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FILED
JUN 10 1998
DEPARTMENT OF REAL ESTATE

By K. Medelich

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-1329 SA
JOHN NORMAN BELL)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 3, 1993, a Decision was rendered herein revoking the real estate broker license of Respondent, JOHN NORMAN BELL (hereinafter "Respondent"), effective April 29, 1993. In said Decision Respondent was given the right to apply for and receive a restricted real estate broker license which was issued to him on April 29, 1993, and then immediately suspended for a period of six months.

On or about May 28, 1997, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has

1 demonstrated to my satisfaction that grounds do not presently
2 exist to deny the issuance of an unrestricted real estate
3 broker license to Respondent.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's
5 petition for reinstatement is granted and that an
6 unrestricted real estate broker license be issued to
7 Respondent, JOHN NORMAN BELL, after Respondent satisfies the
8 following conditions within one (1) year from the date of
9 this Order:

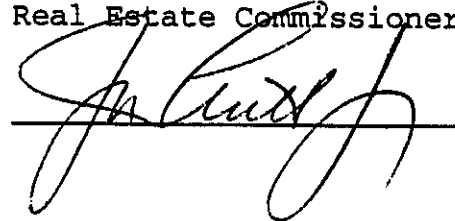
10 1. Submittal of a completed application and
11 payment of the fee for a real estate broker license.

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

18 This Order shall become effective immediately.

19 DATED: 5/27/98.

21 JIM ANTT, JR.
22 Real Estate Commissioner

23 

24
25 JOHN NORMAN BELL
26 306 Lexington Cr.
27 Newport Beach, California 92660



1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
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5 Telephone: (916) 227-0789
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FILED
APR - 9 1993
DEPARTMENT OF REAL ESTATE

By Emily J. Jakes

10 BEFORE THE
11 DEPARTMENT OF REAL ESTATE
12 STATE OF CALIFORNIA
13 * * *

14 In the Matter of the Accusation of)
15)
16)

17 JOHN NORMAN BELL and)
18 LEE KELLY HARRIS, Each)
19 Individually Doing)
20 Business as Bankers)
21 Capital Association,)
22)
23)
24)
25)
26)
27 Respondents.)
_____)

NO. H-1329 SA

AMENDED STIPULATION IN
SETTLEMENT AND ORDER

20 It is hereby stipulated by and between JOHN NORMAN
21 BELL and LEE KELLY HARRIS (sometimes referred to as
22 Respondents), and the Complainant, acting by and through Susan Y.
23 Bennett, Counsel for the Department of Real Estate, as follows,
24 for the purpose of settling and disposing of the Accusation filed
25 on March 3, 1992:

26 1. All issues which were to be contested and all
27 evidence which was to be presented by Complainant and Respondents

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act (APA), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation.

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

10 3. On March 13, 1992, Respondents filed Notices of
11 Defense pursuant to Section 11505 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondents hereby freely and voluntarily withdraw
14 said Notices of Defense. Respondents acknowledge that they
15 understand that by withdrawing said Notices of Defense, they waive
16 their right to require the Commissioner to prove the allegations
17 in the Accusation at a contested hearing held in accordance with
18 the provisions of the APA and that they waive other rights
19 afforded to them in connection with the hearing such as the right
20 to present evidence in defense of the allegations in the
21 Accusation and the right to cross-examine witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations in Paragraphs II
24 through XVII, and Paragraphs XXII and XXIII of the Accusation
25 filed in this proceeding are true and correct and the Real Estate
26 Commissioner shall not be required to provide further evidence to
27 prove such allegations.

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

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

18 DETERMINATION OF ISSUES

19 By reason of the foregoing stipulations, admissions and
20 waivers, and solely for the purpose of settlement of the pending
21 Accusation without a hearing, it is stipulated and agreed that the
22 following determination of issues shall be made:

23 I

24 The Complainant, Thomas McCrady, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation
26 against Respondents in his official capacity.

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II

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

III

At all times mentioned herein, Respondents JOHN NORMAN BELL ("BELL") and LEE KELLY HARRIS ("HARRIS") were and now are licensed by the Department as real estate brokers.

IV

All further references herein to "Respondents" include the parties identified in Paragraph III, above, and also include the employees, agents and real estate licensees employed by or associated with said parties and who at all times herein mentioned were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority and employment.

