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MAR -2 1990

DEPARTMENT OF REAL ESTATE
BY Sandra B. Olson

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-615 SA
U.S. MORTGAGE COLLECTION)	L-39592
SERVICES, INC., and)	
JOHN DEAN BERGAN as)	
designated officer of)	
said corporation,)	
Respondents.)	

DECISION AFTER RECONSIDERATION

On October 20, 1989, a Decision was rendered herein by the Real Estate Commissioner. Said Decision was to become effective on December 15, 1989.

On December 5, 1989, respondents petitioned for reconsideration of said Decision. On December 8, 1989, reconsideration of the Decision of October 20, 1989, was granted for the limited purpose of determining whether the Findings of Fact in the Decision should be modified.

I have considered the petition of respondents and have concluded that good cause has been presented for the following

1 modifications to be made to the Decision of October 20, 1989:

2 IT IS THEREFORE ORDERED THAT:

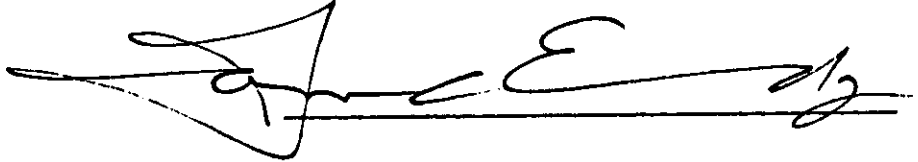
3 1. The wording "7. Household Bank" is deleted from
4 Paragraph VIII of the Decision dated October 20, 1989.

5 2. The wording "5. Household Bank" is inserted into
6 Paragraph VII of the Decision dated October 20, 1989 where
7 appropriate.

8 THIS ORDER SHALL BE EFFECTIVE IMMEDIATELY.

9 IT IS SO ORDERED 2-14 1990.

10 JAMES A. EDMONDS, JR.
11 Real Estate Commissioner

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DEC 14 1989

DEPARTMENT OF REAL ESTATE
Sandra B. Orma

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-615 SA
)	
U.S. MORTGAGE COLLECTION)	L-39592
SERVICES, INC., and)	
JOHN DEAN BERGAN as)	
designated officer of)	
said corporation,)	
)	
Respondents.)	

ORDER GRANTING RECONSIDERATION

On October 20, 1989, a Decision was rendered herein by the Real Estate Commissioner. Said Decision is to become effective at 12 o'clock noon on December 15, 1989.

On December 5, 1989, respondents petitioned for reconsideration of said Decision. I have considered the petition of respondents and have concluded that good cause has been presented for reconsideration of the Decision of October 29, 1989, for the limited purpose of determining whether the FINDINGS OF

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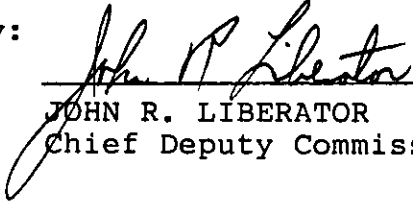
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1 FACT in the Decision should be modified and reconsideration is,
2 therefore, granted.

3 IT IS SO ORDERED December 8, 1989.

4 JAMES A. EDMONDS, JR.
5 Real Estate Commissioner

6 By:


7 JOHN R. LIBERATOR
8 Chief Deputy Commissioner
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NOV 16 1989

DEPARTMENT OF REAL ESTATE
Jana B. Crane

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-615 SA
)	L-39592
U.S. MORTGAGE COLLECTION)	
SERVICES, INC., and)	
JOHN DEAN BERGAN as)	
designated officer of)	
said corporation,)	
)	
Respondents.)	
)	
)	

ORDER STAYING EFFECTIVE DATE

On October 20, 1989, a Decision was rendered in the above-entitled matter to become effective on November 16, 1989.

IT IS HEREBY ORDERED that the effective date of the Decision of October 20, 1989 is stayed for a period of 30 days.

The Decision of October 20, 1989 shall become effective at 12 o'clock noon on December 15, 1989.

DATED: November 14, 1989.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

by: *Randolph Brendia*
RANDOLPH BRENDIA
Regional Manager

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OCT 27 1989

DEPARTMENT OF REAL ESTATE
BY *Saura B. Olson*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-615 SA
U.S. MORTGAGE COLLECTION)	L-39592
SERVICES, INC. and)	
JOHN DEAN BERGAN as)	
designated officer of)	
said corporation,)	
Respondents.)	

DECISION

The above-entitled matter came on for hearing before Stephen J. Smith, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on June 27, July 26 and October 18, 1988.

The Complainant was represented in the proceedings by James R. Peel, Counsel, Department of Real Estate. Respondent U.S. MORTGAGE COLLECTION SERVICES, INC., and JOHN DEAN BERGAN were represented by William Baker, Jr., Attorney at Law.

Evidence was received, the hearing was closed and the matter submitted for Decision.

1 Estate (hereafter "the Department") as a corporate real estate
2 broker effective March 8, 1985. From May 31, 1985, USM had
3 designated respondent JOHN DEAN BERGAN as licensed officer of the
4 corporation. Respondent corporation ceased to do business in
5 California and has moved its operations to Nevada. Respondent
6 USM'S license expired on March 7, 1989. It has never been the
7 subject of previous disciplinary action by the Department.

8 III

9 Respondent JOHN DEAN BERGAN was licensed as a real
10 estate broker by the Department on December 16, 1983, after having
11 been previously licensed as a real estate salesperson. Effective
12 May 31, 1985, respondent was designated licensed officer of both
13 Integrity Financial Corporation and U.S. Realty. Official notice
14 is taken that the broker's license issued to respondent BERGAN
15 will expire on December 15, 1991; the designated corporate
16 officer's license issued to him regarding Integrity Financial
17 expired on July 16, 1989; the license regarding U.S. Realty,
18 expired on November 24, 1988; and his officer license for U.S.
19 Mortgage Corporation expires on June 6, 1991. Respondent BERGAN'S
20 licenses have never been the subject of previous disciplinary
21 action by the Department.

