

DEC 03 1987

By Spurce A. Bean

\*\*\*

# ORDER DENYING REINSTATEMENT OF LICENSE

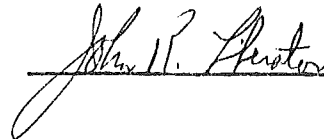
22 I have considered respondent's petition and the evidence  
23 and arguments in support thereof. Respondent has failed to  
24 demonstrate to my satisfaction that she has undergone sufficient  
25 rehabilitation to warrant the reinstatement of her real estate  
26 salesperson license, in that Respondent has presented no evidence  
27 of rehabilitation.

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

4           This Order shall be effective at 12 o'clock noon on  
5 December 23, 1987 .

6           DATED: December 2, 1987 .

7                               JAMES A. EDMONDS, JR.  
8                               Real Estate Commissioner

9                               

4109  
FILED  
JUL 12 1983

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

By Vanessa Papotto

In the Matter of the Accusation of )

ROBERT BRUCE GAMMILL )  
GARRISON JOSEPH NOBLE )  
PHILIP RONALD SMART )  
GWEN PATRICIA ALLEN )  
PAUL HERMAN BEAVER )  
CIRCLE J LAND CO., INC. )  
JOHN H. GLENN, JR. )  
ANTHONY G. SCOTCH, JR. )  
LOIS HUNTER BRODRICK )  
THERESA D. BAKER, )

Respondents. )

N 18038

In the Matter of the Accusation of )

GWEN PATRICIA ALLEN )  
PAUL HERMAN BEAVER )  
ANTHONY G. SCOTCH )  
LOUIS MICHAEL LEVIN )  
THERESA D. BAKER, )

Respondents. )

No. H 1848 SAC

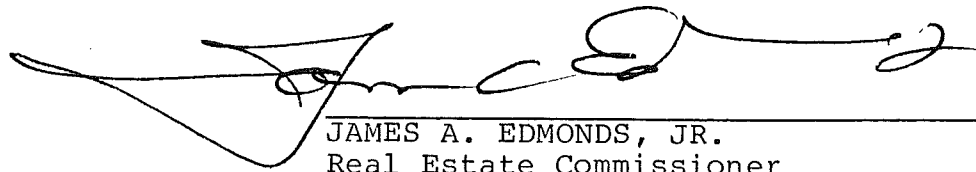
N 19411

DECISION

The Proposed Decision dated June 17, 1983  
of the Administrative Law Judge of the Office of Administrative  
Hearings is hereby adopted as the Decision of the Real Estate  
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock  
noon on August 1, 1983.

IT IS SO ORDERED July 7, 1983.

  
JAMES A. EDMONDS, JR.  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT BRUCE GAMMILL  
GARRISON JOSEPH NOBLE  
PHILIP RONALD SMART  
GWEN PATRICIAN ALLEN  
PAUL HERMAN BEAVER  
CIRCLE J LAND CO., INC.  
JOHN H. GLENN, JR.  
ANTHONY G. SCOTCH, JR.  
LOIS HUNTER BRODRICK  
THERESA D BAKER,

Respondents.

N 18038

-----  
In the Matter of the Accusation of:

GWEN PATRICIA ALLEN  
PAUL HERMAN BEAVER  
ANTHONY G. SCOTCH  
LOUIS MICHAEL LEVIN  
THERESA D. BAKER,

Respondents.

No. H 1848 SAC

N 19411

PROPOSED DECISION

This matter came on for hearing before Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, on May 24, 1983, in Sacramento, California.

Larry A. Alamao, Counsel, represented the complainant.

Edward T. Taylor III, Attorney at Law, represented respondent Louis Micahel Levin.

Hearings involving the other above named respondents have been concluded and decisions therein issued by the Department of Real Estate.



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

The Administrative Law Judge certifies this decision and recommends its adoption.

#### FINDINGS OF FACT

##### I

Duane A. Aasland made the accusation in his official capacity as a Deputy Real Estate Commissioner.

##### II

Respondent Levin is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

##### III

On or about July 1, 1980, Respondent Levin, acting as an agent for ERA the Real Estate Company (ERA) entered into a listing agreement granting ERA the exclusive right to sell certain real property owned by Herschel and Mildred Travis (Travis) and commonly known as 1013 River Road, Modesto, California (River Road).

##### IV

On or about July 1980, Mike Thomas and Gwen Allen acting by and through Respondent Levin offered to purchase River Road according to the following terms and conditions:

1. The purchase price of River Road was \$132,000.00;
2. Thomas and Allen would obtain a loan of \$79,000.00 secured by a first trust deed on River Road;
3. Of that amount, approximately \$22,500.00 would be used to pay the existing loan on River Road and the Travises would receive approximately \$31,300.00;
4. Thomas and Allen represented that the remaining loan proceeds, less loan fees, would be received by Thomas and Allen as cash back through this transaction for the purpose of performing work on the property and to supplement negative cash flow.
5. The Travises would carry a note from Thomas and Allen in the amount of \$79,200.00 and secured by a second trust deed on River Road.

V

In reliance upon said representation, terms and conditions, the Travises agreed to sell River Road.

VI

On or about August 20, 1980, escrow closed on the purchase of River Road according to the above terms and conditions.

VII

On or about August 20, 1980, \$5,500.00 was released from escrow to Allen and an additional \$2,176.00 was released from escrow to Thomas and Allen.

VIII

On or about August 20, 1980, \$3,940.00 was paid to Respondent Levin as a commission in the sale of River Road.

IX

It was not established that Respondent Levin failed to disclose to the Travises that the true value of River Road was \$132,000.00 and that the encumbrances on the property totaled \$158,200.00.

X

On, before or after escrow closed on the sale of River Road, Thomas and Allen, with the intent to substantially benefit themselves and without disclosing their true intentions to the Travises, entered into a plan and scheme to deceive and misrepresent to the Travises that Thomas and Allen would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase River Road.

XI

The plan and scheme contemplated in essence that Respondent Levin would receive a commission for the sale of River Road; that Thomas and Allen would take title to River Road, rent said property and apply the rental proceeds to their own benefit; that Thomas and Allen would apply the \$7,676.00 described herein to their benefit and not for use on River Road; and that Thomas and Allen would not make payments on the loans secured by first and second deeds of trust on River Road.

## XII

Payments on the note secured by the first deed of trust were \$1,053.33 per month for 24 months, with a balloon payment of \$80,053.33 due at the end of the 24 month period.

Allen made approximately five monthly payments and then defaulted and has never made any other payments on the loan. Thomas made no payments on the loan.

The property went through foreclosure and trustee's sale. The home loan company that funded the loan lost approximately \$6,000.00 to \$8,000.00 on the transaction as a result of the default.

## XIII

Thomas and Allen made no payments on the loan secured by the second deed of trust.

The Travises did not take over payments on the first trust deed, after Allen and Thomas defaulted, because they were not financially able to make such payments.

The Travises received \$31,000.00 on the sale of their property, plus \$22,500.00 used to pay off an existing encumbrance. Their loss was at least the \$79,200.00 plus 13% interest per annum. The Travises eventually received \$90,000.00 in settlement of a law suit filed against respondent and the title company that handled the escrow. Respondent's insurer paid the amount of respondent's contribution toward the settlement.

## XIV

Respondent Levin failed to advise the Travises of the true value of the note secured by a second deed of trust carried by the Travises; failed to fully advise the Travises of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by Thomas and Allen would be performed.

## XV

Respondent advised and represented to the Travises that a second trust deed was almost as good as a first, sometimes better; that a second was safe; that the offer was a good deal; and that the Travises would get all their money within three years, or sooner if the buyer sold the property.

The Travises expressed to respondent a concern about taking back a second trust deed, about the terms of the note secured by the first, and the lack of information about the

buyers. Respondent informed the Travises that if the transaction was risky he (respondent) could lose his license, and recommended that the Travises accept the offer. The Travises relied on respondent's recommendation and representations in accepting the offer.

#### XVI

Respondent made some efforts to obtain information on behalf of his clients (about the buyers and the terms of the first) but negligently failed to follow up on these efforts.

#### XVII

Respondent has been working in real estate since 1973, and has been a broker since 1975. He is now active in the sale of residential properties, working under another broker.

Respondent has been very active in professional real estate associations locally and on a State-wide level. He enjoys an excellent reputation in his local community as a real estate agent, and State-wide as a member of the real estate profession.

Respondent is also extremely active in community service projects in the Modesto area and has an outstanding reputation in that community as a leader and volunteer in civic, school and other community activities.

#### DETERMINATION OF ISSUES

##### I

Cause was established for discipline against Respondent Levin under Section 10176(a) and 10177(g) of the Business and Professions Code.

##### II

Cause was not established for discipline against Respondent Levin under Sections 10176(i) and 10177(h) of the Business and Professions Code.

#### ORDER

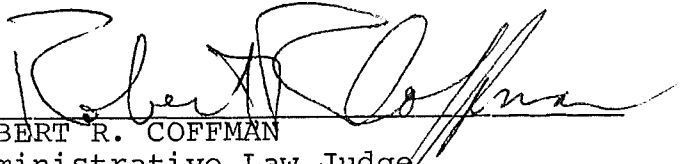
The licenses and licensing rights of Respondent Levin are suspended for 45 days, provided, however, execution of this order of suspension is stayed and respondent is placed on probation for one year on the following terms and conditions:

1. The license is suspended for ten (10) days.

2. No further cause for discipline occurs during the probationary period.

3. Should Respondent Levin fail to comply with the terms of probation, the Commissioner may, after notice and opportunity for hearing, terminate the stay herein, make the suspension effective, or otherwise modify this order; otherwise this stay shall become permanent upon expiration of the one year period of probation.

Dated: June 17, 1983.

  
ROBERT R. COFFMAN  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of: )

ROBERT BRUCE GAMMILL )  
GARRISON JOSEPH NOBLE )  
PHILIP RONALD SMART )  
GWEN PATRICIA ALLEN )  
PAUL HERMAN BEAVER )  
CIRCLE J LAND CO., INC. )  
JOHN H. GLENN, JR. )  
ANTHONY G. SCOTCH, JR. )  
LOIS HUNTER BRODRICK )  
THERESA D. BAKER, )

H-1770 SAC  
N 18038

Respondents. )

----- )  
In the Matter of the Accusation of: )

GWEN PATRICIA ALLEN )  
PAUL HERMAN BEAVER )  
ANTHONY G. SCOTCH )  
LOUIS MICHAEL LEVIN )  
THERESA D. BAKER, )

H-1848 SAC  
N 19411

Respondents. )

PROPOSED DECISION

These matters came on for hearing before Robert R. Coffman, Administrative Law Judge of the Office of Administrative Hearings on October 18, 19, 20, 21, 25, 26, 27 and 28 in Sacramento, California.

Larry A. Alamao, Counsel, represented the complainant.