V

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California within the meaning of Sections 10131(d) and 10131.2 of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property or a business opportunity, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation, and

1 also including the operation of an advance fee mortgage loan
2 brokerage business with the public wherein Respondents charged,
3 received, collected and contracted for the collection of an
4 advance fee in connection with employment undertaken to obtain
5 loans secured by a lien on real property or a business
6 opportunity.

7 VI

8 In connection with the aforesaid mortgage loan brokerage
9 activities, throughout a period unknown to the Real Estate
10 Commissioner, but well known to Respondents, including but not
11 limited to the period from on or about March 8, 1990, through on
12 or about June 7, 1991, Respondents claimed, demanded, charged,
13 received, collected, and contracted for fees in advance from
14 borrowers for services Respondents were to perform thereafter,
15 including but not limited to soliciting lenders for and
16 negotiating loans to be secured by a lien on real property or a
17 business opportunity.

18 VII

19 The agreements, advance fees, loans, and borrowers
20 described in Paragraph VI above included, but were not limited to:

21 (a) An \$85,000.00 advance fee claimed, demanded,
22 charged, and contracted for by Respondents (of which Respondents
23 actually received at least \$42,500.00) on or about March 29, 1990,
24 from Larry and Mark Furer doing business as Prospect Plaza
25 Associates for services Respondents were to perform thereafter
26 soliciting lenders for and negotiating an \$8,500,000.00 loan to
27 Larry and Mark Furer to be secured by a lien encumbering real

1 property consisting of Prospect Plaza, a 5.5-acre office park
2 located at 475 Prospect Avenue, West Orange, New Jersey; and,

3 (b) An \$85,000.00 advance fee claimed, demanded,
4 charged, and contracted for by Respondents (of which Respondents
5 actually received at least \$8,458.00) on or about April 9, 1990,
6 from Paul Sweetman and Country Wide Construction Co., Inc., for
7 services Respondents were to perform thereafter soliciting lenders
8 for and negotiating an \$8,500,000.00 loan to Paul Sweetman and
9 Country Wide Construction Co., Inc., to be secured by a lien
10 encumbering real property consisting of Sea Breezes Estates, a
11 36.721-acre parcel of undeveloped land at Napaegue Beach,
12 Amangansett, East Hampton, New York.

13 VIII

14 The fees described in Paragraph VII above, which were
15 claimed, demanded, charged, received, collected, or contracted for
16 by Respondents were for compensation advanced or to be advanced to
17 Respondents for soliciting lenders for and for negotiating loans
18 to be secured by a lien on real property or a business
19 opportunity, and as such were "advance fees" as that term is used
20 in Sections 10026, 10085, and 10131.2 of the Code, and Section
21 2970 of the Title 10, Chapter 6, California Code of Regulations
22 ("Regulations") in conjunction with Section 10085 of the Code.

23 IX

24 The agreements for those advance fees were each an
25 "advance fee agreement" as that term is used in Section 10085 of
26 the Code and Section 2970 of the Regulations.

27 ///

X

1
2 In obtaining each advance fee agreement from the
3 borrowers, Respondents and the borrowers signed "Applica-
4 tion/Commission Agreement" and "Commitment Letter" forms under
5 which Respondents undertook to solicit lenders for, and arrange or
6 attempt to arrange a loan for the borrowers to be secured by a
7 lien on real property or a business opportunity. The "Applica-
8 tion/Commission Agreement" and "Commitment Letter" forms so used
9 to obtain the advance fee agreements were "advance fee materials"
10 as that term is used in Section 10085 of the Code and Section 2970
11 of the Regulations.

XI

12
13 Respondents collected the advance fees described in
14 Paragraph VII, above, from the borrowers without first submitting
15 the "Application/Commission Agreement" and "Commitment Letter"
16 forms for review and approval by the Commissioner as required by
17 Section 2970 of the Regulations in conjunction with Section 10085
18 of the Code.

XII

19
20 At all times mentioned herein, in connection with the
21 advance fee mortgage loan brokerage activities described in
22 Paragraphs V through VII, inclusive, above, Respondents accepted
23 or received advance fees in trust ("trust funds") from or on
24 behalf of prospective borrowers and thereafter made disbursement
25 of said trust funds. Said trust funds were maintained by
26 Respondents in bank accounts, including but not necessarily
27 limited to Account Number 7306333011, located at Household Bank,

1 MacArthur Blvd., Newport Beach, California ("said bank account"),
2 an ordinary commercial account and not an account maintained in
3 the name of Respondents, or either of them, as trustee.

