 LA which revoked Respondent's real estate broker license, there were Legal Conclusions made that there was cause to revoke Respondent's real estate license pursuant to Code Section 10177(h) for violation of Code Section 10159.2.

A Department audit investigation of Mountain Valley Mortgage, Inc. ("Mountain Valley"), had found numerous violations of the Real Estate Law. Mountain Valley was a licensed real estate corporation for which Respondent was the designated officer. Respondent failed to exercise the required supervision and control of the activities of Mountain Valley.

III

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

The Department has developed criteria in Regulation 2911 to assist in evaluating the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in this proceeding are:

2911(1) - Significant or conscientious involvement in community, church or social programs. Respondent has not provided proof of such involvement.



Sachs  
Jan

FILED  
MAY 17 2001  
DEPARTMENT OF REAL ESTATE

By Laura B. Quinn

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-25691 LA  
HILDEGARD MERRILL, )  
Respondent. )

ORDER DENYING RECONSIDERATION

On March 22, 2001, an Order Denying Reinstatement of License was signed in the above-entitled matter. Said Order was stayed by separate Order to May 17, 2001.

On April 17, 2001, Respondent petitioned for reconsideration of the Order of March 22, 2001.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of March 22, 2001, and reconsideration is hereby denied.

IT IS SO ORDERED

May 14, 2001  
PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish

*Sacto  
Jag*

**FILED**  
APR 17 2001  
DEPARTMENT OF REAL ESTATE

By *Laura B. Olson*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of ) NO. H-25691 LA  
HILDEGARD MERRILL, )  
Respondent. )

ORDER STAYING EFFECTIVE DATE

On March 22, 2001, an Order Denying Reinstatement of License was rendered in the above-entitled matter to become effective April 17, 2001.

IT IS HEREBY ORDERED that the effective date of the Order of March 22, 2001, is stayed for a period of 30 days.

The Order of March 22, 2001, shall become effective at 12 o'clock noon on May 17, 2001.

DATED: April 17, 2001

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

By: *Randolph Brendia*

RANDOLPH BRENDIA  
Regional Manager

By                     

\* \* \*

ORDER DENYING REINSTATEMENT OF LICENSE

On February 26, 1996, a Decision was rendered herein revoking the real estate broker license of Respondent HILDEGARD MERRILL ("Respondent"). Said Decision gave Respondent the right to apply for and be issued a restricted real estate broker license, which was issued to Respondent on or about June 20, 1996.

On September 11, 1997, Respondent petitioned for reinstatement of said license. An Order Granting Reinstatement of License granted Respondent's petition effective October 9, 1998, on certain conditions. Respondent failed to meet the conditions of said Order and Respondent's license was not reinstated.

1 On December 14, 1999, Respondent again petitioned for  
2 reinstatement of said license and the Attorney General of the  
3 State of California has been given notice of the filing of the  
4 petition.

5 I have considered Respondent's petition and the  
6 evidence and arguments in support thereof. Respondent has  
7 failed to demonstrate to my satisfaction that Respondent  
8 has undergone sufficient rehabilitation to warrant the  
9 reinstatement of Respondent's real estate broker license, in  
10 that:

11 I

12 In the Decision which revoked Respondent's real estate  
13 broker license, there was a Determination of Issues made that  
14 there was cause to revoke Respondent's license for failure to  
15 reasonably supervise, while Respondent was the designated  
16 officer of a licensed real estate corporation.

17 Said Decision also revoked the real estate broker  
18 license of the corporation with the right to apply for and be  
19 issued a restricted real estate broker license. It had been  
20 found that the corporation had committed numerous violations of  
21 the Real Estate Law while Respondent was the designated officer  
22 of the corporation.

23 The corporation was found to have violated Business  
24 and Professions Code ("Code") Sections 10137, 10145 and 10240  
25 and Sections 2831, 2831.1, 2831.2, 2833 and 2834 of Title 10,  
26 Chapter 6, California Code of Regulations ("Regulations").  
27



II

Audits of Respondent's licensed activities were conducted between March 23, 2000 and May 8, 2000. It was found that Respondent was in violation of Code Section 10145 and Regulations 2731 and 2831. This is cause to deny Respondent's application pursuant to Regulation 2911(j).