Respondent John H. Glenn, Jr. appeared in person and represented himself. David Weiner, Attorney at Law, represented respondent Lois Hunter Brodrick. William H. Keller, Attorney at Law, represented respondent Paul Herman Beaver. John B. Renwick, Attorney at Law, represented respondents Garrison Joseph Noble and Philip Ronald Smart. Howard J. Stagg, IV, Attorney at Law, represented respondent Anthony G. Scotch. Respondents Robert Bruce Gammill, Gwen Patricia Allen, Theresa D. Baker and Circle J Land Co., Inc. did not appear and were not otherwise represented.

*Exhibit "A"*

Evidence was received, the hearing was closed but the record was held open to permit filing of written closing arguments. Arguments were received and the record was closed on January 10, 1983.

Cases N 18038 and N 19411 were consolidated for the purpose of hearing and decision.

The standard of proof applied was that of clear and convincing proof to a reasonable certainty.

The Administrative Law Judge certifies this decision and recommends it for adoption.

#### FINDINGS OF FACT

##### I

Duane A. Aasland made the accusations in his official capacity as a Deputy Real Estate Commissioner.

##### II

In Case No. N 19411, a continuance, on the motion of respondent Louis Michael Levin, was granted as to the second cause of accusation.

##### III

Respondent Noble is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Business and Professions Code) (Code).

##### IV

Respondent Smart is presently licensed and/or has license rights under the Real Estate Law.

##### V

Respondent Allen is presently licensed and/or has license rights under the Real Estate Law.

##### VI

Respondent Beaver is presently licensed and/or has license rights under the Real Estate Law.

##### VII

Respondent Circle J is presently licensed and/or has license rights under the Real Estate Law.

##### VIII

Respondent Glenn is presently licensed and/or has license rights under the Real Estate Law.

IX

Respondent Scotch is presently licensed and/or has license rights under the Real Estate Law.

X

Respondent Brodrick is presently licensed and/or has license rights under the Real Estate Law.

XI

Respondent Baker is presently licensed and/or has license rights under the Real Estate Law.

XII

Respondent Gammill is presently licensed and/or has license rights under the Real Estate Law.

XIII

Described herein are certain transactions involving agreements to sell various parcels of real property. In each of these transactions, one or more of the respondents participated, or acted as the agent for other respondents. Beginning in approximately June, 1980, various persons entered into a plan and scheme with reference to these transactions, with the intent to substantially benefit themselves without regard to the injury their acts would cause to the various sellers and without disclosing to the sellers their true intentions with respect to the transaction.

XIV

The plan and scheme contemplated with respect to each of the transactions, one or more of the following acts or representations:

1. Buyers would make a written offer to purchase the seller's property. The offer may be presented to the seller by other respondents acting as agents in the transaction.
2. The offer would call for encumbrances in excess of fair market value of the property being purchased.
3. As a term and condition of the offer, buyers would agree to obtain a hard money loan secured by a first or second deed of trust on the property being purchased. Buyers would then represent to each seller that, after the close of escrow, some of



the proceeds of the loan would be held by buyers to make certain improvements or renovations to the property being purchased, or for other purposes related to the property.

4. Buyers would pay the balance of the purchase price by executing a note to the sellers secured by a junior deed of trust on the property.

5. After the close of escrow of each transaction, buyer would receive the amount of money held for property renovations or improvements and would use said money for their own use and purpose, and not make any improvements or renovations to the property. Subsequent to the close of each transaction, buyers would either make no payments or would make one or more payments to the sellers on the note secured by the junior encumbrance or to the holders of the senior encumbrance and then discontinue performing all of their duties, responsibilities and obligations necessary to implement and effect all the terms and conditions of the agreement to purchase the various properties.

6. After the buyers had obtained payment of the funds being held in escrow, they would simply walk away from their obligations under the contract terms leaving the sellers with the remedy of having to foreclose on their note secured by a junior encumbrance, which meant that each seller would lose a substantial portion of his equity in the property.

7. Buyers knew that their representation that they would use the funds for improvements or renovation to the property being purchased was false and that their implied representation that they could and would make payments on the note to the sellers secured by a junior encumbrance was also false. The sellers, believing said representations to be true, relied thereon to their detriment and damage.

#### FIRST CAUSE OF ACCUSATION

#### XV

On or about November 26, 1980, respondents Gammill, Smart and Noble, acting by and through respondents Circle J, Glenn and Brodrick, offered to purchase real property owned by Rodney Stich and commonly known as 5968 Park Avenue, Marysville, California.

XVI

The offer to purchase included the following terms and conditions:

1. The purchase price for the property was \$200,000.
2. Respondents Gammill, Smart and Noble would obtain a loan of \$120,000 secured by a first deed of trust on the property.
3. Of that amount, Stich would receive approximately \$80,000.
4. Respondents Gammill, Smart, Circle J, Glenn and Brodrick represented that the remaining proceeds of the loan, less loan fees, would be put in a trust account for the renovation of the property and for building additional units on the property.
5. Stich would ~~carry a note from respondents Gammill, Smart and Noble in the amount of \$120,000 and secured by a second deed of trust on the property.~~

XVII

In reliance upon the above representations, terms and conditions, Stich agreed to sell the property.

XVIII

On or about February 19, 1981, escrow closed on the purchase of the property according to the above terms and conditions.

XIX

On or about February 19, 1981, \$25,658.90 was released from escrow to respondents Gammill, Smart and Noble. The funds were not placed in a trust account. The funds were not used to renovate the property, nor were the funds used for building additional units on the property.

XX

On or about February 19, 1981, \$10,400 was paid to respondents Circle J, Glenn and Brodrick as commissions in the sale of the property.

XXI

Neither respondents Gammill, Smart and Noble nor respondents Circle J, Glenn and Brodrick disclosed to Stich

that the true value of the property was \$200,000 and that the encumbrances on the property totaled \$240,000.

XXII

On, before or after escrow closed on the sale of the property, respondent Gammill, with the intent to substantially benefit himself and without disclosing his true intentions to Stich, deceived Stich and misrepresented to Stich that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase the property.

XXIII

Respondent Gammill's plan and scheme contemplated that respondents Gammill, Smart and Noble would take title to the property; apply the \$25,658.90 to their own benefit and not renovate or build additional units on the property; and not make payments on the loans secured by first and second deeds of trust.

XXIV

Beginning on or about April 1, 1981, respondents Gammill, Smart and Noble failed to make payments on the loans secured by first and second deeds of trust.

XXV

On or about June 9, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on the property.

XXVI

Respondents failed to advise Stich of the true value of the note secured by a second deed of trust carried by Stich; failed to fully advise Stich of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondents Gammill, Noble and Smart would be performed.

XXVII

Respondent Brodrick did not adequately warn Stich of the very high risk to Stich involved in this transaction. However, Stich, who has bought, sold and operated motels, hotels and apartments, was not only knowledgeable in real estate transactions, he fully understood the risks involved in this transaction.

Because he was aware of the possibility of a default, Stich wanted some assurance that the buyers were persons of integrity and responsibility who could be trusted to make payments on the note secured by the first and second deeds of trust and to use the \$40,000 (reduced to \$25,568 by loan com-

pany and title company fees) to improve the property. Stich conveyed his concerns to respondent Brodrick who informed him that, in her opinion, the buyers were persons of substance, that one was a knowledgeable investor who had been involved in many prior real estate transactions, that respondents Noble and Smart were professors at "the university", and that she was favorably impressed with the buyers as persons willing to go through with the transaction. Stich relied on respondent Brodrick's representations that the buyers were willing and able to make payments on the two notes.

Under the circumstances, respondent Brodrick may not have been under a duty to warn Stich of the risk involved. Even assuming that she fulfilled any obligation to warn Stich, this does not absolve her from her obligation not to make representations to the seller without a reasonable basis for such representations. Respondent Brodrick did not possess reliable information on which to base her representations to Stich. Her representations were not based on a reasonable good faith investigation of the buyers. She was aware of the risk to the seller and of the seller's concern regarding the buyers. When the seller inquired about the buyers, she could have investigated the buyers, or told the seller to conduct his own investigation, or she could have refrained from making any representations at all. Instead, she made material misrepresentations that conveyed to the seller the impression that the buyers were reliable persons who would improve the property and carry out the provisions of the contract.

At the time she made these misrepresentations, she was unaware of the terms of the note secured by the first trust deed. Her subsequent efforts to determine the terms of the note were unsuccessful. She was negligent in not obtaining such information from the buyers, or upon the buyers' refusal to provide such information, to notify the seller and to reevaluate her opinion of the buyers.

The contract provided that the \$40,000, to be used for improvements, be held in trust. Respondent Brodrick failed to discharge her duty to implement the trust provision.

#### XXVIII

No repairs or improvements were made. Stich lost the property. To retain the property, he would have had to assume monthly payments of \$2,100 for one year and a \$120,000 balloon payment after one year. These terms made it too difficult for him to assume the note.

Stich received approximately \$60,000 from the sale, \$21,000 to Stich and \$39,000 to pay off an existing encumbrance. The value of the property was approximately \$200,000.

XXIX

Respondent Gammill handled most aspects of the Stich transaction for the buyers, although respondents Noble and Smart were actively involved in some details such as arranging for improvements to the property.

Respondents Noble and Smart may have been extremely naive in becoming involved in respondent Gammill's scheme, but evidence did not establish that they intended, prior to purchasing the property, to participate in a "buyer walkaway" scheme.

However, their subsequent conduct demonstrated acquiescence in such scheme, particularly their agreement to "sell" the property. Undoubtedly, persons unfamiliar with real estate matters, making similar "investments", might not have realized that they were part of such a scheme. But respondents Noble and Smart were real estate brokers and as such, are held to a higher standard. They were not merely investing money in a business enterprise (they put up no money), they were purchasers of real property who agreed to make \$40,000 in repairs and who obligated themselves to repay notes amounting to \$240,000. The evidence, including consideration of the factors listed in complainant's closing argument, pages 5 through 7, supports a basis for discipline against respondents Noble and Smart. To find they are free of wrongdoing would require a belief that they lacked an understanding of elementary fundamentals and principles of real estate transactions to the degree that they were demonstrably incapable of acting as real estate brokers.

XXX

Respondent Glenn was aware of the potential problems inherent in the offer to purchase. Respondent Brodrick told him that she had fully informed the seller of the risks involved, that the seller was a sophisticated real estate investor, that the buyers were very substantial persons involved in other real estate transactions. He told respondent Brodrick to obtain the terms of the note secured by the first trust deed. He was aware, before escrow closed, that respondent Brodrick had not done so.

In carrying out the duty owed the client, the broker may, of necessity, rely on his agent to a great extent, but under the circumstances herein, respondent Glenn failed to take reasonable steps to insure that respondent Brodrick performed these duties and to determine whether her representations regarding the buyers were founded on a reasonable basis.

SECOND CAUSE OF ACCUSATION

XXXI

On or about January 9, 1981, respondents Gammill, Smart and Noble offered to purchase real property owned by Tom and Vicki L. Roberts and commonly known as 386 Kevin Court, Auburn, California.