4 XIII

5 On or about June 7, 1991, the Department completed an
6 examination of Respondents' books and records pertaining to
7 Respondents' activities, as described in Paragraphs II through X,
8 above, for the fifteen-month period ending March 31, 1991, which
9 revealed violations of the Code and Regulations, as set forth in
10 Paragraphs XIV through XVII, below.

11 XIV

12 In connection with the trust funds described in
13 Paragraph XII, above, during the fifteen-month period described in
14 Paragraph XIII above:

15 (a) Respondents deposited advance fees entrusted to
16 Respondents in said bank account described in Paragraph XII,
17 above, thereby failing to effect compliance with Section 10146 of
18 the Code, by placing said funds into a trust account at a bank or
19 other recognized depository;

20 (b) Respondents caused or permitted the withdrawal or
21 disbursement of advance fees entrusted to Respondents from said
22 bank account, thereby reducing the balance in said account as of
23 March 31, 1991, to an amount which was \$63,955.04 less than
24 Respondents' liability to all owners of the advance fees entrusted
25 to Respondents deposited in said account, without the prior
26 written consent of all said owners, thereby violating Section
27 2832.1 of the Regulations; and,

1 (c) Respondents failed to account to the owners of
2 advance fees entrusted to Respondents as required by Section 10146
3 of the Code and Section 2972 of the Regulations.

4 XV

5 In connection with the trust funds described in
6 Paragraph XII, above, during the fifteen-month period described in
7 Paragraph XIII, above, Respondents deposited Respondents' own
8 money with advance fees entrusted to Respondents.

9 XVI

10 In connection with the trust funds described in
11 Paragraph XII, above, during the fifteen-month period described in
12 Paragraph XIII, Respondents disbursed advance fees entrusted to
13 Respondents that were deposited in said bank account for
14 Respondents' personal or business expenses, thereby fraudulently
15 converting approximately \$63,955.04 to Respondents' own use and
16 benefit or for purposes not authorized by the rightful owners of
17 said trust funds.

18 XVII

19 In the course of the activities described in Paragraphs
20 V through XV, above, Respondents used the fictitious name "Bankers
21 Capital Association." At no time mentioned herein did Respondent
22 **HARRIS** obtain or maintain a license from the Department bearing
23 the fictitious name "Bankers Capital Association."

24 XVIII

25 The acts and omissions of Respondents described in
26 Paragraphs XI through XIV, above, violated the Code and
27 Regulations as set forth below:

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PARAGRAPHS

PROVISIONS VIOLATED

XI

\$10085 of the Code and
\$2970 of the Regulations;

XIV (a)

§10146 of the Code;

XIV (b)

§2832.1 of the Regulations;

XIV(c)

§10146 of the Code and
§2972 of the Regulations

Each of the foregoing violations separately constitutes cause for the suspension or revocation of all real estate licenses and license rights of Respondents under the provisions of Section 10177(d) of the Code.

XIX

The acts and omissions of Respondents described in Paragraph XV, above, constitute cause for the suspension or revocation of all real estate licenses and license rights of Respondents under the provisions of Section 10176(e) of the Code.

XX

The acts and omissions of Respondents described in Paragraph XVI, above, constitute cause for the suspension or revocation of all real estate licenses and license rights of Respondents under the provisions of Section 10176(i) of the Code.

XXI

The acts and omissions of Respondent **HARRIS** described in Paragraph XVII, above, violated Section 2731(a) of the Regulations in conjunction with Section 10159.5 of the Code, and are cause for the suspension or revocation of all real estate licenses and license rights of Respondent **HARRIS** under the provisions of Section 10177(d) of the Code.

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1 C. Respondent BELL shall not be eligible to apply for
2 the issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations, or restrictions of
4 a restricted license until two years have elapsed from the
5 effective date of this Order.

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

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

25 F. Any restricted real estate license issued to
26 Respondent BELL pursuant to this Order shall be suspended for six
27 (6) months from the date of issuance of said restricted license.