22 IV

23 USM is a mortgage servicing company specializing in the
24 servicing of all-inclusive trust deeds secured by direct or
25 collateral liens on real property. On behalf of investors, USM
26 collects payments due, pays all expenses, retains a commission,
27 and returns the balance to the investors on two hundred-fifty

1 deeds of trust. The trust deeds serviced often involve as many as
2 nineteen or twenty fractional investor interests, and three of
3 four combined mortgages within the trust deed. It was not unusual
4 for USM to be required to make twenty or more monthly payments for
5 each of a number of these trust deeds. Due to USM specialization
6 in handling such complex servicing and accounting, USM attracted
7 predominately large, institutional clients, who requested that USM
8 service trust deeds they held.

9 V

10 USM is a closely-held California corporation, with Earl
11 Gross as sole shareholder and President. Robert Mapsted and
12 respondent BERGAN were named vice presidents, but owned no shares.
13 USM is but one of a series of related closely-held corporations
14 controlled by Earl Gross, including U.S. Realty and Integrity
15 Financial Corporation, all of which were engaged in various
16 aspects of the real estate business in Southern California during
17 1985-86.

18 VI

19 It was not established that respondent USM failed to
20 keep separate records for trust fund beneficiaries during the
21 period January 1, 1985 through June 30, 1986, such that separate
22 accountability could not be established for each beneficiary. It
23 was established that USM invested \$200,000.00 in a computer and
24 software systems that would enable USM to accomplish the
25 accounting that was a feature of servicing all-inclusive trust
26 deeds of substantial size. The computer was subject to
27 difficulties in inputting data from time to time, but it was

1 established that respondent's accounting records were maintained
2 according to generally accepted accounting principles of the
3 American Institute of Certified Public Accountants at all relevant
4 times. It was also established that respondent's certified public
5 accountants produced, at the end of both 1984 and 1985, certified
6 audits of respondent's books and records, as required by the U.S.
7 Department of Housing and Urban Development. A public accountant
8 certified the audit for 1986. These audits revealed respondent's
9 books to be in order, and each beneficiary's account to be
10 separately stated and in balance. For each beneficiary, no matter
11 how tiny that beneficiary's fractional interest, USM would produce
12 and mail a monthly statement.

13 The Department's auditor could not make sense of
14 respondent's books at the time of his examination. Clearly there
15 were peculiarities with respondent's books and accounts at the time
16 of the examination, and respondent's multiple and sometimes
17 contradictory explanations of this state of affairs were not
18 entirely credible. However, expert testimony established that the
19 complexity of the records kept by USM could not be adequately
20 understood and evaluated in the two and a half days spent by the
21 Department's auditor, particularly in light of the fact that the
22 Department's auditor was not yet certified as a public
23 accountant. The Department's auditor's conclusion that separate
24 beneficiary accountability could not be established was based on
25 his inability to understand respondent USM'S accounting system.
26 In light of expert testimony establishing that USM'S accounting
27 during the relevant time periods complied with generally accepted

1 accounting principles, the Department failed to meet the burden of
2 proof regarding this allegation.

3 VII

4 It was established that USM'S clients listed below are
5 exempt institutions for the purposes of Business and Professions
6 Code (hereafter "Code") Section 10133.1(j), then in effect, now
7 Code Section 10133.1(a)(8) as follows:

- 8 1. California Federal Savings and Loan
- 9 2. Lincoln Federal Savings and Loan
- 10 3. Viking Savings and Loan
- 11 4. Signal Savings and Loan

12 With respect to the four institutions listed above, USM
13 acted pursuant to contract with these savings and loan
14 associations as agent for the collection and disbursement of funds
15 related to trust deeds secured by real property. Each of these
16 institutions are "savings institutions" as described in former
17 Code Section 10133.1(j), and respondent's actions pursuant to
18 contracts with these institutions establishing agency
19 relationships brings USM within the exemption established by that
20 section. Therefore, interest earned and retained by USM for
21 deposits for exempt client's funds into USM'S trust account is
22 purely a matter of contract between those entities, and not the
23 subject to trust fund regulations of the Department.

24 VIII

25 It was established that respondent USM'S activities were
26 subject to the application of the Real Estate Law of the State of
27 California pursuant to Code Section 10130, 10131(d), and

1 10133.1(a)(1) and (a)(8), contrary to respondent's contentions,
2 with respect to the following clients served by USM:

- 3 1. Loma Linda University
- 4 2. Integrity Realty Trust
- 5 3. Integrity Financial Corporation
- 6 4. IFC Pension Trust
- 7 5. Northern California Conference Association
- 8 6. Pacific Union College
- 9 7. Household Bank
- 10 8. Loma Linda University

11 With respect to these eight entities, it was established
12 that although respondent USM had contractual relationships with
13 each to provide loan servicing for mortgages secured by deeds of
14 trust on real property, respondent USM is not itself one of the
15 exempt entities listed in Business and Professions Code Section
16 10133.1(a)(1) and (a)(8) or (b), nor is it an employee of one of
17 the exempt entities. It was not established that Loma Linda
18 University was a pension trust or trust company. The servicing
19 agreement with Loma Linda University was not executed by it as
20 trustee for any trust. While IFC Pension Trust, Northern
21 California Conference Association and Pacific Union College are
22 entities described in Section 10133.1(a)(1), as all were described
23 as pension trusts, USM'S collection services are not exempt.

24 Although at least one of USM'S contracts, that with Loma
25 Linda University, attempts to contractually create an
26 employer-employee relationship for the expressed purpose of
27 attempting to create applicability of the exemption of Section

1 10133.1(a)(1) and (a)(8)(b), it is clear that the relationship is
2 artificial and does not establish an employee relationship that
3 would make the exemption applicable. The nature of Integrity
4 Realty Trust was not established at the hearing, and thus must be
5 presumed to be nonexempt. Integrity Financial Corporation is
6 clearly non-exempt as it is one of Earl Gross's subsidiary
7 corporation and includes private individual investors.

8 No evidence established any investor to be a "trust
9 company" within the meaning of Code Section 10133.1(a)(1) inasmuch
10 as none are shown to be licensed or regulated under Financial Code
11 Section 1500 et. seq.