XXXII

The offer to purchase included the following terms and conditions:

1. The purchase price for Kevin Court was \$113,000.
2. Respondents Gammill, Smart and Noble would obtain a loan of \$88,000 secured by a first deed of trust on Kevin Court.
3. Of that amount, approximately \$47,500 would be used to pay the existing construction loan on Kevin Court and the Roberts would receive approximately \$16,000.
4. Respondents Gammill, Smart and Noble represented that the remaining proceeds of the loan, less loan fees, would be used to improve the Kevin Court property.
5. Roberts would carry a note from respondents Gammill, Smart and Nobel in the amount of \$47,000 and secured by a second deed of trust on Kevin Court.

XXXIII

In reliance upon said representations, terms and conditions, the Roberts agreed to sell Kevin Court.

XXXIV

On or about January 9, 1981, escrow closed on the purchase of Kevin Court according to the above-described terms and conditions.

XXXV

On or about January 16, 1981, a total of \$11,112.39 (\$3,704.13 each) was released from escrow to respondents Gammill, Smart and Noble. These funds were not used for completing work on Kevin Court.

XXXVI

Respondents Gammill, Smart and Noble did not disclose to the Roberts that the true value of Kevin Court was approximately \$113,000 and that the encumbrances totaled \$135,000.

XXXVII

On, before or after escrow closed on the sale of Kevin Court, respondent Gammill, with the intent to substantially benefit himself and without disclosing his true inten-

tions to the Roberts, entered into a plan and scheme to deceive and misrepresent to the Roberts that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Kevin Court.

XXXVIII

Respondent Gammill's plan and scheme described contemplated that respondents Gammill, Smart and Noble would take title to Kevin Court; apply the \$11,112.39 to their own benefit and not complete work on Kevin Court; and, not make payments on the loans secured by first and second deeds of trust.

XXXIX

Beginning on or about March 1, 1981, respondents Gammill, Smart and Noble failed to make payments on the loans secured by first and second trust deeds.

XL

In or about April, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on Kevin Court.

XLI

Respondents Gammill, Noble and Smart did not improve or expend funds to improve the Kevin Court property.

XLII

Roberts received approximately \$64,600 from the sale, \$16,000 to Roberts and \$47,600 to pay off an existing encumbrance.

Roberts lost the property. To cure the default, Roberts would have had to assume seven (7) monthly payments of \$1,246 and a balloon payment of \$89,000 after seven (7) months.

XLIII

The factors listed in Finding XXIX are applicable to the Kevin Court transaction. The matters contained in Finding XXIX are incorporated herein by reference.

THIRD CAUSE OF ACCUSATION

XLIV

In or about November, 1980, respondent Gammill and Sheri Quaintance offered to purchase real property owned by Tom and Vicki L. Roberts and commonly known as 12612 Eckard Way, Auburn, California.

XLV

The offer to purchase included the following terms and conditions:

1. The purchase price for Eckard Way was \$113,000.
2. Respondent Gammill and Quaintance would obtain a loan of \$88,000 secured by a first deed of trust on Eckard Way.
3. Of that amount, approximately \$47,500 would be used to pay the existing construction loan on Eckard Way and the Roberts would receive approximately \$17,000.
4. Respondent Gammill represented that the remaining proceeds of the loan, less loan fees, would be used for completing work on Eckard Way.
5. Roberts would carry a note from respondent Gammill and Quaintance in the amount of \$47,000 and secured by a second deed of trust on Eckard Way.

XLVI

In reliance upon said representation, terms and conditions, Roberts agreed to sell Eckard Way.

XLVII

On or about December 23, 1980, escrow closed on the purchase of Eckard Way according to the terms and conditions described above.

XLVIII

On or about December 24, 1980, a total of \$14,323.54 was released from escrow as follows: \$7,076.27 to respondents Smart and Noble; \$3,940.13 to respondent Gammill; and \$3,307.14 to Quaintance. The funds were not used for completing work on Eckard Way.

XLIX

Respondent Gamill did not disclose to the Roberts that the true value of Eckard Way was approximately \$113,000 and that the encumbrances totaled \$135,000.

L

On, before or after escrow closed on the sale of Eckard Way, respondent Gammill, with the intent to substan-



tially benefit himself and without disclosing his true intentions to the Roberts, entered into a plan and scheme to deceive and misrepresent to the Roberts that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Eckard Way.

LI

The plan and scheme contemplated that respondent Gammill and Quaintance would apply the \$14,323.54 to their own benefit and not complete improvements on Eckard Way; and that respondent Gammill and Quaintance would default on the loans secured by first and second deeds of trust.

LII

Respondent Gammill and Quaintance made three payments on the loan secured by the first trust deed and thereafter failed to make any payments on said loan.

LIII

In or about June, 1981, a Notice of Default was filed by the holder of the note secured by the first trust deed on Eckard Way.

LIV

The Roberts lost their property through foreclosure proceedings upon the default of respondent Gammill on the above note.

LV

Evidence did not establish that respondents Noble and Smart were involved in this transaction other than as recipients of the \$7,076 check. Respondents Noble and Smart maintain that they received such amount by mistake and endorsed the check over to respondent Gammill.

FOURTH CAUSE OF ACCUSATION

LVI

On or about November 15, 1980, respondent Gammill and Brad and Janet Babcock offered to purchase real property owned by Gordon C. and Karen S. Haworth and commonly known as 1169 Statford Way, Placer County, California.

LVII

The offer to purchase included the following terms and conditions.

1. The purchase price for Statford Way was \$170,000.

2. Respondent Gammill and the Babcocks would obtain a loan of \$102,000 secured by a first deed of trust on Statford Way.

3. Of that amount, approximately \$40,500 would be used to pay the existing construction loan on Statford Way.

4. Respondent Gammill and the Babcocks represented that approximately \$13,000 from the proceeds of the first trust deed loan would be given to respondent Gammill and the Babcocks in order to finance construction on other real property owned by respondent Gammill.

5. Haworths would carry a note from respondent Gammill and the Babcocks in the amount of \$104,000 and secured by a second deed of trust on Statford Way.

#### LVIII

In reliance upon said representations, terms and conditions, the Haworths agreed to sell Statford Way.

#### LVIX

On or about December 23, 1980, escrow closed on the purchase of Statford Way according to the above terms and conditions.

#### LX

On or about December 24, 1980, \$6,145.74 was released from escrow to respondent Gammill and \$7,000 was released to the Babcocks. These funds were not used for construction on other real property owned by respondent Gammill and respondent Gammill did not pay any additional proceeds to the Haworths.

#### LXI

Respondent Gammill and the Babcocks did not disclose to the Haworths that the true value of Statford Way was approximately \$170,000 and that the encumbrance totaled \$206,000.

#### LXII

On, before or after escrow closed on the sale of Statford Way, respondent Gammill, with the intent to substantially benefit himself and without disclosing his true intentions to the Haworths, entered into a plan and scheme to deceive and misrepresent to the Haworths that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Statford Way.

LXIII

Respondent Gammill's plan and scheme contemplated that respondent Gammill and the Babcocks would take title to Statford Way; apply the \$12,145.74 to their own benefit and not to be used for construction on other real property owned by respondent Gammill; and, that respondent Gammill and the Babcocks would not make payments on the loans secured by first and second deeds of trust.

LXIV

The Haworths eventually recovered title to the property but at a loss of more than \$70,000, resulting from respondent Gammill's deceit and misrepresentations.

FIFTH CAUSE OF ACCUSATION

LXV

On or about June 15, 1980, respondent Gammill, acting by and through respondent Allen and Better Homes offered to purchase real property owned by Loran C. and Loren L. Thorson and commonly known as 6532 Hazel Avenue, Orangevale, California.

LXVI

The offer to purchase included the following terms and conditions:

1. The purchase price for Hazel Avenue was \$25,000.
2. Respondent Gammill would obtain a loan of \$12,000 secured by a first deed of trust on Hazel Avenue.
3. Respondents Gammill and Scotch represented that approximately \$1,600 of that amount would be used as "prepaid interest on the first deed of trust - to be paid to buyer at close of escrow".
4. Thorsons would carry a note from respondent Gammill in the amount of \$16,000 and secured by a second trust deed on Hazel Avenue.

LXVII

In reliance upon said representations, terms and conditions, the Thorsons agreed to sell Hazel Avenue.

LXVIII

On or about July 11, 1980, escrow closed on the purchase of Hazel Avenue according to the above terms and conditions.

LXIX

On or about July 11, 1980, \$1,673.59 was released from escrow to respondent Gammill. These funds were not used for the payment of prepaid interest on the first deed of trust.

LXX

On or about July 11, 1980, \$2,500 was paid to respondent Allen and Better Homes as commissions in the sale of Hazel Avenue.

LXXI

Neither respondent Gammill nor respondents Allen and Scotch disclosed to the Thorsons that the true value of Hazel Avenue was \$25,000 and that the encumbrances totaled \$28,000.

LXXII

On, before or after escrow closed on the sale of Hazel Avenue, respondents Gammill and Allen, with the intent to substantially benefit themselves and without disclosing their true intentions to the Thorsons, entered into a plan and scheme to deceive and misrepresent to the Thorsons that respondent Gammill would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Hazel Avenue.

LXXIII

The above plan and scheme contemplated that respondent Allen and Better Homes would receive commissions for the sale of Hazel Avenue; that respondent Gammill would take title to Hazel Avenue; apply the \$1,673.59 to his own benefit and not for prepayment of interest; and, not make payments on the loans secured by first and second deeds of trust on Hazel Avenue.

LXXIV

Beginning on or about November 1, 1980, respondent Gammill, after making a total of \$540 (plus late charges) in payments on the loan secured by a first deed of trust on Hazel Avenue, ceased making such payments when they became due.

LXXV

On or about January 16, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on Hazel Avenue.

The Thorsons subsequently recovered title to the property but at a substantial monetary loss.

LXXVI

Respondents Allen and Scotch failed to advise the Thorsons of the true value of the note secured by a second deed of trust carried by the Thorsons; failed to fully advise the Thorsons of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondent Gammill would be performed.

SIXTH CAUSE OF ACCUSATION

LXXVII

On or about July 7, 1980, respondent Beaver, acting as an agent for Better Homes Realty, entered into a listing agreement granting Better Homes the exclusive right to sell certain real property owned by Alison F. Geballe and commonly known as 2332 Marshall Way, Sacramento, California.

LXXVIII

On or about July 7, 1980, respondent Gammill, acting by and through respondent Beaver and Better Homes, offered to purchase Marshall Way according to the following terms and conditions:

1. The purchase price of Marshall Way was \$94,700.
2. Respondent Gammill would obtain a loan of \$47,880 secured by a first trust deed on Marshall Way.
3. Approximately \$4,900 of that amount would be given to respondent Gammill as "work credit and negative cash flow".
4. Geballe would carry a note from respondent Gammill in the amount of \$56,820 and secured by a second trust deed on Marshall Way.

LXXIX

In reliance upon said representations, terms and conditions, Geballe agreed to sell Marshall Way.

XXC

On or about July 17, 1980, escrow closed on the purchase of Marshall Way according to the above terms and conditions.