II

All licenses and licensing rights of Respondent LEE KELLY HARRIS under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.6 of the Business and Professions Code, if Respondent HARRIS makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Order. The restricted license issued to Respondent HARRIS shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and, the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of the Code:

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

B. The restricted license issued to Respondent HARRIS may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent HARRIS 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.

///

1 C. Respondent HARRIS shall not be eligible to apply
2 for the issuance of an unrestricted real estate license nor for
3 the removal of any of the conditions, limitations, or restrictions
4 of a restricted license until two years have elapsed from the
5 effective date of this Order.

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

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

26 ///

27 ///

1 F. Any restricted real estate license issued to
2 Respondent HARRIS pursuant to this Order shall be suspended for
3 six (6) months from the date of issuance of said restricted
4 license.

5 DATED: February 25, 1993

6
7
8 Susan Y. Bennett
9 SUSAN Y. BENNETT
Counsel for Complainant

10 * * *

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

21
22 DATED: March 4, 1993

23 John Norman Bell
24 JOHN NORMAN BELL
Respondent

25
26 DATED: March 4, 1993

27 Lee Kelly Harris
LEE KELLY HARRIS
Respondent

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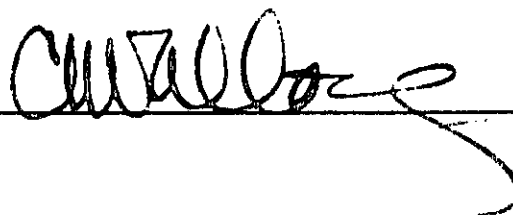
The foregoing Stipulation and Agreement for
Settlement is hereby adopted by the Real Estate Commissioner as
Decision and Order and shall become effective at 12 o'clock noon
on April 29, 1993.

IT IS SO ORDERED

4/3

, 1993.

CLARK WALLACE
Real Estate Commissioner



for

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

FILED

APR -1 1992

DEPARTMENT OF REAL ESTATE
BY S. Beav

In the Matter of the Accusation of

JOHN NORMAN BELL and
LEE KELLY HARRIS, etc.,

} Case No. H-1329 SA

} OAH No. L-56730

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 W. First Street, Los Angeles, CA 90012

on Mon., October 26 and Tues., October 27, 1992, 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.

Dated: April 1, 1992

cc: John Norman Bell
Lee Kelly Harris

✓ Sacto.

OAH

BSV

RE 501 (1/92)

DEPARTMENT OF REAL ESTATE

By James L. Beaver

JAMES L. BEAVER, Counsel

James L. Beaver, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
Telephone (213) 897-3937

FILED

MAR -3 1992

DEPARTMENT OF REAL ESTATE
BY C. Berg

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-1329 SA
JOHN NORMAN BELL and LEE KELLY)	<u>A C C U S A T I O N</u>
HARRIS, each individually and)	
doing business as Bankers)	
Capital Association,)	
Respondents.)	

The Complainant, THOMAS MCCRADY, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JOHN NORMAN BELL and LEE KELLY HARRIS (herein "Respondents"), each individually and doing business as Bankers Capital Association, is informed and alleges as follows:

I

The term "the Regulations" as used herein refers to the provisions of Title 10, Chapter 6, California Code of Regulations.

II

The Complainant, THOMAS MCCRADY, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

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III

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

IV

At all times mentioned herein Respondents JOHN NORMAN BELL (herein "BELL") and LEE KELLY HARRIS (herein "HARRIS") were and now are licensed by the Department as real estate brokers.

V

All further references herein to "Respondents" include the parties identified in Paragraph IV, above, and also include the employees, agents and real estate licensees employed by or associated with said parties and who at all times herein mentioned were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority and employment.

VI

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California within the meaning of Sections 10131(d) and 10131.2 of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property or a business opportunity, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation, and

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2 also including the operation of an advance fee mortgage loan
3 brokerage business with the public wherein Respondents charged,
4 received, collected and contracted for the collection of an
5 advance fee in connection with employment undertaken to obtain
6 loans secured by a lien on real property or a business
7 opportunity.