12 Respondent's contention that the exemption statutes must
13 be construed to include the pension trusts and trust companies
14 served by respondent are rejected. In one sense respondent USM is
15 "doing business under any law of ... The United States relating to
16 ...trust companies...[and] pension trusts" in that respondent is
17 required to comply with federal regulations of the United States
18 Housing and Urban Development Department (HUD), including the
19 submission to that Department of regular financial accountings.

20 Such filings with HUD are in compliance with HUD
21 regulations regulating mortgage lending (see former Section
22 10133.1(b) exemption for HUD/VA guaranteed loans). Such filings
23 are not probative of USM'S, or their investors' status as trust
24 companies. The clear intention Section 10133.1(a)(1) is to
25 provide an exemption for entities and their employees that are
26 operating as banks, trust companies, savings and loan
27 associations, industrial loan companies, pension trusts, credit

1 unions, or insurance companies. As such, these entities and their
2 employees are subject to strict regulation of their activities by
3 other state or federal statutory systems, and regulation by the
4 Real Estate Law would be unnecessarily duplicative, and perhaps
5 preempted in whole or in part. A specified exemption is created
6 by Section 10133.1(a)(8) for entities acting as agents for savings
7 institutions in servicing mortgages, as respondent has been doing
8 for some savings institution clients. The creation of this
9 specific exemption for this limited class of activities excludes
10 by implication similar activities undertaken by USM as agents on
11 behalf of trust companies or pension trusts a exempt activities.
12 Further, such a specific exception for an agency relationship with
13 a particular type of institution, one among others named as exempt
14 in Section 10133.1(a)(1) strongly suggests that the exemption of
15 that section is applicable only to the institution itself or its
16 employees. As respondent USM is not one of the exempt entities
17 itself, nor is it an employee of an exempt institution, the
18 exemption in Code Section 10133.1(a)(1) is inapplicable.

19 Respondent's contention that the regulatory scheme is
20 applicable only to noninstitutional beneficiaries must also fail,
21 both for lack of legal support and for the reasons as set forth
22 above. Although the statute's exemption of named financial
23 institutions may lend itself to argument that institutional
24 beneficiaries are to be excluded from statutory protection, the
25 statute itself and its subparts do not directly or implicitly
26 refer to beneficiaries, and to do so would serve to engraft upon
27 the statute an unintended meaning. Thus, the institutional or

1 noninstitutional status of the beneficiaries served is relevant to
2 exempt status only to the extent that USM or its employees are
3 exempt, as set forth in the statute. No provision is made in the
4 statute for exemption of USM based upon the status of the
5 beneficiary otherwise except as set forth in Section
6 10133.1(a)(3).

7 Finally, the exemption created by Code Section 10133.15
8 does not assist respondent USM. Section 10133.15 is not an
9 exemption from the requirement that USM be licensed. It is an
10 exemption from regulations governing sales of trust deeds and
11 realk property securities (Article 5, 6 and 6.5 of Chapter 3 of
12 the Real Estate Law) applicable to a person acting as an
13 authorized representative, agent or loan correspondent of a bank,
14 trust company, savings and loan association, industrial loan
15 company, pension trust, credit union or insurance company.
16 Noncompliance with these Articles is not at issue here. At issue
17 in this case is USM'S lack of compliance with trust fund handling
18 (section 10145) and record-keeping (Regulation 2831.1)
19 requirements which are part of or authorized pursuant to Article 1
20 of Chapter 3 of the Real Estate Law.

21 IX

22 It was established that respondent USM retained trust
23 fund interest earned on nonexempt clients' (as set forth in
24 Finding VIII) funds in contravention of the Real Estate Law of the
25 State of California. Although these funds were retained as
26 "additional compensation" pursuant to contract and under claim of
27 right, USM may not contract around the requirements of the law.

1 See Code Section 10145(d)(5).

2 X

3 It was established that respondent USM deposited
4 clients' funds into one interest-bearing trust fund account
5 without keeping the funds in the account, separate, distinct and
6 apart from the funds held for others or for the broker, in
7 violation of Code Section 10145(d)(3). Respondent USM did
8 maintain an interest-bearing account during the period January,
9 1985 through June 1986 where all monies received on behalf of
10 clients were deposited. However each client's earned interest was
11 separately stated in USM'S computer records, and each
12 beneficiary's interest could be adequately traced by audit trails
13 that met generally accepted accounting practices. It was
14 precisely this computer-generated separate accounting that
15 permitted respondent to identify and refund the \$1,400.00 in
16 interest retained on behalf of private, nonexempt clients that
17 respondent acknowledged could not be retained as additional
18 compensation when the Department first investigated the matter.
19 As long as the interest earned upon the client's funds in the
20 interest-bearing trust account remained in that account, the
21 beneficiaries' various interests were separately accounted for and
22 stated.

23 XI

24 During the period in question, respondent USM permitted
25 unlicensed signatories to its trust funds to have the ability to
26 make withdrawals far in excess of the amount of the bond
27 protecting the beneficiaries. During this period, none of the

XIV

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2 In light of respondent's reasonable but partially
3 incorrect claims of legal and contractual rights to retain
4 interest earned on institutional customer's funds on deposit in
5 USM'S trust account and respondents' immediate compliance with the
6 Department's demands that noninstitutional customer's trust fund
7 interest earned be refunded and trust account and bonding
8 requirements of the Real Estate Law be complied with, it would not
9 be contrary to the public interest to issue to respondents
10 restricted real estate broker's licenses conditioned upon USM'S
11 refund of trust fund interest earned to nonexempt clients as set
12 forth in this decision.

13 DETERMINATION OF ISSUES

14 I

15 Cause does not exist for suspension or revocation of
16 respondents' real estate brokers' licenses pursuant to Business
17 and Professions Code Sections 10177(d), 10177(g) and Title 10,
18 California Code of Regulations (hereafter "CCR") Section 2831.1,
19 in that it was not established that respondent failed to keep
20 separate records for trust fund beneficiaries, preventing the
21 determination of accountability for those beneficiaries, as set
22 forth in Finding VI.