XXCI

On or about July 17, 1980, \$4,887.89 was released from escrow to respondent Gammill. These funds were not used for performing work on Marshall Way.

XXCII

On or about July 17, 1980, \$5,682 was paid to respondent Beaver and Better Homes as commissions in the sale of Marshall Way.

XXCIII

Neither respondent Gammill nor respondents Beaver and Scotch disclosed to Geballe that the true value of Marshall Way was \$94,700 and that the encumbrances totaled \$104,700.

XXCIV

On, before or after escrow closed on the sale of Marshall Way, respondents Gammill, Allen and Baker, with the intent to substantially benefit themselves and without disclosing their true intentions to Geballe, entered into a plan and scheme to deceive and misrepresent to Geballe that respondent Gammill would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Marshall Way.

XXCV

The plan and scheme contemplated in essence that respondent Beaver and Better Homes would receive commissions for the sale of Marshall Way; that respondent Gammill would take title to Marshall Way; apply the \$4,887.89 to his own benefit and not for work performed on Marshall Way; and, transfer title to Marshall Way to respondents Allen and Baker; respondents Allen and Baker would, for a valuable consideration, sell an interest in Marshall Way to a third party.

XXCVI

On or after August 1, 1980, respondent Gammill transferred title to Marshall Way to respondents Allen and Baker.

XXCVII

On or after August 1, 1980, respondents Allen and Baker transferred a one-third (1/3) interest in Marshall Way

to Lloyd Price in return for the payment by Price of \$1,000 to respondents Allen and Baker.

XXCVIII

Respondents Allen and Baker failed to disclose to Price the nature and extent of the encumbrances on Marshall Way.

XXCIX

Respondents Beaver and Scotch failed to advise Geballe of the true value of the note secured by a second deed of trust carried by Geballe; failed to fully advise Geballe of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondent Gammill would be performed.

XC

Geballe was a law school graduate. She was not knowledgeable or sophisticated in real estate transactions. She relied on respondent Beaver's representations that the offer was a solid one, that the buyer had substantial funds to handle the transaction and that it was very unlikely that the buyer would sell the property.

Respondent Beaver informed Geballe that the property was overencumbered but did not explain the consequences thereof, including the risks involved.

Geballe obtained title to the property after assuming the \$618 monthly payments on the note and making the \$49,000 balloon payment. She lost a substantial amount of money on the transaction.

SEVENTH CAUSE OF ACCUSATION

XCI

On or about June 14, 1980, respondent Beaver, acting as an agent for Better Homes, entered into a listing agreement granting Better Homes the exclusive right to sell certain real property owned by Donald S. and Alice Didriksen and commonly known as 5305 Sacramento Boulevard, Sacramento, California.

XCII

On or about June 14, 1980, respondent Gammill, acting by and through respondents Beaver and Better Homes, offered to purchase Sacramento Blvd. according to the following terms and conditions:

1. The purchase price of Sacramento Blvd. was \$40,600.

2. Respondent Gammill would obtain a loan of \$26,240 secured by a first trust deed on Sacramento Blvd.

3. Respondents Gammill and Beaver represented that approximately \$5,000 of that amount would be given to respondent Gammill in order to make repairs on Sacramento Blvd.

4. The Didriksens would carry a note from respondent Gammill in the amount of \$24,360 and secured by a second trust deed on Sacramento Blvd.

#### XCIII

In reliance upon said representations, terms and conditions, the Didriksens agreed to sell Sacramento Blvd.

#### XCIV

On or about June 27, 1980, escrow closed on the purchase of Sacramento Blvd. according to the terms and conditions excepting the loan secured by a first deed of trust which was reduced to \$24,000.

#### XCV

On or about June 27, 1980, \$5,013.31 was released from escrow to respondent Gammill. The funds were not used to make repairs on Sacramento Blvd.

#### XCVI

On or about June 27, 1980, \$2,436 was paid to respondent Beaver and Better Homes as commissions in the sale of Sacramento Blvd.

#### XCVII

Neither respondent Gammill nor respondents Beaver and Scotch disclosed to the Didriksens that the true value of Sacramento Blvd. was not more than \$40,600 and that the encumbrances totaled \$48,360.

#### XCVIII

On, before or after escrow closed on the sale of Sacramento Blvd., respondent Gammill, with the intent to substantially benefit himself and without disclosing his true intentions to the Didriksens, entered into a plan and scheme to deceive and misrepresent to the Didriksens that respondent Gammill would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Sacramento Blvd.



## XCIX

The plan and scheme contemplated that respondent Beaver and Better Homes would receive commissions for the sale of Sacramento Blvd.; that respondent Gammill would take title to Sacramento Blvd.; apply the \$5,013.31 to his own benefit and not for work performed on Sacramento Blvd.

### C

On or after August 1, 1980, respondent Gammill transferred title to Sacramento Blvd. to another or others.

### CI

Respondents Beaver and Scotch failed to advise the Didriksens of the true value of the note secured by a second deed of trust carried by the Didriksens; failed to fully advise the Didriksens of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondent Gammill would be performed.

### CII

The Didriksens appear to be elderly persons of modest circumstances with little or no understanding of the complexities of business matters, including real estate transactions. They placed great reliance on respondent Beaver.

Respondent Beaver represented to the Didriksens that the buyer was a real estate investor in the business of purchasing old homes and improving them with his crew of repairmen. Respondent Beaver further represented to the Didriksens that there was nothing to worry about, that the worst that could happen would be that the property would be returned to the Didriksens.

Respondent Beaver did not explain to the Didriksens the cost to them of acquiring the property through foreclosure proceedings, including the terms of the note that they would have to assume.

At the time of the instant hearing, payments on the note secured by the first trust deed were in default but the matter had not proceeded to trustees sale because of pending litigation involving the property.

## EIGHTH CAUSE OF ACCUSATION

### CIII

In or about July, 1980, Michael David Thomas and respondent Allen, acting by and through respondent Beaver and Better Homes, offered to purchase real property owned by Donald Prindle and commonly known as 30597 Pudding Creek, Fort Bragg, California.

CIV

The offer to purchase included the following terms and conditions:

1. The purchase price of Pudding Creek was \$275,000.
2. Thomas and respondent Allen would obtain a loan of \$165,000 secured by a first deed of trust on Pudding Creek.
3. Of that amount, approximately \$38,000 would be used to pay the existing loan on Pudding Creek and Prindle would receive approximately \$53,000.
4. Thomas and respondents Allen and Beaver represented that the remaining loan proceeds, less loan fees, would be paid to Thomas and respondent Allen for "work credit and negative cash flow" on Pudding Creek.
5. Prindle would carry a note from Thomas and respondent Allen in the amount of \$165,000 and secured by a second trust deed on Pudding Creek.

CV

In reliance upon said representations, terms and conditions, Prindle agreed to sell Pudding Creek.

CVI

On or about September 5, 1980, escrow closed on the purchase of Pudding Creek according to the above terms and conditions.

CVII

On or about September 5, 1980, \$10,505.60 was released from escrow to Thomas and an additional \$10,505.60 was released from escrow to respondent Allen. These funds were not used for work or for negative cash flow on Pudding Creek.

CVIII

On or about September 5, 1980, \$15,510 was paid to respondents Allen and Beaver and Better Homes as commissions in the sale of Pudding Creek.

CIX

Neither respondent Allen nor respondents Beaver and Scotch disclosed to Prindle that the true value of Pudding Creek was \$275,000 and that the encumbrances totaled \$330,000.

CX

On, before or after escrow closed on the sale of Pudding Creek, Thomas and respondent Allen, with the intent to substantially benefit herself and without disclosing her true intentions to Prindle, entered into a plan and scheme to deceive and misrepresent to Prindle that Thomas and respondent Allen would perform all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Pudding Creek.

CXI

The plan and scheme contemplated that respondents Allen and Beaver and Better Homes would receive a commission for the sale of Pudding Creek; that Thomas and respondent Allen would take title to Pudding Creek, rent said property and apply the rental proceeds to their own benefit; that Thomas and respondent Allen would apply the \$21,011.20 to their own benefit and not for repairs or improvements or negative cash flow on Pudding Creek and, that Thomas and respondent Allen would not make payments on the loans secured by first and second deeds of trust on Pudding Creek.

CXII

Thomas and respondent Allen made no payments on the loans secured by deeds of trust on Pudding Creek.

CXIII

On or about December 30, 1980, a Notice of Default was filed by the holder of the note secured by a first trust deed on Pudding Creek.

CXIV

Respondents Beaver and Scotch failed to advise Prindle of the true value of the note secured by a second deed of trust carried by Prindle; failed to fully advise Prindle of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by Thomas and respondent Allen would be performed.

CXV

The note secured by the first trust deed provided for twelve (12) monthly payments of \$2,750 and a balloon payment of \$167,750.

Prindle lost his property.

## NINTH CAUSE OF ACCUSATION

### CXVI

On or about June 11, 1980, Thomas, acting by and through respondents Allen and Baker and Better Homes, offered to purchase real property owned by Ernest L. Willard, Jr. and Margaret Willard and commonly known as 5265 Fifth Street, Rocklin, California.

### CXVII

The offer to purchase included the following terms and conditions:

1. The purchase price of Fifth Street was \$82,000.
2. Thomas would obtain a loan of \$40,000 secured by a first deed of trust on Fifth Street.
3. Of that amount, the Willards would receive approximately \$27,000.
4. Respondents Allen and Baker represented that the remaining loan proceeds, less loan fees, would be paid to Thomas for making repairs on Fifth Street.
5. The Willards would carry a note from Thomas in the amount of \$53,200 and secured by a second trust deed on Fifth Street.

### CXVIII

In reliance upon the above representations, terms and conditions, the Willards agreed to sell Fifth Street.

### CXIX

On or about July 8, 1980, escrow closed on the purchase of Fifth Street according to the above terms and conditions.

### CXX

On or about July 8, 1980, \$6,800 was released from escrow to Thomas. The funds were not used to make repairs on Fifth Street.

### CXXI

On or about July 8, 1980, \$4,100 was paid to respondents Allen and Baker and Better Homes as commissions for the sale of Fifth Street

CXXII

Neither respondents Allen, Baker nor Scotch disclosed to the Willards that the true value of Fifth Street was \$82,000 and that the encumbrances totaled \$93,200.

CXXIII

On, before or after escrow closed on the sale of Fifth Street, Thomas and respondents Allen and Baker, with the intent to substantially benefit themselves and without disclosing their true intentions to the Willards, entered into a plan and scheme to deceive and misrepresent to the Willards that Thomas would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Fifth Street.

CXXIV

The plan and scheme contemplated that respondents Allen and Baker and Better Homes receive a commission for the sale of Fifth Street; that Thomas would take title to Fifth Street, rent the property and apply the rental proceeds to his own benefit; that Thomas would apply the \$6,800 to his own benefit and not for repairs on Fifth Street; and that Thomas would not make payments on the loans secured by first and second deeds of trust on Fifth Street.

CXXV

After making some payments on said first and second trust deed loans, Thomas and his subsequent assignees of the property, failed to make the payments on the loans when they became due.