III

In or about 2000, a civil court judgment was entered against Respondent and other defendants, in the amount of \$96,524.82. Said judgment has not been completely satisfied. As of January, 2001, approximately \$38,000 was still owed on said judgment. This is cause to deny Respondent's application pursuant to Regulation 2911(i).

IV

On Respondent's petition application, Respondent failed to reveal that she was a defendant in a 1998 civil court action. This evidences cause to deny Respondent's application pursuant to Code Section 10177(a) and Regulation 2911(m)(1).

V


The serious nature of the conduct which led to the revocation of Respondent's real estate broker license, combined with the facts set forth in Paragraphs II, III and IV, evidence that not enough time has passed to determine that Respondent is completely rehabilitated. This is cause to deny Respondent's application pursuant to Regulation 2911(a).

1 NOW, THEREFORE, IT IS ORDERED that Respondent's  
2 petition for reinstatement of Respondent's real estate broker  
3 license is denied.

4 This Order shall become effective at 12 o'clock noon  
5 on April 17, 2001

6 DATED: March 22, 2001.

7 PAULA REDDISH ZINNEMANN  
8 Real Estate Commissioner

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26 cc: Hildegard Merrill  
27 20140 Wells Drive  
Woodland Hills, CA 91364

By Laura B. Orme

\* \* \* \*

In the Matter of the Accusation of        )   NO. H-25691 LA  
  )  
          HILDEGARD MERRILL                   )  
  )  
                          Respondent.         )

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that grounds do not presently

1 exist to deny the issuance of an unrestricted real estate  
2 broker license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's  
4 petition for reinstatement is granted and that an  
5 unrestricted real estate broker license be issued to  
6 Respondent, HILDEGARD MERRILL, after Respondent satisfies the  
7 following conditions within six months from the date of this  
8 Order:

9 1. Submittal of a completed application and  
10 payment of the fee for a real estate broker license.

11 2. Submittal of evidence satisfactory to the Real  
12 Estate Commissioner that Respondent has, since her present  
13 restricted license was last renewed, taken and successfully  
14 completed the continuing education requirements of Article  
15 2.5 of Chapter 3 of the Real Estate Law for renewal of a real  
16 estate license.

17 This Order shall become effective immediately.

18 DATED: 10/9/98

19  
20 JIM ANTT, JR.  
Real Estate Commissioner

21   
22

23  
24 HILDEGARD MERRILL  
20140 Wells Drive  
25 Woodland Hills, California 91364  
26  
27



1 Department of Real Estate  
2 107 South Broadway, Room 8107  
3 Los Angeles, California, 90012

4 Telephone: (213) 897-3937

FILED  
FEB 28 1996  
DEPARTMENT OF REAL ESTATE

by K. Niederholt

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11 In the Matter of the Accusation of ) No. H-25691 LA

12 MOUNTAIN VALLEY MORTGAGE, INC. )

13 and HILDEGARD MERRILL, )

14 individually and as designated )

15 officer of Mountain Valley )

16 Mortgage, Inc., )

17 Respondents. )

STIPULATION AND AGREEMENT  
IN SETTLEMENT AND ORDER

17 It is hereby stipulated by and between MOUNTAIN VALLEY  
18 MORTGAGE, INC. and HILDEGARD MERRILL, (sometimes referred to as  
19 "Respondents"), and the Complainant, acting by and through George  
20 W. Wright, Counsel for the Department of Real Estate, as follows  
21 for the purpose of settling and disposing of the Accusation filed  
22 on February 18, 1994, in this matter:

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

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

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

9 3. On April 1, 1994, Respondents filed a Notice of  
10 Defense pursuant to Section 11505 of the Government Code for the  
11 purpose of requesting a hearing on the allegations in the  
12 Accusation. Respondents hereby freely and voluntarily withdraw  
13 said Notice of Defense. Respondents acknowledge that they  
14 understand that by withdrawing said Notice of Defense, they will  
15 thereby waive their right to require the Commissioner to prove  
16 their allegations in the Accusation at a contested hearing held in  
17 accordance with the provisions of the APA and that they will waive  
18 other rights afforded to them in connection with the hearing such  
19 as the right to present evidence in defense of the allegations in  
20 the Accusation and the right to cross-examine witnesses.