23 II

24 Cause exists for the suspension or revocation of
25 respondents' real estate brokers' licenses pursuant to Business
26 and Professions Code Sections 10176(e) and 10177(d) for willful
27 violation of Code Section 10145(d)(5) with respect to those

1 clients of respondent subject to the Real Estate Law as set forth
2 in Finding VIII, for depositing interest earned on those
3 non-exempt clients' trust funds to USM'S own account, and
4 converting those funds to USM'S own use, as set forth in Finding
5 IX.

6 Cause does not exist for the suspension or revocation of
7 respondents' real estate brokers' licenses pursuant to Business
8 and Professions Code Section 10145(d)(5), 10177(d) and 10176(e)
9 for depositing interest earned upon client's funds in trust to
10 USM'S own account with respect to those clients for which USM is
11 exempt from the application of the Real Estate Law pursuant to
12 Business and Professions Code Section 10133.1, as set forth in
13 Finding VII.

14 III

15 Cause exists for the suspension or revocation of
16 respondents' real estate brokers' licenses pursuant to Business
17 and Professions Code Sections 10177(g) and 10177(d) for willful
18 violation of Code Section 10145(d)(3) in that it was established
19 that respondent USM deposited clients' trust funds into an
20 interest-bearing account without keeping separate the funds of
21 each investor.

22 IV

23 Cause exists for the suspension or revocation of
24 respondents' real estate brokers' licenses pursuant to Business
25 and Professions Code Sections 10177(d) for willful violation of
26 Title 10, CCR Section 2834 in that withdrawals from respondent
27 USM'S trust funds could be made by unlicensed persons with

1 check-writing authority in excess of the amount of the bond
2 covering the unlicensed persons, as set forth in Finding XI.

3 ORDER

4 WHEREFORE, THE FOLLOWING ORDER IS HEREBY MADE:

5 I

6 A. For each and every determination of issue set forth
7 above, the corporate real estate broker license and all other
8 license rights of respondent U.S. MORTGAGE COLLECTION SERVICES,
9 INC. ("USM") under the Real Estate Law are hereby revoked.

10 B. However, respondent USM shall be entitled to apply
11 for and be issued a restricted corporate real estate broker
12 license pursuant to Section 10156.5 of the Code, if respondent USM
13 makes application therefor and pays to the Department of Real
14 Estate the appropriate fee for said license within 60 days from
15 the effective date of the Decision herein.

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

21 1. The restricted license shall not confer any property
22 right in the privileges to be exercised thereunder
23 and the Real Estate Commissioner may by appropriate
24 order suspend prior to hearing the right of respondent
25 to exercise any privileges granted under the restricted
26 license in the event of:

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(a) The conviction of respondent USM (including a plea of nolo contendere) of a crime which bears a significant relation to USM'S fitness or capacity as a real estate licensee.

(b) The receipt of evidence satisfactory to the Real Estate Commissioner that respondent USM has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to said restricted license(s).

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

3. Respondent USM shall not be eligible to apply for the issuance of any unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license(s) until two (2) years have elapsed from the date of issuance of the restricted license(s) to respondent USM.

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1 C. The restricted license(s) issued to respondent
2 BERGAN shall be subject to all of the provisions of Section
3 10156.7 of the Business and Professions Code and to the
4 limitations, conditions and restrictions imposed under the
5 authority of Section 10156.6 of said Code"

6 1. The restricted license(s) shall not confer
7 any property right in the privileges to be
8 exercised thereunder and the Real Estate
9 Commissioner may by appropriate order suspend
10 prior to hearing the right of respondent BERGAN to
11 exercise any privileges granted under the (se)
12 restricted license(s) in the event of:

13 (a) The conviction of respondent (including
14 a plea of nolo contendere) of a crime which
15 bears a significant relation to his fitness
16 or capacity as a real estate licensee.

17 (b) The receipt of evidence satisfactory to
18 the Real Estate Commissioner that respondent
19 BERGAN has violated provisions of the California
20 Real Estate Law, the Subdivided Lands Law,
21 Regulations of the Real Estate Commissioner,
22 or conditions attaching to said restricted
23 license(s).

24 2. Respondent BERGAN shall, within 12 months from the
25 effective date of the Decision, present evidence
26 satisfactory to the Real Estate Commissioner that
27 he/she has, since the most recent issuance of an

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

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

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

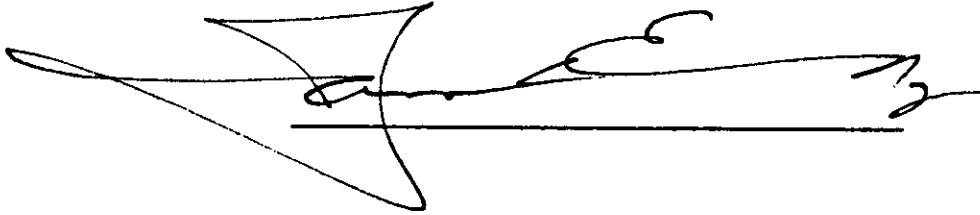
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5. Respondent BERGAN shall not be eligible to apply
for the issuance of any unrestricted real estate
license nor the removal of any of the conditions,
limitations or restrictions attaching to the
restricted license(s) until two (2) years have
elapsed from the date of issuance of the restricted
license(s) to respondent BERGAN.

This Decision shall become effective at 12 o'clock
noon of November 16, _____, 1989.

IT IS SO ORDERED 10-30-89.

JAMES A. EDMONDS, JR.
Real Estate Commissioner



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Sacto Jan

FILED

JAN 31 1989

DEPARTMENT OF REAL ESTATE
BY *Laura B. O'Neil*

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H- 615 SA
U.S. MORTGAGE COLLECTION)	L-39592
SERVICES, INC., and)	
JOHN DEAN BERGAN as)	
designated officer of)	
the corporation.)	
Respondents.)	

NOTICE

TO: U.S. MORTGAGE COLLECTION SERVICES, INC. and
JOHN DEAN BERGAN, Respondents
and
BILL BAKER, ESQ., their attorney

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 23, 1988 of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 23, 1988 is attached hereto for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will

1 be determined by me after consideration of the record herein
2 including the transcript of the proceedings held on June 27, July
3 26 and October 18, 1988 and any written argument hereafter
4 submitted on behalf of respondent and complainant.