CXXVI

Respondent Baker made substantial misrepresentations to the Willards that respondent Baker knew, or should have known, were untrue. These misrepresentations induced, and were made by respondent Baker for that purpose, the Willards to sell their property.

CXXVII

Respondents Allen, Baker and Scotch failed to advise the Willards of the true value of the note secured by a second deed of trust carried by the Willards; failed to fully advise the Willards of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by Thomas would be performed.

CXXVIII

The Willards suffered substantial monetary damages on the transaction.

The loan on the first deed of trust has been in default since October, 1981. The Willards made several monthly payments of \$525 per month, but could not afford to continue making payments and cannot afford to make the \$40,000 balloon payment.

The matter is now in litigation.

#### CXXIX

During February through August, 1980, Better Homes Realty was owned by respondents Allen, Baker and Scotch.

Respondent Scotch was the responsible broker of record during such period. In fact, the company was managed by respondent Allen. Respondent Scotch failed to carry out his functions as supervising broker in that he failed to exercise reasonable supervision over salespersons. His abdication of this function created a situation wherein his agents could readily engage in fraud or dishonest dealing, or in conduct constituting negligence and/or incompetence.

#### DETERMINATION OF ISSUES

##### FIRST CAUSE OF ACCUSATION

###### I

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

###### II

Cause was established for discipline against respondents Smart and Noble under §10177(f) and (j) of the Business and Professions Code.

###### III

Cause was established for discipline against respondent Brodrick under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Brodrick under §10176(i) of the Business and Professions Code.

###### IV

Cause was established for discipline against respondents Glenn and Circle J under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondents Glenn and Circle J under §10176(a) and (i) of the Business and Professions Code.

## SECOND CAUSE OF ACCUSATION

### V

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### VI

Cause was established for discipline against respondents Smart and Noble under §10177(f) and (j) of the Business and Professions Code.

## THIRD CAUSE OF ACCUSATION

### VII

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### VIII

Cause was not established for discipline against respondents Smart and Noble.

## FOURTH CAUSE OF ACCUSATION

### IX

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

## FIFTH CAUSE OF ACCUSATION

### X

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### XI

Cause was established for discipline against respondent Allen under §10176(a) and (i) and §10177(g) of the Business and Professions Code.

### XII

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

## SIXTH CAUSE OF ACCUSATION

### XIII

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### XIV

Cause was established for discipline against respondent Allen under §10177(f) and (j) of the Business and Professions Code.

### XV

Cause was established for discipline against respondent Baker under §10177(f) and (j) of the Business and Professions Code.

### XVI

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

### XVII

Cause was established for discipline against respondent Beaver under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Beaver under §10176(i) of the Business and Professions Code.

## SEVENTH CAUSE OF ACCUSATION

### XVIII

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### XIX

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.



XX

Cause was established for discipline against respondent Beaver under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Beaver under §10176(i) of the Business and Professions Code.

EIGHTH CAUSE OF ACCUSATION

XXI

Cause was established for discipline against respondent Allen under §10177(f) and (j) of the Business and Professions Code.

XXII

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

XXIII

Cause was established for discipline against respondent Beaver under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Beaver under §10176(i) of the Business and Professions Code.

NINTH CAUSE OF ACCUSATION

XIV

Cause was established for discipline against respondent Allen under §10176(a) and (i) and §10177(g) of the Business and Professions Code.

XXV

Cause was established for discipline against respondent Baker under §10176(a) and (i) and §10177(g) of the Business and Professions Code.

XXVI

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

## ALL CAUSES OF ACCUSATION

### XXVII

The risks inherent in these real estate transactions were, or should have been, obvious to a real estate licensee. The licensee is not a guarantor. However, the duty of the licensee, under the particular offers to purchase involved in this matter, was, at the very least, to explain in ordinary language the consequences to the seller of a default: that the sellers will not receive any money on the note secured by the second and that the sellers will lose the property unless they pay the monthly and balloon payments on the first trust deed (indicating to the seller the amount of the monthly payment and of the balloon payment).

Some of the sellers in these transactions did not have the funds to assume payments on the note secured by the first trust deed; some had the funds but failed to assume payments because it would have been a losing proposition for them to do so. This is not merely the benefit of hindsight; it was obviously foreseeable to a real estate professional, but not to most laymen, given the terms of these offers and all of the surrounding circumstances, that the risk was high.

A seller's agent, faced with such an offer, could have pursued various alternative approaches in discharging the agent's professional responsibility.

### XXVIII

None of the individuals involved in this matter have any connection with respondent Circle J. The current owners, licensees and employees of Circle J were not involved in the transactions giving rise to these causes for accusation. Therefore, it would not be against the public interest to dismiss the accusation as to Circle J.

## ORDER

### FIRST CAUSE OF ACCUSATION

#### I

The licenses and licensing rights of respondent Gammill are revoked.

#### II

The licenses and licensing rights of respondent Brodrick are suspended for twenty (20) days.

III

The licenses and licensing rights of respondent Smart are suspended for twenty (20) days.

IV

The licenses and licensing rights of respondent Noble are suspended for twenty (20) days.

V

The licenses and licensing rights of respondent Glenn are suspended for five (5) days.

VI

The accusation against respondent Circle J is dismissed.

SECOND CAUSE OF ACCUSATION

VII

The licenses and licensing rights of respondent Gammill are revoked.

VIII

The licenses and licensing rights of respondent Noble are suspended for twenty (20) days, the suspension to run consecutively with the twenty (20) day suspension under the First Cause of Accusation, for a total of forty (40) days.

IX

The licenses and licensing rights of respondent Smart are suspended for twenty (20) days, the suspension to run consecutively with the twenty (20) day suspension under the First Cause of Accusation, for a total of forty (40) days.

THIRD CAUSE OF ACCUSATION

X

The licenses and licensing rights of respondent Gammill are revoked.

XI

The accusation against respondent Noble is dismissed as to the Third Cause of Accusation.

XII

The accusation against respondent Smart is dismissed as to the Third Cause of Accusation.

FOURTH CAUSE OF ACCUSATION

XIII

The licenses and licensing rights of respondent Gammill are revoked.

FIFTH CAUSE OF ACCUSATION

XIV

The licenses and licensing rights of respondent Gammill are revoked.

XV

The licenses and licensing rights of respondent Allen are revoked.

XVI

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days.

SIXTH CAUSE OF ACCUSATION

XVII

The licenses and licensing rights of respondent Gammill are revoked.

XVIII

The licenses and licensing rights of respondent Allen are revoked.

XIX

The licenses and licensing rights of respondent Baker are revoked.

XX

The licenses and licensing rights of respondent Scotch are suspended for ten (10) days.

XXI

The licenses and licensing rights of respondent Beaver are suspended for fifteen (15) days.

SEVENTH CAUSE OF ACCUSATION

XXII

The licenses and licensing rights of respondent Gammill are revoked.

XXIII

The licenses and licensing rights of respondent Beaver are suspended for forty-five (45) days.

XXIV

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days.

EIGHTH CAUSE OF ACCUSATION

XXV

The licenses and licensing rights of respondent Allen are revoked.

XXVI

The licenses and licensing rights of respondent Beaver are suspended for thirty (30) days. The suspensions against respondent Beaver shall run consecutively for a total suspension of ninety (90) days.

XXVII

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days.

NINTH CAUSE OF ACCUSATION

XXVIII

The licenses and licensing rights of respondent Allen are revoked.

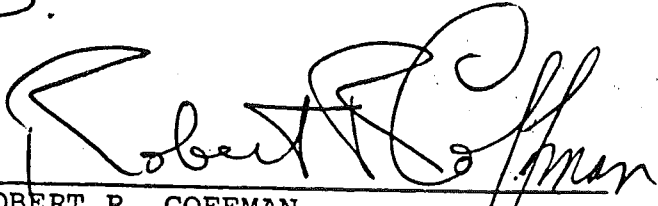
XXIX

The licenses and licensing rights of respondent Baker are revoked.

XXX

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days. The suspensions against respondent Scotch shall run consecutively for a total suspension of ninety (90) days.

Dated: January 19, 1983.

  
ROBERT R. COFFMAN  
Administrative Law Judge  
Office of Administrative Hearings

FEB 15 1983

## DEPARTMENT OF REAL ESTATE

Vanessa Papatto

N- 18038  
19411

W. JEROME THOMAS  
Acting Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of: )

ROBERT BRUCE GAMMILL )  
GARRISON JOSEPH NOBLE )  
PHILIP RONALD SMART )  
GWEN PATRICIA ALLEN )  
PAUL HERMAN BEAVER )  
CIRCLE J LAND CO., INC. )  
JOHN H. GLENN, JR. )  
ANTHONY G. SCOTCH, JR. )  
LOIS HUNTER BRODRICK )  
THERESA D. BAKER, )

H-1770 SAC  
N 18038

Respondents. )

----- )

In the Matter of the Accusation of: )

GWEN PATRICIA ALLEN )  
PAUL HERMAN BEAVER )  
ANTHONY G. SCOTCH )  
LOUIS MICHAEL LEVIN )  
THERESA D. BAKER, )

H-1848 SAC  
N 19411

Respondents. )

PROPOSED DECISION

These matters came on for hearing before Robert R. Coffman, Administrative Law Judge of the Office of Administrative Hearings on October 18, 19, 20, 21, 25, 26, 27 and 28 in Sacramento, California.

Larry A. Alamao, Counsel, represented the complainant.

Respondent John H. Glenn, Jr. appeared in person and represented himself. David Weiner, Attorney at Law, represented respondent Lois Hunter Brodrick. William H. Keller, Attorney at Law, represented respondent Paul Herman Beaver. John B. Renwick, Attorney at Law, represented respondents Garrison Joseph Noble and Philip Ronald Smart. Howard J. Stagg, IV, Attorney at Law, represented respondent Anthony G. Scotch. Respondents Robert Bruce Gammill, Gwen Patricia Allen, Theresa D. Baker and Circle J Land Co., Inc. did not appear and were not otherwise represented.

Evidence was received, the hearing was closed but the record was held open to permit filing of written closing arguments. Arguments were received and the record was closed on January 10, 1983.

Cases N 18038 and N 19411 were consolidated for the purpose of hearing and decision.

The standard of proof applied was that of clear and convincing proof to a reasonable certainty.

The Administrative Law Judge certifies this decision and recommends it for adoption.

#### FINDINGS OF FACT

##### I

Duane A. Aasland made the accusations in his official capacity as a Deputy Real Estate Commissioner.

##### II

In Case No. N 19411, a continuance, on the motion of respondent Louis Michael Levin, was granted as to the second cause of accusation.

##### III

Respondent Noble is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Business and Professions Code) (Code).

##### IV

Respondent Smart is presently licensed and/or has license rights under the Real Estate Law.

##### V

Respondent Allen is presently licensed and/or has license rights under the Real Estate Law.

##### VI

Respondent Beaver is presently licensed and/or has license rights under the Real Estate Law.

##### VII

Respondent Circle J is presently licensed and/or has license rights under the Real Estate Law.