21 4. Respondents, pursuant to the limitations set forth  
22 below, hereby admit that the allegations in the Accusation filed  
23 on February 18, 1994 in this proceeding are true and correct and  
24 the Real Estate Commissioner shall not be required to provide  
25 further evidence to prove such allegations.

26 5. It is understood by the parties that the Real Estate  
27 Commissioner may adopt the Order in this Stipulation as his

1 decision and order in this matter thereby imposing the penalty and  
2 sanctions on Respondents' real estate licenses and/or license  
3 rights as set forth in the below Order. In the event that the  
4 Commissioner in his discretion does not adopt the Stipulation, the  
5 Stipulation And Agreement In Settlement shall be void and of no  
6 effect, and Respondents shall retain the right to a hearing and  
7 proceeding on the Accusation under all the provisions of the APA  
8 and shall not be bound by any admission or waiver made herein.  
9

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

16 7. The below Determination of Issues contains a  
17 determination that Respondent MOUNTAIN VALLEY MORTGAGE, INC. has  
18 violated Business and Professions Code (hereafter Code) Section  
19 10145 or a regulation of the Real Estate Commissioner interpreting  
20 Code Section 10145, or both. Respondent MOUNTAIN VALLEY MORTGAGE,  
21 INC. is aware that by agreeing to this Stipulation And Agreement  
22 In Settlement, if the findings set forth below in the  
23 Determination of Issues become final, the Commissioner may charge  
24 Respondent MOUNTAIN VALLEY MORTGAGE, INC. for the costs of an  
25 audit conducted pursuant to Section 10148 of the Code to determine  
26 if Respondent MOUNTAIN VALLEY MORTGAGE, INC. is in compliance with  
27 the Real Estate Law. The maximum costs of said audit will not  
exceed \$2,600.00.

1  
2 DETERMINATION OF ISSUES

3 By reason of the foregoing stipulations, admissions and  
4 waivers and solely for the purpose of settlement of the pending  
5 Accusation without a hearing, it is stipulated and agreed that the  
6 following Determination of Issues shall be made:

7 1. The conduct or omissions of Respondent MOUNTAIN  
8 VALLEY MORTGAGE, INC., as set forth in paragraphs ten (X) through  
9 twenty-three (XXIII) of the Accusation constitute cause to suspend  
10 or revoke its corporate real estate broker license and/or license  
11 rights under the provisions of Code Section 10177(d) for  
12 violations of Code Sections 10137, 10145 and 10240 and Regulations  
13 2831, 2831.1, 2831.2, 2833 and 2834 of Title 10, Chapter 6 of the  
14 California Code of Regulations (hereafter Regulations).

15 2. The conduct or omissions of Respondent HILDEGARD  
16 MERRILL, as set forth in paragraphs paragraphs ten (X) through  
17 twenty-three (XXIII) of the Accusation constitute cause to suspend  
18 or revoke her real estate broker license and/or license rights  
19 under the provisions of Code Section 10177(h) for violation of  
20 Code Section 10159.2.

21 ORDER

22 WHEREFORE, THE FOLLOWING ORDER is hereby made:

23 I

24 A. The licenses and license rights of MOUNTAIN VALLEY  
25 MORTGAGE, INC. under Part 1 of Division 4 of the Business and  
26 Professions Code are revoked.

27 B. However, Respondent shall be entitled to apply for  
and be issued a restricted real estate corporate broker license



1 pursuant to Section 10156.5 of the Code if Respondent makes  
2 application therefor and pays to the Department of Real Estate the  
3 appropriate fee for said license within one hundred twenty (120)  
4 days from the effective date of the Decision.

5 C. The restricted license issued to Respondent shall be  
6 subject to all of the provisions of Section 10156.7 of the  
7 Business and Professions Code and to the following limitations,  
8 conditions and restrictions imposed under authority of Section  
9 10156.6 of said Code:

10 (1) Said restricted license may be suspended prior  
11 to hearing by order of the Real Estate Commissioner in the event  
12 of Respondent's conviction or plea of nolo contendere to a crime  
13 which bears a significant relation to Respondent's qualifications,  
14 duties or functions as a real estate licensee.