5 Written argument of respondent to be considered by me
6 must be submitted within 15 days after receipt of the transcript
7 of the proceedings of June 27, July 26 and October 18, 1988 at the
8 office of the Department of Real Estate unless an extension of the
9 time is granted for good cause shown.

10 Written argument of complainant to be considered by me
11 must be submitted within 15 days after receipt of the argument of
12 respondent at the Los Angeles office of the Department of Real
13 Estate unless an extension of the time is granted for good cause
14 shown.

15 DATED: January 24, 1989.

16 JAMES A. EDMONDS, JR.
17 Real Estate Commissioner

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19 By: John R. Liberator
20 JOHN R. LIBERATOR
21 Chief Deputy Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. H-615 SA
)	
U.S. MORTGAGE COLLECTION)	OAH NO. L-39592
SERVICES, INC. and)	
JOHN DEAN BERGAN as designated)	
officer of the corporation,)	
)	
Respondent.)	

PROPOSED DECISION

On June 27, July 26 and October 18, 1988, in Los Angeles, California, Stephen J. Smith, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James R. Peel, Counsel, Department of Real Estate, represented complainant.

Earl Gross, President, appeared on behalf of U.S. Mortgage Collection Services, Inc.

John Dean Bergan appeared in person. Respondent U.S. Mortgage Collection Services, Inc. and John Dean Bergan were represented by William Baker, Attorney at Law.

Evidence was received, the record was closed and the matter was submitted. The Administrative Law Judge finds the following facts applying the standard of clear and convincing proof.

FINDINGS OF FACT

I

Thomas McCrady, Deputy Real Estate Commissioner, Department of Real Estate, State of California, made the charges and allegations contained in the Accusation in his official capacity.

II

Respondent U.S. Mortgage Collection Services, Inc. (hereafter "USM") was initially licensed by the Department of Real Estate (hereafter "the Department") as a corporate real estate broker effective March 8, 1985. As of May 31, 1985, USM had designated respondent John Dean Bergan as licensed officer of the corporation.

The corporation license is due to expire on March 7, 1989, and has never been the subject of previous disciplinary action by the Department.

III

Respondent John Dean Bergan was licensed as a real estate broker by the Department on December 16, 1983, after having been previously licensed as a real estate salesperson. Effective May 31, 1985, respondent was designated licensed officer of both Integrity Financial Corporation and U.S. Realty. The broker's license issued to respondent Bergan expired December 15, 1987. The designated corporate officer's license issued to him regarding Integrity Financial is due to expire on July 16, 1989, and the license regarding U.S. Realty, if not renewed, will have expired on November 24, 1988. Respondent Bergan's licenses have never been the subject of previous disciplinary action by the Department.

IV

USM is a mortgage servicing company specializing in the servicing of complex, all-inclusive trust deeds secured by direct or collateral liens on real property. On behalf of investors, USM collects payments due, pays all expenses, retains a commission, and returns the balance to the investors on two hundred-fifty complex deeds of trust. The trust deeds serviced often involve as many as nineteen or twenty fractional investor interests, and three or four combined mortgages within the trust deed. It was not unusual for USM to be required to make twenty or more monthly payments for each of a number of these trust deeds. Due to USM specialization in handling such complex servicing and accounting, USM attracted predominately large, institutional clients, who requested that USM service trust deeds they held.

V

USM is a closely-held California corporation, with Earl Gross as one hundred percent shareholder and President. Robert Mapsted and respondent Bergan were named Vice Presidents, but owned no shares. USM is but one of a series of related closely-held corporations controlled by Earl Gross, including U.S. Realty and Integrity Financial Corporation, all of which were engaged in various aspects of the real estate business in Southern California during 1985-86.

VI

It was not established that respondent USM failed to keep separate records for trust fund beneficiaries during the period January 1, 1985 through June 30, 1986, such that separate accountability could not be established for each beneficiary. It was established that USM invested \$200,000.00 in a sophisticated computer and software system that would enable USM to accomplish the complex accounting that was a feature of servicing all-inclusive trust deeds of substantial size. The computer was subject to difficulties in

inputing data from time to time, but it was established that respondent's accounting records were maintained according to generally accepted accounting principles of the American Institute of Certified Public Accountants at all relevant times. It was also established that respondent's certified public accountants produced, at the end of both 1985 and 1986, certified audits of respondent's books and records, as required by the U.S. Department of Housing and Urban Development. Both of these audits revealed respondent's books to be in order, and each beneficiary's account to be separately stated and in balance. For each beneficiary, no matter how tiny that beneficiary's fractional interest, USM would produce and mail a monthly statement.

The Department's auditor could not make sense of respondent's books at the time of his examination. Clearly there were peculiarities with respondent's books and accounts at the time of the examination, and respondent's multiple and sometimes contradictory explanations of this state of affairs were not entirely credible. However, competent expert testimony established that the complexity of the records kept by USM could not be adequately understood and evaluated in the two and a half days spent by the Department's auditor, particularly in light of the fact that the Department's auditor was a neophyte and not yet certified as a public accountant. The Department's auditor's conclusion that separate beneficiary accountability could not be established was based on his inability to understand respondent USM's accounting system. In light of expert testimony establishing that USM's accounting during the relevant time periods complied with generally accepted accounting principles, the Department failed to meet the burden of proof regarding this allegation.

VII

It was established that USM's clients listed below are exempt institutions for the purposes of Business and Professions Code sections 10133 and 10133.1 as follows:

1. Household Bank
2. California Federal Savings and Loan
3. Lincoln Federal Savings and Loan
4. Viking Savings and Loan
5. Signal Savings and Loan

With respect to the five institutions listed above, USM acted pursuant to contract with these exempt organizations as agent for the collection and disbursement of funds related to trust deeds secured by real property. Each of these institutions are "savings institutions" as described in Business and Professions Code section 10131.1(8), and respondent's actions pursuant to contracts with these institutions establishing agency relationships brings USM within the exemption established by that section. Therefore, interest earned and retained by USM for deposits of exempt clients' funds into USM's trust account is purely a matter of contract between those entities, and not the subject of disciplinary action by the Department.