##### VIII

Respondent Glenn is presently licensed and/or has license rights under the Real Estate Law.



IX

Respondent Scotch is presently licensed and/or has license rights under the Real Estate Law.

X

Respondent Brodrick is presently licensed and/or has license rights under the Real Estate Law.

XI

Respondent Baker is presently licensed and/or has license rights under the Real Estate Law.

XII

Respondent Gammill is presently licensed and/or has license rights under the Real Estate Law.

XIII

Described herein are certain transactions involving agreements to sell various parcels of real property. In each of these transactions, one or more of the respondents participated, or acted as the agent for other respondents. Beginning in approximately June, 1980, various persons entered into a plan and scheme with reference to these transactions, with the intent to substantially benefit themselves without regard to the injury their acts would cause to the various sellers and without disclosing to the sellers their true intentions with respect to the transaction.

XIV

The plan and scheme contemplated with respect to each of the transactions, one or more of the following acts or representations:

1. Buyers would make a written offer to purchase the seller's property. The offer may be presented to the seller by other respondents acting as agents in the transaction.
2. The offer would call for encumbrances in excess of fair market value of the property being purchased.
3. As a term and condition of the offer, buyers would agree to obtain a hard money loan secured by a first or second deed of trust on the property being purchased. Buyers would then represent to each seller that, after the close of escrow, some of

the proceeds of the loan would be held by buyers to make certain improvements or renovations to the property being purchased, or for other purposes related to the property.

4. Buyers would pay the balance of the purchase price by executing a note to the sellers secured by a junior deed of trust on the property.

5. After the close of escrow of each transaction, buyer would receive the amount of money held for property renovations or improvements and would use said money for their own use and purpose, and not make any improvements or renovations to the property. Subsequent to the close of each transaction, buyers would either make no payments or would make one or more payments to the sellers on the note secured by the junior encumbrance or to the holders of the senior encumbrance and then discontinue performing all of their duties, responsibilities and obligations necessary to implement and effect all the terms and conditions of the agreement to purchase the various properties.

6. After the buyers had obtained payment of the funds being held in escrow, they would simply walk away from their obligations under the contract terms leaving the sellers with the remedy of having to foreclose on their note secured by a junior encumbrance, which meant that each seller would lose a substantial portion of his equity in the property.

7. Buyers knew that their representation that they would use the funds for improvements or renovation to the property being purchased was false and that their implied representation that they could and would make payments on the note to the sellers secured by a junior encumbrance was also false. The sellers, believing said representations to be true, relied thereon to their detriment and damage.

#### FIRST CAUSE OF ACCUSATION

#### XV

On or about November 26, 1980, respondents Gammill, Smart and Noble, acting by and through respondents Circle J, Glenn and Brodrick, offered to purchase real property owned by Rodney Stich and commonly known as 5968 Park Avenue, Marysville, California.

XVI

The offer to purchase included the following terms and conditions:

1. The purchase price for the property was \$200,000.
2. Respondents Gammill, Smart and Noble would obtain a loan of \$120,000 secured by a first deed of trust on the property.
3. Of that amount, Stich would receive approximately \$80,000.
4. Respondents Gammill, Smart, Circle J, Glenn and Brodrick represented that the remaining proceeds of the loan, less loan fees, would be put in a trust account for the renovation of the property and for building additional units on the property.
5. Stich would carry a note from respondents Gammill, Smart and Noble in the amount of \$120,000 and secured by a second deed of trust on the property.

XVII

In reliance upon the above representations, terms and conditions, Stich agreed to sell the property.

XVIII

On or about February 19, 1981, escrow closed on the purchase of the property according to the above terms and conditions.

XIX

On or about February 19, 1981, \$25,658.90 was released from escrow to respondents Gammill, Smart and Noble. The funds were not placed in a trust account. The funds were not used to renovate the property, nor were the funds used for building additional units on the property.

XX

On or about February 19, 1981, \$10,400 was paid to respondents Circle J, Glenn and Brodrick as commissions in the sale of the property.

XXI

Neither respondents Gammill, Smart and Noble nor respondents Circle J, Glenn and Brodrick disclosed to Stich

that the true value of the property was \$200,000 and that the encumbrances on the property totaled \$240,000.

XXII

On, before or after escrow closed on the sale of the property, respondent Gammill, with the intent to substantially benefit himself and without disclosing his true intentions to Stich, deceived Stich and misrepresented to Stich that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase the property.

XXIII

Respondent Gammill's plan and scheme contemplated that respondents Gammill, Smart and Noble would take title to the property; apply the \$25,658.90 to their own benefit and not renovate or build additional units on the property; and not make payments on the loans secured by first and second deeds of trust.

XXIV

Beginning on or about April 1, 1981, respondents Gammill, Smart and Noble failed to make payments on the loans secured by first and second deeds of trust.

XXV

On or about June 9, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on the property.

XXVI

Respondents failed to advise Stich of the true value of the note secured by a second deed of trust carried by Stich; failed to fully advise Stich of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondents Gammill, Noble and Smart would be performed.

XXVII

Respondent Brodrick did not adequately warn Stich of the very high risk to Stich involved in this transaction. However, Stich, who has bought, sold and operated motels, hotels and apartments, was not only knowledgeable in real estate transactions, he fully understood the risks involved in this transaction.

Because he was aware of the possibility of a default, Stich wanted some assurance that the buyers were persons of integrity and responsibility who could be trusted to make payments on the note secured by the first and second deeds of trust and to use the \$40,000 (reduced to \$25,568 by loan com-

pany and title company fees) to improve the property. Stich conveyed his concerns to respondent Brodrick who informed him that, in her opinion, the buyers were persons of substance, that one was a knowledgeable investor who had been involved in many prior real estate transactions, that respondents Noble and Smart were professors at "the university", and that she was favorably impressed with the buyers as persons willing to go through with the transaction. Stich relied on respondent Brodrick's representations that the buyers were willing and able to make payments on the two notes.

Under the circumstances, respondent Brodrick may not have been under a duty to warn Stich of the risk involved. Even assuming that she fulfilled any obligation to warn Stich, this does not absolve her from her obligation not to make representations to the seller without a reasonable basis for such representations. Respondent Brodrick did not possess reliable information on which to base her representations to Stich. Her representations were not based on a reasonable good faith investigation of the buyers. She was aware of the risk to the seller and of the seller's concern regarding the buyers. When the seller inquired about the buyers, she could have investigated the buyers, or told the seller to conduct his own investigation, or she could have refrained from making any representations at all. Instead, she made material misrepresentations that conveyed to the seller the impression that the buyers were reliable persons who would improve the property and carry out the provisions of the contract.

At the time she made these misrepresentations, she was unaware of the terms of the note secured by the first trust deed. Her subsequent efforts to determine the terms of the note were unsuccessful. She was negligent in not obtaining such information from the buyers, or upon the buyers' refusal to provide such information, to notify the seller and to reevaluate her opinion of the buyers.

The contract provided that the \$40,000, to be used for improvements, be held in trust. Respondent Brodrick failed to discharge her duty to implement the trust provision.

#### XXVIII

No repairs or improvements were made. Stich lost the property. To retain the property, he would have had to assume monthly payments of \$2,100 for one year and a \$120,000 balloon payment after one year. These terms made it too difficult for him to assume the note.

Stich received approximately \$60,000 from the sale, \$21,000 to Stich and \$39,000 to pay off an existing encumbrance. The value of the property was approximately \$200,000.

## XXIX

Respondent Gammill handled most aspects of the Stich transaction for the buyers, although respondents Noble and Smart were actively involved in some details such as arranging for improvements to the property.

Respondents Noble and Smart may have been extremely naive in becoming involved in respondent Gammill's scheme, but evidence did not establish that they intended, prior to purchasing the property, to participate in a "buyer walkaway" scheme.

However, their subsequent conduct demonstrated acquiescence in such scheme, particularly their agreement to "sell" the property. Undoubtedly, persons unfamiliar with real estate matters, making similar "investments", might not have realized that they were part of such a scheme. But respondents Noble and Smart were real estate brokers and as such, are held to a higher standard. They were not merely investing money in a business enterprise (they put up no money), they were purchasers of real property who agreed to make \$40,000 in repairs and who obligated themselves to repay notes amounting to \$240,000. The evidence, including consideration of the factors listed in complainant's closing argument, pages 5 through 7, supports a basis for discipline against respondents Noble and Smart. To find they are free of wrongdoing would require a belief that they lacked an understanding of elementary fundamentals and principles of real estate transactions to the degree that they were demonstrably incapable of acting as real estate brokers.

## XXX

Respondent Glenn was aware of the potential problems inherent in the offer to purchase. Respondent Brodrick told him that she had fully informed the seller of the risks involved, that the seller was a sophisticated real estate investor, that the buyers were very substantial persons involved in other real estate transactions. He told respondent Brodrick to obtain the terms of the note secured by the first trust deed. He was aware, before escrow closed, that respondent Brodrick had not done so.

In carrying out the duty owed the client, the broker may, of necessity, rely on his agent to a great extent, but under the circumstances herein, respondent Glenn failed to take reasonable steps to insure that respondent Brodrick performed these duties and to determine whether her representations regarding the buyers were founded on a reasonable basis.

## SECOND CAUSE OF ACCUSATION

## XXXI

On or about January 9, 1981, respondents Gammill, Smart and Noble offered to purchase real property owned by Tom and Vicki L. Roberts and commonly known as 386 Kevin Court, Auburn, California.

XXXII

The offer to purchase included the following terms and conditions:

1. The purchase price for Kevin Court was \$113,000.
2. Respondents Gammill, Smart and Noble would obtain a loan of \$88,000 secured by a first deed of trust on Kevin Court.
3. Of that amount, approximately \$47,500 would be used to pay the existing construction loan on Kevin Court and the Roberts would receive approximately \$16,000.
4. Respondents Gammill, Smart and Noble represented that the remaining proceeds of the loan, less loan fees, would be used to improve the Kevin Court property.
5. Roberts would carry a note from respondents Gammill, Smart and Noble in the amount of \$47,000 and secured by a second deed of trust on Kevin Court.

XXXIII

In reliance upon said representations, terms and conditions, the Roberts agreed to sell Kevin Court.

XXXIV

On or about January 9, 1981, escrow closed on the purchase of Kevin Court according to the above-described terms and conditions.

XXXV

On or about January 16, 1981, a total of \$11,112.39 (\$3,704.13 each) was released from escrow to respondents Gammill, Smart and Noble. These funds were not used for completing work on Kevin Court.

XXXVI

Respondents Gammill, Smart and Noble did not disclose to the Roberts that the true value of Kevin Court was approximately \$113,000 and that the encumbrances totaled \$135,000.

XXXVII

On, before or after escrow closed on the sale of Kevin Court, respondent Gammill, with the intent to substantially benefit himself and without disclosing his true inten-

tions to the Roberts, entered into a plan and scheme to deceive and misrepresent to the Roberts that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Kevin Court.