15 (2) Said restricted license may be suspended prior  
16 to hearing by Order of the Real Estate Commissioner on evidence  
17 satisfactory to the Commissioner that Respondent has violated  
18 provisions of the California Real Estate Law, the Subdivided Lands  
19 Law, Regulations of the Real Estate Commissioner, or the  
20 conditions attaching to this restricted license.

21 (3) Respondent shall report in writing to the  
22 Department of Real Estate as the Real Estate Commissioner shall  
23 direct by his Decision herein or by separate written order issued  
24 while Respondent holds a restricted license, such information  
25 concerning Respondent's activities for which a real estate license  
26 is required as the Commissioner shall deem to be appropriate to  
27 protect the public interest.

1  
2 (4) Respondent shall not be eligible to apply for  
3 the issuance of an unrestricted real estate license nor the  
4 removal of any of the conditions, limitations or restrictions of a  
5 restricted license until one (1) year has elapsed from the date of  
6 issuance of the restricted license to Respondent.

7 (5) Pursuant to Code Section 10148, Respondent  
8 MOUNTAIN VALLEY MORTGAGE, INC. shall pay the Commissioner's  
9 reasonable cost for an audit as a result of the trust fund  
10 violations found in paragraph 1 of the Determination of Issues. In  
11 calculating the amount of the Commissioner's reasonable cost, the  
12 Commissioner may use the estimated average hourly salary for all  
13 persons performing audits of real estate brokers, and shall  
14 include an allocation for travel costs, including mileage, to and  
15 from the auditor's place of work, and per diem. The cost of said  
16 chargeable audit shall not exceed \$2,600.00. Respondent MOUNTAIN  
17 VALLEY MORTGAGE, INC. shall pay such cost within 45 days of  
18 receiving an invoice from the Commissioner detailing the  
19 activities performed during the audit and the amount of time spend  
20 performing those activities. Notwithstanding the provisions of  
21 Paragraphs "A", "B" and "C" of this Section "I" herein, if  
22 Respondent MOUNTAIN VALLEY MORTGAGE, INC. fails to pay the  
23 reasonable costs for an audit to determine if Respondent has  
24 corrected the violations found in paragraph 1 of the Determination  
25 of Issues, the Commissioner may order the indefinite suspension of  
26 Respondent's real estate license and licensing rights. The  
27 suspension shall remain in effect until payment is made in full,  
or until Respondent enters into an agreement satisfactory to the

1 Commissioner to provide for payment. The Commissioner may impose  
2 further reasonable disciplinary terms and conditions upon  
3 Respondent's real estate and licensing rights as part of any such  
4 agreement.

5  
6 II

7 A. The licenses and license rights of  
8 HILDEGARD MERRILL under Part 1 of Division 4 of the Business and  
9 Professions Code are revoked.

10 B. However, Respondent shall be entitled to apply for  
11 and be issued a restricted real estate broker license pursuant to  
12 Section 10156.5 of the Code if Respondent makes application  
13 therefor and pays to the Department of Real Estate the appropriate  
14 fee for said license within one hundred twenty (120) days from the  
15 effective date of the Decision.

16 C. The restricted license issued to Respondent shall be  
17 subject to all of the provisions of Section 10156.7 of the  
18 Business and Professions Code and to the following limitations,  
19 conditions and restrictions imposed under authority of Section  
20 10156.6 of said Code:

21 (1) Said restricted license may be suspended prior  
22 to hearing by order of the Real Estate Commissioner in the event  
23 of Respondent's conviction or plea of nolo contendere to a crime  
24 which bears a significant relation to Respondent's qualifications,  
25 duties or functions as a real estate licensee.

26 (2) Said restricted license may be suspended prior  
27 to hearing by Order of the Real Estate Commissioner on evidence  
satisfactory to the Commissioner that Respondent has violated

1 provisions of the California Real Estate Law, the Subdivided Lands  
2 Law, Regulations of the Real Estate Commissioner, or the  
3 conditions attaching to this restricted license.  
4

5 (3) Respondent shall, within nine (9) months from  
6 the effective date of the restricted license, present evidence  
7 satisfactory to the Real Estate Commissioner that she has, since  
8 the most recent issuance of an original or renewal real estate  
9 license, taken and successfully completed the continuing education  
10 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
11 for renewal of a real estate license. If Respondent fails to  
12 satisfy this condition, the Real Estate Commissioner may order the  
13 suspension of the restricted license until Respondent presents  
14 such evidence. The Real Estate Commissioner shall afford  
15 Respondent the opportunity for a hearing pursuant to the APA to  
16 present such evidence.