VIII

It was established that respondent USM's activities were subject to the application of the Real Estate Law of the State of California pursuant to Business and Professions Code sections 10130, 10131(d), and 10131.1(a)(1) and (a)(8), contrary to respondent's contentions, with respect to the following clients served by USM:

1. Loma Linda University
2. Integrity Realty Trust
3. Integrity Financial Corporation
4. IFC Pension Trust
5. Northern California Conference Association
6. Pacific Union College

With respect to these six entities, it was established that although respondent USM had contractual relationships with each to provide loan servicing for mortgages secured by deeds of trust on real property, respondent USM is not itself one of the exempt entities listed in Business and Professions Code section 10131.1(a)(1) and (a)(8)(b), nor is it an employee of one of the exempt entities. It was established that Loma Linda University, IFC Pension Trust, Northern California Conference Association and Pacific Union College are all entities described in section 10131.1(a)(1), as all were pension trusts or trust companies. Although at least one of USM's contracts, that with Loma Linda University, attempts to contractually create an employer-employee relationship for the expressed purpose of attempting to create applicability of the exemption of section 10131.1(a)(1) and (a)(8)(b), it is clear that the relationship is artificial and does not establish an employee relationship that would make the exemption applicable. The nature of Integrity Realty Trust was not established at the hearing, and thus must be presumed to be nonexempt. Integrity Financial Corporation is clearly non-exempt as it is one of Earl Gross' subsidiary corporations and includes private individual investors.

Respondent's contention that the exemption statutes must be construed to include the pension trusts and trust companies served by respondent are rejected. In one sense respondent USM is "doing business under any law of ... The United States relating to ... trust companies...[and] pension trusts" in that respondent is required to comply with federal regulations of the United States Housing and Urban Development Department, including the submission to that Department of regular financial accountings. However, the clear intention of the statute is to provide an exemption for entities and their employees that are operating as banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies. As such, these entities and their employees are subject to strict regulation of their activities by other state or federal statutory systems, and regulation by the Real Estate Law would be unnecessarily duplicative, and perhaps preempted in whole or in part. A specific exemption is created by section 10131.1(a)(8) for entities acting as agents for savings institutions in servicing mortgages, as respondent has been doing for some savings institution

clients. The creation of this specific exemption for this limited class of activities excludes by implication similar activities undertaken by USM as agents on behalf of trust companies or pension trusts as exempt activities. Further, such a specific exception for an agency relationship with a particular type of institution, one among others named as exempt in section 10131.1(a)(1) strongly suggests that the exemption of that section is applicable only to the institution itself or its employees. As respondent USM is not one of the exempt entities itself, nor is it an employee of an exempt institution, the exemption is inapplicable.

Respondent's contention that the regulatory scheme is inapplicable only to noninstitutional beneficiaries must also fail, both for lack of legal support and for the reasons as set forth above. Although the statute's exemption of named financial institutions may lend itself to argument that institutional beneficiaries are to be excluded from statutory protection, the statute itself and its subparts do not directly or implicitly refer to beneficiaries, and to do so would serve to engraft upon the statute an unintended meaning. Thus, the institutional or noninstitutional status of the beneficiaries served is relevant to exempt status only to the extent that the entity or its employees are exempt, as set forth in the statute. No provision is made in the statute for exemption based upon the status of the beneficiary otherwise.

Finally, the exemption created by Business and Professions Code section 10133.15 does not assist respondent USM. Although the exemption is applicable to USM regarding its activity pursuant to contract as authorized agent of trust companies and pension funds, among others, the activities exempted are not those at issue. Loan servicing activity such as USM conducts for its clients is excluded as the statute only exempts activities undertaken pursuant to Article 5 (Trust Deed and Real Estate Contract Purchases and Sales), Article 6 (Real Property Securities Dealers) and Article 6 (Real Property Securities Dealers - Liquidations and Conservatorships). None of USM's activities at issue in these proceedings are included in these exemptions.

IX

It was established that respondent USM retained trust fund interest earned on nonexempt clients' (as set forth in Finding VIII) funds in contravention of the Real Estate Law of the State of California. Although these funds were retained as "additional compensation" pursuant to contract and under claim of right, USM may not contract around the requirements of the law.

X

It was not established that respondent USM deposited clients' funds into an interest-bearing trust fund without keeping the funds in the account separate, distinct and apart from the funds held for others or for the broker. Respondent USM did maintain an interest-bearing account during the period January, 1985 through June 1986

where all monies received on behalf of clients were deposited. Each account was separately stated in USM's computer records, and each beneficiary's interest could be adequately traced by audit trails that met generally accepted accounting practices. It was precisely this computer-generated separate accounting that permitted respondent to identify and refund the \$1,400.00 in interest retained on behalf of private, nonexempt clients that respondent acknowledged could not be retained as additional compensation when the Department first investigated the matter. As long as the interest earned upon the client's funds in the interest-bearing trust account remained in that account, the beneficiary's various interests were separately accounted for and stated.

XI

During the period in question, respondent USM permitted unlicensed signatories to its trust funds to have the ability to make withdrawals far in excess of the amount of the bond protecting the beneficiaries. During this period, none of the signatories to USM's trust accounts was licensed, and the bond amount was ten thousand dollars. Numerous checks on trust account funds, including one check for one million dollars were written during this period.

Following the Department's advice to of USM that the signatory/bonding arrangement was in violation of the Real Estate Law, respondent USM immediately increased the bond amount to two hundred fifty thousand dollars, added respondent Bergan's name to the account, and changed the restrictions on the account to require that any check in excess of the bond amount required the corporate broker's signature.

XII

Respondent John Dean Bergan knowingly participated in all of the acts of USM as previously set forth in Findings IV through XI as corporate broker from the time that he became such in May, 1985, through June 30, 1985.

XIII

It could not be determined from the evidence presented at the hearing the proper apportionment of the \$26,126.42 in USM trust fund interest earned on client's trust funds, less the \$1,400.00 already refunded to admittedly non-exempt clients, to exempt and non-exempt clients of USM. An accounting of these funds will be required in order to determine the relative rights of USM's clients subject to the Real Estate Law to restitution of interest earned on those clients' funds retained by USM in contravention of the Real Estate Law.