8 VII

9 In connection with the aforesaid mortgage loan brokerage
10 activities, throughout a period unknown to the Real Estate
11 Commissioner, but well known to Respondents, including but not
12 limited to the period from on or about March 8, 1990, through on
13 or about June 7, 1991, Respondents claimed, demanded, charged,
14 received, collected, and contracted for fees in advance from
15 borrowers for services Respondents were to perform thereafter,
16 including but not limited to soliciting lenders for and
17 negotiating loans to be secured by a lien on real property or a
18 business opportunity.

19 VIII

20 The agreements, advance fees, loans, and borrowers
21 described in Paragraph V, above, included, but were not limited
22 to:

23 (a) an \$85,000 advance fee claimed, demanded, charged,
24 and contracted for by Respondents (of which Respondents actually
25 received at least \$42,500) on or about March 29, 1990, from Larry
26 and Mark Furer doing business as Prospect Plaza Associates for
27 services Respondents were to perform thereafter soliciting lenders
for and negotiating an \$8,500,000.00 loan to Larry and Mark Furer

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2 to be secured by a lien encumbering real property consisting of
3 Prospect Plaza, a 5.5 acre office park at 475 Prospect Avenue,
4 West Orange, New Jersey;

5 (b) an \$85,000 advance fee claimed, demanded, charged,
6 and contracted for by Respondents (of which Respondents actually
7 received at least \$8,459) on or about April 9, 1990, from Paul
8 Sweetman and Country Wide Construction Co., Inc. for services
9 Respondents were to perform thereafter soliciting lenders for and
10 negotiating an \$8,500,000.00 loan to Paul Sweetman and Country
11 Wide Construction Co., Inc. to be secured by a lien encumbering
12 real property consisting of Sea Breeze Estates, a 36.721 acre
13 parcel of undeveloped land at Napeague Beach, Amagansett, East
14 Hampton, New York;

15 (c) a \$50,000 advance fee claimed, demanded, charged,
16 and contracted for by Respondents on or about May 21, 1990, from
17 Joseph Spezzano and Joseph Spezzano, Inc. for services Respondents
18 were to perform thereafter soliciting lenders for and negotiating
19 an \$5,000,000.00 loan to Joseph Spezzano and Joseph Spezzano, Inc.
20 to be secured by a lien encumbering real property consisting of
21 Riverside Dairy Farm, 209-223 Totoket Road, North Branford,
22 Connecticut.

23 IX

24 The fees described above claimed, demanded, charged,
25 received, collected, or contracted for by Respondents were for
26 compensation advanced or to be advanced to Respondents for
27 soliciting lenders for and for negotiating loans to be secured by
a lien on real property or a business opportunity, and as such

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2 were "advance fees" as that term is used in Sections 10026, 10085,
3 and 10131.2, of the Code, and Section 2970 of the Regulations, and
4 as such were also "trust funds" subject to the trust fund handling
5 and accounting requirements of Section 10146 of the Code and
6 Section 2972 of the Regulations.

7 X

8 The agreements for those advance fees were each an
9 "advance fee agreement" as that term is used in Section 10085 of
10 the Code and Section 2970 of the Regulations.

11 XI

12 In obtaining each advance fee agreement from the
13 borrowers, Respondents and the borrowers signed "Application/
14 Commission Agreement" and "Commitment Letter" forms under which
15 Respondents undertook to solicit lenders for and arrange or
16 attempt to arrange a loan for the borrowers to be secured by a
17 lien on real property or a business opportunity. The "Application/
18 Commission Agreement" and "Commitment Letter" forms so used to
19 obtain the advance fee agreements were "advance fee materials" as
20 that term is used in Section 10085 of the Code and Section 2970 of
21 the Regulations.

22 XII

23 Respondents collected the advance fees described above
24 from the borrowers without first submitting the "Application/
25 Commission Agreement" and "Commitment Letter" forms for review and
26 approval by the Commissioner as required Section 2970 of the
27 Regulations in conjunction with Section 10085 of the Code.

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2 XIII

3 At all times mentioned herein, in connection with the
4 advance fee mortgage loan brokerage activities described in
5 Paragraphs VI through VIII, inclusive, above, Respondents accepted
6 or received advance fees in trust (herein "trust funds") from or
7 on behalf of prospective borrowers and thereafter made
8 disbursement of said trust funds. These trust funds were
9 maintained by Respondents in bank accounts, including but not
10 necessarily limited to account number 7306333011, at Household
11 Bank, MacArthur Blvd., Newport Beach, California (herein "said
12 account"), an ordinary commercial account and not an account
13 maintained in the name of Respondents, or either of them, as
14 trustee:

15 XIV

16 On or about June 7, 1991, the Department completed an
17 examination of Respondents' books and records pertaining to
18 Respondents activities, as described in Paragraph III through XI,
19 above, for the fifteen month period ending March 31, 1991, which
20 revealed violations of the Code and the Regulations, as set forth
21 in the following paragraphs.