17 (4) Respondent shall, within six (6) months from  
18 the effective date of the restricted license, take and pass the  
19 Professional Responsibility Examination administered by the  
20 Department, including the payment of the appropriate fee. If  
21 Respondent fails to satisfy this condition, the Commissioner may  
22 order suspension of the restricted license until Respondent passes  
23 the examination.

24 (5) Respondent shall report in writing to the  
25 Department of Real Estate as the Real Estate Commissioner shall  
26 direct by his Decision herein or by separate written order issued  
27 while Respondent holds a restricted license, such information  
concerning Respondent's activities for which a real estate license

1 is required as the Commissioner shall deem to be appropriate to  
2 protect the public interest.

3 (6) Respondent shall not be eligible to apply for  
4 the issuance of an unrestricted real estate license nor the removal  
5 of any of the conditions, limitations or restrictions of a  
6 restricted license until one (1) year has elapsed from the date of  
7 issuance of the restricted license to Respondent.

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

19 DATED: Aug 4, 1995 Mountain Valley Mortgage  
20 MOUNTAIN VALLEY MORTGAGE, INC.  
21 Respondent

22 DATED: Aug 4, 1995 Hildegard Merrill  
23 HILDEGARD MERRILL, Respondent

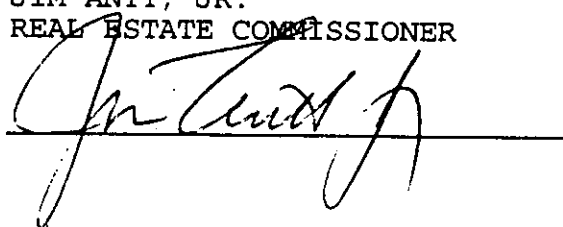
24 DATED: Feb. 5, 1996 George W. Wright  
25 GEORGE W. WRIGHT, Counsel for the  
26 Complainant  
27 /

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The foregoing Stipulation and Agreement In Settlement in  
case No. H-25691 LA, is hereby adopted as my Decision and Order  
and shall become effective at 12 o'clock noon on March 19,  
1996.

IT IS SO ORDERED 2/26, 1996.

JIM ANTT, JR.  
REAL ESTATE COMMISSIONER



*Sacto*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

EPR 19 1994

*K. Merrill*

In the Matter of the Accusation of

MOUNTAIN VALLEY MORTGAGE, INC.,  
et al.,

} Case No. H-25691 LA

} OAH No. L-63153

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 \_\_\_\_\_  
Office of Administrative Hearings, 314 West First Street, Los Angeles

on August 10, 1994, at the hour of 9:00 a.m.,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: April 19, 1994

By *George W. Wright*  
Counsel

cc: Mountain Valley Mortgage Inc.  
Hildegard Merrill  
Sacto OAH CV

George W. Wright, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, CA 90012

(213) 897-3937

FILED  
FEB 18 1994

DEPARTMENT OF REAL ESTATE  
BY R. M. DeRubeis

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of )	No. H-25691 LA
MOUNTAIN VALLEY MORTGAGE, INC. )	
and HILDEGARD MERRILL, )	<u>A C C U S A T I O N</u>
individually and as designated )	
officer of Mountain Valley )	
Mortgage, Inc., )	
Respondents. )	

The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MOUNTAIN VALLEY MORTGAGE, INC. and HILDEGARD MERRILL, individually and as designated officer of Mountain Valley Mortgage, Inc., alleges as follows:

I

The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

/

/



II

At all times mentioned herein, MOUNTAIN VALLEY MORTGAGE, INC. ("MVM"), a corporation, was and still is licensed by the Department of Real Estate of the State of California ("Department") as a corporate real estate broker by and through HILDEGARD MERRILL, ("MERRILL") as its designated officer.