XXXVIII

Respondent Gammill's plan and scheme described contemplated that respondents Gammill, Smart and Noble would take title to Kevin Court; apply the \$11,112.39 to their own benefit and not complete work on Kevin Court; and, not make payments on the loans secured by first and second deeds of trust.

XXXIX

Beginning on or about March 1, 1981, respondents Gammill, Smart and Noble failed to make payments on the loans secured by first and second trust deeds.

XL

In or about April, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on Kevin Court.

XLI

Respondents Gammill, Noble and Smart did not improve or expend funds to improve the Kevin Court property.

XLII

Roberts received approximately \$64,600 from the sale, \$16,000 to Roberts and \$47,600 to pay off an existing encumbrance.

Roberts lost the property. To cure the default, Roberts would have had to assume seven (7) monthly payments of \$1,246 and a balloon payment of \$89,000 after seven (7) months.

XLIII

The factors listed in Finding XXIX are applicable to the Kevin Court transaction. The matters contained in Finding XXIX are incorporated herein by reference.

THIRD CAUSE OF ACCUSATION

XLIV

In or about November, 1980, respondent Gammill and Sheri Quaintance offered to purchase real property owned by Tom and Vicki L. Roberts and commonly known as 12612 Eckard Way, Auburn, California.



XLV

The offer to purchase included the following terms and conditions:

1. The purchase price for Eckard Way was \$113,000.
2. Respondent Gammill and Quaintance would obtain a loan of \$88,000 secured by a first deed of trust on Eckard Way.
3. Of that amount, approximately \$47,500 would be used to pay the existing construction loan on Eckard Way and the Roberts would receive approximately \$17,000.
4. Respondent Gammill represented that the remaining proceeds of the loan, less loan fees, would be used for completing work on Eckard Way.
5. Roberts would carry a note from respondent Gammill and Quaintance in the amount of \$47,000 and secured by a second deed of trust on Eckard Way.

XLVI

In reliance upon said representation, terms and conditions, Roberts agreed to sell Eckard Way.

XLVII

On or about December 23, 1980, escrow closed on the purchase of Eckard Way according to the terms and conditions described above.

XLVIII

On or about December 24, 1980, a total of \$14,323.54 was released from escrow as follows: \$7,076.27 to respondents Smart and Noble; \$3,940.13 to respondent Gammill; and \$3,307.14 to Quaintance. The funds were not used for completing work on Eckard Way.

XLIX

Respondent Gamill did not disclose to the Roberts that the true value of Eckard Way was approximately \$113,000 and that the encumbrances totaled \$135,000.

L

On, before or after escrow closed on the sale of Eckard Way, respondent Gammill, with the intent to substan-

tially benefit himself and without disclosing his true intentions to the Roberts, entered into a plan and scheme to deceive and misrepresent to the Roberts that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Eckard Way.

LI

The plan and scheme contemplated that respondent Gammill and Quaintance would apply the \$14,323.54 to their own benefit and not complete improvements on Eckard Way; and that respondent Gammill and Quaintance would default on the loans secured by first and second deeds of trust.

LII

Respondent Gammill and Quaintance made three payments on the loan secured by the first trust deed and thereafter failed to make any payments on said loan.

LIII

In or about June, 1981, a Notice of Default was filed by the holder of the note secured by the first trust deed on Eckard Way.

LIV

The Roberts lost their property through foreclosure proceedings upon the default of respondent Gammill on the above note.

LV

Evidence did not establish that respondents Noble and Smart were involved in this transaction other than as recipients of the \$7,076 check. Respondents Noble and Smart maintain that they received such amount by mistake and endorsed the check over to respondent Gammill.

FOURTH CAUSE OF ACCUSATION

LVI

On or about November 15, 1980, respondent Gammill and Brad and Janet Babcock offered to purchase real property owned by Gordon C. and Karen S. Haworth and commonly known as 1169 Statford Way, Placer County, California.

LVII

The offer to purchase included the following terms and conditions.

1. The purchase price for Statford Way was \$170,000.

2. Respondent Gammill and the Babcocks would obtain a loan of \$102,000 secured by a first deed of trust on Statford Way.

3. Of that amount, approximately \$40,500 would be used to pay the existing construction loan on Statford Way.

4. Respondent Gammill and the Babcocks represented that approximately \$13,000 from the proceeds of the first trust deed loan would be given to respondent Gammill and the Babcocks in order to finance construction on other real property owned by respondent Gammill.

5. Haworths would carry a note from respondent Gammill and the Babcocks in the amount of \$104,000 and secured by a second deed of trust on Statford Way.

#### LVIII

In reliance upon said representations, terms and conditions, the Haworths agreed to sell Statford Way.

#### LVIX

On or about December 23, 1980, escrow closed on the purchase of Statford Way according to the above terms and conditions.

#### LX

On or about December 24, 1980, \$6,145.74 was released from escrow to respondent Gammill and \$7,000 was released to the Babcocks. These funds were not used for construction on other real property owned by respondent Gammill and respondent Gammill did not pay any additional proceeds to the Haworths.

#### LXI

Respondent Gammill and the Babcocks did not disclose to the Haworths that the true value of Statford Way was approximately \$170,000 and that the encumbrance totaled \$206,000.

#### LXII

On, before or after escrow closed on the sale of Statford Way, respondent Gammill, with the intent to substantially benefit himself and without disclosing his true intentions to the Haworths, entered into a plan and scheme to deceive and misrepresent to the Haworths that he would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Statford Way.

LXIII

Respondent Gammill's plan and scheme contemplated that respondent Gammill and the Babcocks would take title to Statford Way; apply the \$12,145.74 to their own benefit and not to be used for construction on other real property owned by respondent Gammill; and, that respondent Gammill and the Babcocks would not make payments on the loans secured by first and second deeds of trust.

LXIV

The Haworths eventually recovered title to the property but at a loss of more than \$70,000, resulting from respondent Gammill's deceit and misrepresentations.

FIFTH CAUSE OF ACCUSATION

LXV

On or about June 15, 1980, respondent Gammill, acting by and through respondent Allen and Better Homes offered to purchase real property owned by Loran C. and Loren L. Thorson and commonly known as 6532 Hazel Avenue, Orangevale, California.

LXVI

The offer to purchase included the following terms and conditions:

1. The purchase price for Hazel Avenue was \$25,000.
2. Respondent Gammill would obtain a loan of \$12,000 secured by a first deed of trust on Hazel Avenue.
3. Respondents Gammill and Scotch represented that approximately \$1,600 of that amount would be used as "prepaid interest on the first deed of trust - to be paid to buyer at close of escrow".
4. Thorsons would carry a note from respondent Gammill in the amount of \$16,000 and secured by a second trust deed on Hazel Avenue.

LXVII

In reliance upon said representations, terms and conditions, the Thorsons agreed to sell Hazel Avenue.

LXVIII

On or about July 11, 1980, escrow closed on the purchase of Hazel Avenue according to the above terms and conditions.

LXIX

On or about July 11, 1980, \$1,673.59 was released from escrow to respondent Gammill. These funds were not used for the payment of prepaid interest on the first deed of trust.

LXX

On or about July 11, 1980, \$2,500 was paid to respondent Allen and Better Homes as commissions in the sale of Hazel Avenue.

LXXI

Neither respondent Gammill nor respondents Allen and Scotch disclosed to the Thorsons that the true value of Hazel Avenue was \$25,000 and that the encumbrances totaled \$28,000.

LXXII

On, before or after escrow closed on the sale of Hazel Avenue, respondents Gammill and Allen, with the intent to substantially benefit themselves and without disclosing their true intentions to the Thorsons, entered into a plan and scheme to deceive and misrepresent to the Thorsons that respondent Gammill would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Hazel Avenue.

LXXIII

The above plan and scheme contemplated that respondent Allen and Better Homes would receive commissions for the sale of Hazel Avenue; that respondent Gammill would take title to Hazel Avenue; apply the \$1,673.59 to his own benefit and not for prepayment of interest; and, not make payments on the loans secured by first and second deeds of trust on Hazel Avenue.

LXXIV

Beginning on or about November 1, 1980, respondent Gammill, after making a total of \$540 (plus late charges) in payments on the loan secured by a first deed of trust on Hazel Avenue, ceased making such payments when they became due.

LXXV

On or about January 16, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on Hazel Avenue.

The Thorsons subsequently recovered title to the property but at a substantial monetary loss.

LXXVI

Respondents Allen and Scotch failed to advise the Thorsons of the true value of the note secured by a second deed of trust carried by the Thorsons; failed to fully advise the Thorsons of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondent Gammill would be performed.

SIXTH CAUSE OF ACCUSATION

LXXVII

On or about July 7, 1980, respondent Beaver, acting as an agent for Better Homes Realty, entered into a listing agreement granting Better Homes the exclusive right to sell certain real property owned by Alison F. Geballe and commonly known as 2332 Marshall Way, Sacramento, California.

LXXVIII

On or about July 7, 1980, respondent Gammill, acting by and through respondent Beaver and Better Homes, offered to purchase Marshall Way according to the following terms and conditions:

1. The purchase price of Marshall Way was \$94,700.
2. Respondent Gammill would obtain a loan of \$47,880 secured by a first trust deed on Marshall Way.
3. Approximately \$4,900 of that amount would be given to respondent Gammill as "work credit and negative cash flow".
4. Geballe would carry a note from respondent Gammill in the amount of \$56,820 and secured by a second trust deed on Marshall Way.

LXXIX

In reliance upon said representations, terms and conditions, Geballe agreed to sell Marshall Way.

XXC

On or about July 17, 1980, escrow closed on the purchase of Marshall Way according to the above terms and conditions.

XXCI

On or about July 17, 1980, \$4,887.89 was released from escrow to respondent Gammill. These funds were not used for performing work on Marshall Way.

XXCII

On or about July 17, 1980, \$5,682 was paid to respondent Beaver and Better Homes as commissions in the sale of Marshall Way.

XXCIII

Neither respondent Gammill nor respondents Beaver and Scotch disclosed to Geballe that the true value of Marshall Way was \$94,700 and that the encumbrances totaled \$104,700.

XXCIV

On, before or after escrow closed on the sale of Marshall Way, respondents Gammill, Allen and Baker, with the intent to substantially benefit themselves and without disclosing their true intentions to Geballe, entered into a plan and scheme to deceive and misrepresent to Geballe that respondent Gammill would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Marshall Way.

XXCV

The plan and scheme contemplated in essence that respondent Beaver and Better Homes would receive commissions for the sale of Marshall Way; that respondent Gammill would take title to Marshall Way; apply the \$4,887.89 to his own benefit and not for work performed on Marshall Way; and, transfer title to Marshall Way to respondents Allen and Baker; respondents Allen and Baker would, for a valuable consideration, sell an interest in Marshall Way to a third party.

XXCVI

On or after August 1, 1980, respondent Gammill transferred title to Marshall Way to respondents Allen and Baker.

XXCVII

On or after August 1, 1980, respondents Allen and Baker transferred a one-third (1/3) interest in Marshall Way

to Lloyd Price in return for the payment by Price of \$1,000 to respondents Allen and Baker.