22 XV

23 In connection with the trust funds described in
24 Paragraph XI, during the fifteen month period described in
25 Paragraph XII:

26 (a) Respondents deposited advance fees entrusted to
27 Respondents in said account, thereby failing to effect compliance
with Section 10146 of the Code by placing such funds into a trust

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2 account at a bank or other recognized depository;

3 (b) Respondents caused or permitted the withdrawal or
4 disbursement of advance fees entrusted to Respondents from said
5 account, thereby reducing the balance in said accounts as of March
6 31, 1991, to an amount which was \$63,955.04 less than Respondents'
7 liability to all owners of the advance fees entrusted to
8 Respondents deposited in said account, without the prior written
9 consent of all said owners, thereby violating Section 2832.1 of
10 the Regulations;

11 (c) Respondents failed to account to the owners of
12 advance fees entrusted to Respondents as required by Section 10146
13 of the Code and Section 2972 of the Regulations.

14 XVI

15 In connection with the trust funds described in
16 Paragraph XI, during the fifteen month period described in
17 Paragraph XII, Respondents deposited Respondents' own money into
18 said account, thereby commingling Respondents' own money with
19 advance fees entrusted to Respondents.

20 XVII

21 In connection with the trust funds described in
22 Paragraph XI, during the fifteen month period described in
23 Paragraph XII, Respondents disbursed advance fees entrusted to
24 Respondents deposited in said account for Respondents' personal or
25 business expenses, thereby fraudulently converting approximately
26 63,955.04 to Respondents' own use and benefit.

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2 XVIII

3 The acts and omissions of Respondents described in
4 Paragraphs XII and XV, above, violated the Code and Regulations as
5 set forth below:

6 PARAGRAPH PROVISION VIOLATED
7 XII Section 10085 of the Code, and
8 Section 2970 of the Regulations;
9 XV(a) Section 10146 of the Code;
 XV(b) Section 2832.1 of the Regulations;
 XV(c) Section 10146 of the Code and
 Section 2972 of the Regulations.

10 Each of the foregoing violations separately constitutes
11 cause for the suspension or revocation of all real estate licenses
12 and license rights of Respondents under the provisions of Section
13 10177(d) of the Code.

14
15 XIX

16 The acts and omissions of Respondents described in
17 Paragraph XVI, above, constitute cause for the suspension or
18 revocation of all real estate licenses and license rights of
19 Respondents under the provisions of Section 10176(e) of the Code.

20 XX

21 The acts and omissions of Respondents described in
22 Paragraph XVII, above, constitute fraud and dishonest dealing, and
23 are cause for the suspension or revocation of all real estate
24 licenses and license rights of Respondents under the provisions of
25 Section 10176(i) of the Code.

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2 SECOND CAUSE OF ACCUSATION

3 XXI

4 Complainant incorporates herein the allegations of
5 Paragraphs I through XX, inclusive, hereinabove.

6 XXII

7 In course of the activities described in Paragraphs III
8 through V, inclusive, above, Respondents used the fictitious name
9 "Bankers Capital Association". At no time mentioned herein did
10 Respondent HARRIS obtain or maintain a license from the Department
11 bearing the fictitious name "Bankers Capital Association".

12 XXIII

13 The acts and omissions of Respondent HARRIS described in
14 Paragraph XXII, above, violated Section 2731(a) of the Regulations
15 in conjunction with Section 10179.5 of the Code, and are cause for
16 the suspension or revocation of all real estate licenses and
17 license rights of Respondent HARRIS under the provisions of
18 Section 10177(d) of the Code.

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

9
10 THOMAS MCCRADY
11 THOMAS MCCRADY
12 Deputy Real Estate Commissioner

13 Dated at Santa Ana, California
14 this 3rd day of March, 1992.
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25 cc: John Norman Bell
26 Lee Kelly Harris
27 Sacto.
BSV

jlb

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