III

At all times mentioned herein, MERRILL was and still is licensed by the Department as a real estate broker, individually and as designated officer of MVM. As the designated officer of MVM, MERRILL was and still is responsible for the supervision and control of the activities conducted on behalf of MVM by its officers and employees as necessary to secure full compliance with the Real Estate Law as set forth in Section 10159.2 of the Code.

IV

At no time mentioned herein was Tom Scott ("Scott") licensed by the Department either as a real estate broker or real estate salesperson licensed under the employ of a broker.

V

All further references to the "Code" are to the California Business and Professions Code, and all further references to the "Regulations" are to Chapter 6, Title 10, California Code of Regulations.

VI

All further references to MVM shall include MVM AND MERRILL and shall be deemed to include the officers, directors, employees, agents and real estate licensees employed by or

1 associated with those parties who at all times herein mentioned  
2 were engaged in the furtherance of the business or operations of  
3 those parties and who were acting within the course and scope of  
4 their authority and employment.

5 VII

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

16 VIII

17 On or about April 1, 1987, an Order to Desist and  
18 Refrain (NO. H-22860 LA) was issued to MVM and MERRILL for  
19 violations of Sections 10145 of the Code and Section 2731, 2831.1,  
20 2831.2 and 2832.1 of the Regulations.

21 IX

22 On or about March 6, 1992, Department personnel  
23 completed an investigative audit of the books and records of MVM,  
24 pertaining to its activities as a mortgage loan broker, for a  
25 period commencing on January 1, 1991, and terminating on December  
26 31, 1991, and unless otherwise specified, the relevant period of  
27

1 time referenced herein shall be the same. The findings of that  
2 audit are set forth in the paragraphs that follow.

3 X

4 In connection with the aforesaid mortgage loan  
5 activities, MVM accepted or received funds in trust ("trust  
6 funds") in the form of credit report and appraisal fees and loan  
7 proceeds on behalf of the borrowers and thereafter made  
8 disbursements of such funds on behalf of said borrowers. MVM  
9 deposited certain of these funds into the following accounts:

10 Mountain Valley Mortgage Trust Account  
11 Household Bank (Account No. 0571224794)  
12 19900 Ventura Blvd.  
Woodland Hills, CA 91364 (T/A)

13 Mountain Valley Mortgage Escrow Division Trust Account  
14 Metro Bank (Account No. 068 684-239406)  
21530 Oxnard Street  
Woodland Hills, CA 91367 (Escrow T/A #1)

15 Mountain Valley Mortgage Escrow Division Trust Account  
16 Imperial Bank (Account No. 10-057-019)  
15303 Ventura Blvd.  
17 Sherman Oaks, CA 91413 (Escrow T/A #2)

18 XI

19 In connection with T/A #1 referred to in Paragraph X  
20 above, MVM and MERRILL acted in violation of the Code and  
21 Regulations because MVM and MERRILL failed to maintain columnar  
22 records of trust funds received and the daily balance was not  
23 accurate. MVM and MERRILL violated Section 2831 of the Regulations  
24 by such conduct.

25 XII

26 In connection with Escrow T/A #1 referred to in  
27 Paragraph X above, MVM acted in violation of the Code and

1 Regulations because MVM failed to maintain columnar records of  
2 trust funds received and the daily balance was not accurate. All  
3 of the checks written in December were not in the record. MVM  
4 violated Section 2831 of the Regulations by such conduct.

5 XIII

6 In connection with Escrow T/A #2 referred to in  
7 Paragraph X above, MVM acted in violation of the Code and  
8 Regulations because MVM failed to maintain columnar records of the  
9 date the trust funds were received, from whom the funds were  
10 received and the daily balance was not accurate. MVM violated  
11 Section 2831 of the Regulations by such conduct.

12 XIV

13 In connection with T/A #1 referred to in Paragraph X  
14 above, the audit examination also revealed that MVM failed to  
15 maintain accurate and complete separate records for each  
16 beneficiary or transaction wherein credit report and appraisal  
17 fees were received and disbursed. There was no information as to  
18 the date of a check, the check number, the check amount and to  
19 whom the check was issued. MVM violated Section 2831.1 of the  
20 Regulation by such conduct.