XIV

In light of respondent's reasonable but partially incorrect claims of legal and contractual rights to retain interest earned on institutional customer's funds on deposit in USM's trust account and

respondents' immediate compliance with the Department's demands that noninstitutional customer's trust fund interest earned be refunded and trust account and bonding requirements of the Real Estate Law be complied with, it would not be contrary to the public interest to issue to respondents restricted real estate broker's licenses conditioned upon USM's refund of trust fund interest earned to nonexempt clients as set forth in this decision.

DETERMINATION OF ISSUES

I

Cause does not exist for suspension or revocation of respondents' real estate brokers' licenses pursuant to Business and Professions Code sections 10177(d), 10177(g) and Title 10, California Code of Regulations (hereafter "CCR") section 2831.1, in that it was not established that respondent failed to keep separate records for trust fund beneficiaries, preventing the determination of accountability for those beneficiaries, as set forth in Finding VI.

II

Cause exists for the suspension or revocation of respondents' real estate brokers' licenses pursuant to Business and Professions Code sections 10145(d)(5), 10177(d) and 10176(e), with respect to those clients of respondent subject to the Real Estate Law as set forth in Finding VIII, for depositing interest earned on those non-exempt clients' trust funds to USM's own account, and converting those funds to USM's own use, as set forth in Finding IX.

Cause does not exist for the suspension or revocation of respondents' real estate brokers' licenses pursuant to Business and Professions Code sections 10145(d)(5), 10177(d) and 10176(e) for depositing interest earned upon client's funds in trust to USM's own account with respect to those clients for which USM is exempt from the application of the Real Estate Law pursuant to Business and Professions Code section 10133.1, as set forth in Finding VII.

III

Cause does not exist for the suspension or revocation of respondents' real estate brokers' licenses pursuant to Business and Professions Code sections 10145(d)(3), 10177(d) and 10177(g) in that it was not established that respondent USM deposited client's trust funds into an interest-bearing account without keeping separate records of account for each of multiple beneficiaries, as set forth in Finding X.

IV

Cause exists for the suspension or revocation of respondents' real estate brokers' licenses pursuant to Business and Professions Code sections 10177(d) and Title 10, CCR section 2834 in that withdrawals from respondent USM's trust funds could be made by

unlicensed persons with check-writing authority in excess of the amount of the bond covering the unlicensed persons, as set forth in Finding XI.

V

Cause exists for the suspension or revocation of John Dean Bergan's real estate broker's license pursuant to Business and Professions Code section 10185 in that as corporate officer licensee of USM, he knowingly participated in the acts and omissions that constituted causes for discipline as set forth in Determinations II and IV, as set forth in Finding XII. Pursuant to Business and Professions Code section 10159.2, all licenses and license rights issued by the Department to respondent Bergan are subject to discipline if any cause for discipline is found for any of respondent Bergan's activities pursuant to any license.

ORDER

All real estate licenses and licensing rights issued to respondents U.S. Mortgage Collection Services, Inc. and John Dean Bergan by the Department of Real Estate are revoked separately and severally for each of Determinations II, IV, and V; provided, however, the revocation shall be stayed on condition that a restricted real estate license shall be issued to both respondents pursuant to section 10156.5 of the Business and Professions Code if each respondent makes application therefor within thirty days from the effective date of this decision. The restricted license issued to each respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

- NOT
ADVISED
1. The restricted license issued to each respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
 2. Each respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning that respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings

of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which that respondent engaged during the period covered by the report.

3. Neither respondent shall be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until respondent USM has provided to the Department an accounting satisfactory to the Department of all trust funds retained by USM as additional compensation on behalf of clients subject to the Real Estate Law as set forth in Findings VIII, IX and XIII, and has provided to the Department satisfactory evidence that refunds of all trust fund interest retained on behalf of these nonexempt clients have been made in full to these clients. In the event that respondent USM fails to comply with either the accounting or refund conditions as set forth herein within a period of ninety (90) days from the effective date of this decision, the Department may, following notice and an opportunity to be heard, impose any stayed portion of the penalty set forth herein as the Department deems, in its discretion, to be appropriate. Upon respondent USM's providing evidence to the Department's satisfaction of full compliance with the accounting and refund conditions set forth herein, either respondent may apply to the Department for removal of all conditions and restrictions and restoration of all licenses to unconditional status.

Dated: December 23, 1988

Stephen J. Smith

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

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ADOPTED*

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 16 1988

DEPARTMENT OF REAL ESTATE
BY Jana B. O'Neil

In the Matter of the Accusation of

U.S. MORTGAGE COLLECTION SERVICES,
INC., et al.,

Case No. H-615 SA
OAH No. L-39592

Respondent(s)

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, CA 90012
18th day of October, 1988 at 11:00 a.m. &
on the 19th day of October, 1988 at 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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 hearing officer 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 hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

By James R. Peck
Counsel

Dated: September 16, 1988

cc: U.S. Mortgage Collection Services, Inc.
John Dean Bergan
Bill Baker, Esq.
Sacto.
OAH, KTC

Sacto
Joey

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

REG-9. 1988

DEPARTMENT OF REAL ESTATE
BY Lana B. Olson

In the Matter of the Accusation of

U.S. MORTGAGE COLLECTION SERVICES
INC., et al.,

Case No. H-615 SA

OAH No. L-39592

Respondent(s)

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, CA 90012
19th &

on the 20th day of SEPTEMBER, 19 88, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, or other evidence including affidavits, without any notice to you.

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DEPARTMENT OF REAL ESTATE

Dated: August 9, 1988

By James R. Peck
Counsel

cc: U.S. Mortgage Collection Services, Inc.
John Dean Bergan
Bill Baker, Esq.
Sacto.
OAH, KTC
RE 501 (Rev. 7/87)

Sacto
Gary

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

JUL - 1 1988

DEPARTMENT OF REAL ESTATE
BY Lana B. Ornd

In the Matter of the Accusation of

U.S. MORTGAGE COLLECTION SERVICES,
INC., and JOHN DEAN BERGAN as designated
officer of said corporation,

}

Case No. H-615 SA

OAH No. L-39592

Respondent(s)

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, CA 90012

on the 26th day of JULY, 19 88, at the hour of 1:30 p.m., or as soon thereafter
as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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.