21 XV

22 In connection with Escrow T/A #1 referred to in  
23 Paragraph X above, MVM acted in violation of the Code and  
24 Regulations because MVM failed to maintain complete and accurate  
25 records as to daily balances. All of the checks written in  
26 December were not in the record. MVM violated Section 2831.1 of  
27 the Regulation by such conduct.

XVI

In connection with Escrow T/A #2 referred to in Paragraph X above, MVM acted in violation of the Code and Regulations because MVM failed to maintain complete and accurate records as to daily balances. MVM violated Section 2831.1 of the Regulation by such conduct.

XVII

In connection with T/A #1 referred to in Paragraph X above, MVM failed to reconcile the balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1, with the records of all trust funds received and disbursed as required by Section 2831 of the Regulations, on a monthly basis. MVM violated Section 2831.2 by her failure to perform said acts.

XVIII

In connection with Escrow T/A #1 referred to in Paragraph X above, MVM failed to reconcile the balance of all separate beneficiary or transaction records maintained pursuant to the provisions of Section 2831.1, with the records of all trust funds received and disbursed as required by Section 2831 of the Regulations, because the separate record balances did not include all of the checks written in December. MVM violated Section 2831.2 by her failure to perform said acts.

XIX

In connection with Escrow T/A #2 referred to in Paragraph X above, MVM failed to reconcile the balance of all separate beneficiary or transaction records maintained pursuant to

1 the provisions of Section 2831.1, with the records of all trust  
2 funds received and disbursed as required by Section 2831 of the  
3 Regulations. MVM violated Section 2831.2 by her failure to perform  
4 said acts.

5 XX

6 The audit examination also revealed that MVM had an  
7 excess of funds in the trust account in the amount of \$2,316.12 as  
8 of December 31, 1991. This overage consisted of unidentified  
9 funds. This excess of funds over the aggregate trust fund  
10 liability constitutes a trust fund overage that violates Section  
11 2833 of the Regulations.

12 XXI

13 The audit examination also revealed that MVM violated  
14 Section 2834 of the Regulations by allowing withdrawals from T/A  
15 #1 by an unbonded, unlicensed person, M. P.. Pickard, who is a  
16 signatory on the account.

17 XXII

18 The audit examination also revealed that MVM employed  
19 Scott who was not licensed by the Department to perform acts which  
20 require a real estate license. Scott acted as a real estate  
21 licensee by negotiating rates and terms of a loan to refinance a  
22 mortgage loan secured by a lien on real property with Alfred  
23 Salinas on or about April 26, 1991. MVM violated Section 10137 of  
24 the Code by employing and/or compensating Scott for these acts.

25 XXIII

26 At all times material herein in the course of the above-  
27 described mortgage loan business, MVM solicited borrowers and

1 lenders for loans and negotiated with said borrowers and lenders  
2 for loans secured by liens on real property. MVM violated Section  
3 10240 of the Code in that it failed to provide mortgage loan  
4 disclosure statements to said borrowers when it packaged loans for  
5 mortgage loan companies.

6 XXIV

7 At all times mentioned herein, MERRILL failed to comply  
8 with the provisions of Section 10159.2 of the Code by allowing MVM  
9 to violate the above-described provisions of the Real Estate Law  
10 during the period of time that she acted as its designated  
11 officer. This conduct is cause for the suspension or revocation of  
12 MERRILL'S license and/or license rights under Section 10177(h) of  
13 the Code.

14 XXV

15 The conduct of MVM and MERRILL, as alleged hereinabove  
16 in Paragraphs XI through XXIV, constitutes cause for the  
17 suspension or revocation of all licenses and/or license rights of  
18 the Respondents under Sections 10137 and 10177(d) 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 MOUNTAIN VALLEY MORTGAGE, INC. and HILDEGARD  
5 MERRILL under the Real Estate Law and for such other and  
6 further relief as may be proper under other applicable  
7 provisions of law.

8 Dated at Los Angeles, California  
9 this 18th day of February, 1994.

10  
11 STEVEN J. ELLIS  
12 Deputy Real Estate Commissioner  
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26 cc: Mountain Valley Mortgage, Inc.  
27 Hildegard Merrill  
Sacto  
CV