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DEPARTMENT OF REAL ESTATE

Dated: July 1, 1988

By James R. Peel
Counsel

cc: U.S. Mortgage Collection Services, Inc.
John Dean Bergan
Bill Baker, Esq.
Sacto.
OAH, KTC

RE 501 (Rev. 7/87)

Sacto
Plan

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

MAY 16 1988

DEPARTMENT OF REAL ESTATE
BY James R. Peel

In the Matter of the Accusation of

U.S. MORTGAGE COLLECTION
SERVICES, INC., et al.,

Case No. H-615 SA

OAH No. L-39592

Respondent(s)

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, CA 90012

on the 27th day of JUNE, 19 88, at the hour of 1:30 p.m., or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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 hearing officer 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 hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: May 16, 1988

By James R. Peel
Counsel

cc: U.S. Mortgage Collection Services, Inc.
John Dean Bergan
Bill Baker, Esq.
Sacto.
OAH, KTC
RE 501 (Rev. 7/87)

*Sacto
Jag*

FILED

FEB-4 1988

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY *Jana B. Chava*

In the Matter of the Accusation of

U.S. MORTGAGE COLLECTION SERVICES,
INC., et al.,

Case No. H-615 SA

OAH No. L-39592

Respondent(s)

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, CA 90012

on the 27th day of APRIL, 19 88, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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 hearing officer 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 hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

By *Jama R. Peel*
Counsel

Dated: February 4, 1988

cc: John Dean Bergan
U.S. Mortgage Collection Services, Inc.
David Badovinac
Sacto.
OAH
KTC
RE 501 (Rev. 7/87)

*Sacto
Jury*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY - 6 1987

DEPARTMENT OF REAL ESTATE
BY *Laura B. Urena*

In the Matter of the Accusation of
U.S. MORTGAGE COLLECTION
SERVICES, INC., ET AL.,

Case No. H-615 SA
L-39592

Respondent(s)

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

314 West First Street, Los Angeles, CA 90012

on the 2nd day of JULY, 1987, at the hour of 9:00 a.m.,
or as soon thereafter as the matter can be heard, upon the charges made in the
Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel,
but you are neither required to be present at the hearing nor to be represented by
counsel. If you are not present in person, nor represented by counsel at the hearing,
the Department may take disciplinary action against you upon any express admissions,
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.

DATED: May 6, 1987

cc: U.S. Mortgage Collections Services
John Dean Bergan
*✓*Sacto.
OAH
KTC

DEPARTMENT OF REAL ESTATE
By *James R. Peck*
Counsel

RE Form 501 (Rev. 11-10-82)

Sachs
Jan 15

FILED

JAN 15 1987

DEPARTMENT OF REAL ESTATE
BY *Leura B. Orona*

1 JAMES R. PEEL, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012
5 (213) 620-4790

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-615 SA
12 U.S. MORTGAGE COLLECTION SERVICES,) A C C U S A T I O N
13 INC. and JOHN DEAN BERGAN as)
14 designated officer of said)
15 corporation,)
16 Respondents.)

17 The Complainant, Thomas McCrady, a Deputy Real Estate
18 Commissioner of the State of California, for cause of accusation
19 against U.S. MORTGAGE COLLECTION SERVICES, INC., and JOHN DEAN
20 BERGAN, alleges as follows:

21 I

22 The Complainant, Thomas McCrady, a Deputy Real Estate
23 Commissioner of the State of California, makes this accusation in
24 his official capacity.

25 II

26 U.S. MORTGAGE COLLECTION SERVICES INC., and JOHN DEAN
27 BERGAN (hereinafter collectively referred to as respondents) are
presently licensed and/or have license rights under the Real

1 Estate Law (Part 1 of Division 4 of the Business and Professions
2 Code, hereinafter Code).

3 III

4 At all times herein mentioned, respondent U.S. MORTGAGE
5 COLLECTION SERVICES, INC. was licensed by the Department of Real
6 Estate as a corporate real estate broker and respondent JOHN DEAN
7 BERGAN was licensed by the Department as the designated licensed
8 officer of said corporation.

9 IV

10 All further reference herein to respondents shall be
11 deemed to refer also to the employees and agents employed by
12 respondents, who at all times herein mentioned were engaged in the
13 furtherance of respondents' business or operations and who were
14 acting within the course and scope of their authority and
15 employment by respondents.

16 V

17 From June 1, 1985, through December 31, 1986, in
18 connection with real estate activities for which a real estate
19 license is required, respondents violated Section 2831.1 Title 10,
20 California Administrative Code, by not keeping separate records
21 for trust fund beneficiaries with the result that no
22 accountability for trust funds can be calculated. Such conduct by
23 the respondents is cause to suspend or revoke their real estate
24 license and license rights pursuant to Sections 10177(d) and
25 10177(g) of the Code.

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VI

From June 1, 1985, through December 31, 1986, respondents violated Section 10145(d)(5) of the Code by depositing interest earned from trust funds in a money market interest bearing trust account into their personal operating account in the approximate amount of \$26,000. Such conduct by the respondents constitutes the misappropriation and conversion of funds belonging to others to their own personal use and benefit and is cause to suspend or revoke their real estate license and license rights pursuant to Sections 10177(d), 10176(e), 10176(i), or 10177(g), of the Code.

VII

From June 1, 1985, through December 31, 1986, respondents violated Section 10145(d)(3) of the Code by depositing into an interest bearing trust account trust funds belonging to multiple beneficiaries. Such conduct by the respondents is cause to suspend or revoke their license and license rights pursuant to Sections 10177(d) and 10177(g) of the Code.

VIII

From June 1, 1985, through December 31, 1986, respondents violated Section 2834, Title 10, California Administrative Code, by permitting several unbonded and unlicensed employees to be signatories on and to make withdrawals from their real estate trust accounts. Such conduct by the respondents is cause to suspend or revoke their real estate license and license rights pursuant to Sections 10177(d) and 10177(g) of the Code.

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