#### XXCVIII

Respondents Allen and Baker failed to disclose to Price the nature and extent of the encumbrances on Marshall Way.

#### XXCIX

Respondents Beaver and Scotch failed to advise Geballe of the true value of the note secured by a second deed of trust carried by Geballe; failed to fully advise Geballe of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondent Gammill would be performed.

#### XC

Geballe was a law school graduate. She was not knowledgeable or sophisticated in real estate transactions. She relied on respondent Beaver's representations that the offer was a solid one, that the buyer had substantial funds to handle the transaction and that it was very unlikely that the buyer would sell the property.

Respondent Beaver informed Geballe that the property was overencumbered but did not explain the consequences thereof, including the risks involved.

Geballe obtained title to the property after assuming the \$618 monthly payments on the note and making the \$49,000 balloon payment. She lost a substantial amount of money on the transaction.

#### SEVENTH CAUSE OF ACCUSATION

#### XCI

On or about June 14, 1980, respondent Beaver, acting as an agent for Better Homes, entered into a listing agreement granting Better Homes the exclusive right to sell certain real property owned by Donald S. and Alice Didriksen and commonly known as 5305 Sacramento Boulevard, Sacramento, California.

#### XCII

On or about June 14, 1980, respondent Gammill, acting by and through respondents Beaver and Better Homes, offered to purchase Sacramento Blvd. according to the following terms and conditions:

1. The purchase price of Sacramento Blvd. was \$40,600.



2. Respondent Gammill would obtain a loan of \$26,240 secured by a first trust deed on Sacramento Blvd.

3. Respondents Gammill and Beaver represented that approximately \$5,000 of that amount would be given to respondent Gammill in order to make repairs on Sacramento Blvd.

4. The Didriksens would carry a note from respondent Gammill in the amount of \$24,360 and secured by a second trust deed on Sacramento Blvd.

#### XCIII

In reliance upon said representations, terms and conditions, the Didriksens agreed to sell Sacramento Blvd.

#### XCIV

On or about June 27, 1980, escrow closed on the purchase of Sacramento Blvd. according to the terms and conditions excepting the loan secured by a first deed of trust which was reduced to \$24,000.

#### XCV

On or about June 27, 1980, \$5,013.31 was released from escrow to respondent Gammill. The funds were not used to make repairs on Sacramento Blvd.

#### XCVI

On or about June 27, 1980, \$2,436 was paid to respondent Beaver and Better Homes as commissions in the sale of Sacramento Blvd.

#### XCVII

Neither respondent Gammill nor respondents Beaver and Scotch disclosed to the Didriksens that the true value of Sacramento Blvd. was not more than \$40,600 and that the encumbrances totaled \$48,360.

#### XCVIII

On, before or after escrow closed on the sale of Sacramento Blvd., respondent Gammill, with the intent to substantially benefit himself and without disclosing his true intentions to the Didriksens, entered into a plan and scheme to deceive and misrepresent to the Didriksens that respondent Gammill would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Sacramento Blvd.

## XCIX

The plan and scheme contemplated that respondent Beaver and Better Homes would receive commissions for the sale of Sacramento Blvd.; that respondent Gammill would take title to Sacramento Blvd.; apply the \$5,013.31 to his own benefit and not for work performed on Sacramento Blvd.

## C

On or after August 1, 1980, respondent Gammill transferred title to Sacramento Blvd. to another or others.

## CI

Respondents Beaver and Scotch failed to advise the Didriksens of the true value of the note secured by a second deed of trust carried by the Didriksens; failed to fully advise the Didriksens of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by respondent Gammill would be performed.

## CII

The Didriksens appear to be elderly persons of modest circumstances with little or no understanding of the complexities of business matters, including real estate transactions. They placed great reliance on respondent Beaver.

Respondent Beaver represented to the Didriksens that the buyer was a real estate investor in the business of purchasing old homes and improving them with his crew of repairmen. Respondent Beaver further represented to the Didriksens that there was nothing to worry about, that the worst that could happen would be that the property would be returned to the Didriksens.

Respondent Beaver did not explain to the Didriksens the cost to them of acquiring the property through foreclosure proceedings, including the terms of the note that they would have to assume.

At the time of the instant hearing, payments on the note secured by the first trust deed were in default but the matter had not proceeded to trustees sale because of pending litigation involving the property.

## EIGHTH CAUSE OF ACCUSATION

## CIII

In or about July, 1980, Michael David Thomas and respondent Allen, acting by and through respondent Beaver and Better Homes, offered to purchase real property owned by Donald Prindle and commonly known as 30597 Pudding Creek, Fort Bragg, California.

CIV

The offer to purchase included the following terms and conditions:

1. The purchase price of Pudding Creek was \$275,000.
2. Thomas and respondent Allen would obtain a loan of \$165,000 secured by a first deed of trust on Pudding Creek.
3. Of that amount, approximately \$38,000 would be used to pay the existing loan on Pudding Creek and Prindle would receive approximately \$53,000.
4. Thomas and respondents Allen and Beaver represented that the remaining loan proceeds, less loan fees, would be paid to Thomas and respondent Allen for "work credit and negative cash flow" on Pudding Creek.
5. Prindle would carry a note from Thomas and respondent Allen in the amount of \$165,000 and secured by a second trust deed on Pudding Creek.

CV

In reliance upon said representations, terms and conditions, Prindle agreed to sell Pudding Creek.

CVI

On or about September 5, 1980, escrow closed on the purchase of Pudding Creek according to the above terms and conditions.

CVII

On or about September 5, 1980, \$10,505.60 was released from escrow to Thomas and an additional \$10,505.60 was released from escrow to respondent Allen. These funds were not used for work or for negative cash flow on Pudding Creek.

CVIII

On or about September 5, 1980, \$15,510 was paid to respondents Allen and Beaver and Better Homes as commissions in the sale of Pudding Creek.

#### CIX

Neither respondent Allen nor respondents Beaver and Scotch disclosed to Prindle that the true value of Pudding Creek was \$275,000 and that the encumbrances totaled \$330,000.

#### CX

On, before or after escrow closed on the sale of Pudding Creek, Thomas and respondent Allen, with the intent to substantially benefit herself and without disclosing her true intentions to Prindle, entered into a plan and scheme to deceive and misrepresent to Prindle that Thomas and respondent Allen would perform all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Pudding Creek.

#### CXI

The plan and scheme contemplated that respondents Allen and Beaver and Better Homes would receive a commission for the sale of Pudding Creek; that Thomas and respondent Allen would take title to Pudding Creek, rent said property and apply the rental proceeds to their own benefit; that Thomas and respondent Allen would apply the \$21,011.20 to their own benefit and not for repairs or improvements or negative cash flow on Pudding Creek and, that Thomas and respondent Allen would not make payments on the loans secured by first and second deeds of trust on Pudding Creek.

#### CXII

Thomas and respondent Allen made no payments on the loans secured by deeds of trust on Pudding Creek.

#### CXIII

On or about December 30, 1980, a Notice of Default was filed by the holder of the note secured by a first trust deed on Pudding Creek.

#### CXIV

Respondents Beaver and Scotch failed to advise Prindle of the true value of the note secured by a second deed of trust carried by Prindle; failed to fully advise Prindle of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by Thomas and respondent Allen would be performed.

#### CXV

The note secured by the first trust deed provided for twelve (12) monthly payments of \$2,750 and a balloon payment of \$167,750.

Prindle lost his property.

## NINTH CAUSE OF ACCUSATION

### CXVI

On or about June 11, 1980, Thomas, acting by and through respondents Allen and Baker and Better Homes, offered to purchase real property owned by Ernest L. Willard, Jr. and Margaret Willard and commonly known as 5265 Fifth Street, Rocklin, California.

### CXVII

The offer to purchase included the following terms and conditions:

1. The purchase price of Fifth Street was \$82,000.
2. Thomas would obtain a loan of \$40,000 secured by a first deed of trust on Fifth Street.
3. Of that amount, the Willards would receive approximately \$27,000.
4. Respondents Allen and Baker represented that the remaining loan proceeds, less loan fees, would be paid to Thomas for making repairs on Fifth Street.
5. The Willards would carry a note from Thomas in the amount of \$53,200 and secured by a second trust deed on Fifth Street.

### CXVIII

In reliance upon the above representations, terms and conditions, the Willards agreed to sell Fifth Street.

### CXIX

On or about July 8, 1980, escrow closed on the purchase of Fifth Street according to the above terms and conditions.

### CXX

On or about July 8, 1980, \$6,800 was released from escrow to Thomas. The funds were not used to make repairs on Fifth Street.

### CXXI

On or about July 8, 1980, \$4,100 was paid to respondents Allen and Baker and Better Homes as commissions for the sale of Fifth Street

CXXII

Neither respondents Allen, Baker nor Scotch disclosed to the Willards that the true value of Fifth Street was \$82,000 and that the encumbrances totaled \$93,200.

CXXIII

On, before or after escrow closed on the sale of Fifth Street, Thomas and respondents Allen and Baker, with the intent to substantially benefit themselves and without disclosing their true intentions to the Willards, entered into a plan and scheme to deceive and misrepresent to the Willards that Thomas would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Fifth Street.

CXXIV

The plan and scheme contemplated that respondents Allen and Baker and Better Homes receive a commission for the sale of Fifth Street; that Thomas would take title to Fifth Street, rent the property and apply the rental proceeds to his own benefit; that Thomas would apply the \$6,800 to his own benefit and not for repairs on Fifth Street; and that Thomas would not make payments on the loans secured by first and second deeds of trust on Fifth Street.

CXXV

After making some payments on said first and second trust deed loans, Thomas and his subsequent assignees of the property, failed to make the payments on the loans when they became due.

CXXVI

Respondent Baker made substantial misrepresentations to the Willards that respondent Baker knew, or should have known, were untrue. These misrepresentations induced, and were made by respondent Baker for that purpose, the Willards to sell their property.

CXXVII

Respondents Allen, Baker and Scotch failed to advise the Willards of the true value of the note secured by a second deed of trust carried by the Willards; failed to fully advise the Willards of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by Thomas would be performed.

CXXVIII

The Willards suffered substantial monetary damages on the transaction.

The loan on the first deed of trust has been in default since October, 1981. The Willards made several monthly payments of \$525 per month, but could not afford to continue making payments and cannot afford to make the \$40,000 balloon payment.

The matter is now in litigation.

#### CXXIX

During February through August, 1980, Better Homes Realty was owned by respondents Allen, Baker and Scotch.

Respondent Scotch was the responsible broker of record during such period. In fact, the company was managed by respondent Allen. Respondent Scotch failed to carry out his functions as supervising broker in that he failed to exercise reasonable supervision over salespersons. His abdication of this function created a situation wherein his agents could readily engage in fraud or dishonest dealing, or in conduct constituting negligence and/or incompetence.

#### DETERMINATION OF ISSUES

##### FIRST CAUSE OF ACCUSATION

###### I

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

###### II

Cause was established for discipline against respondents Smart and Noble under §10177(f) and (j) of the Business and Professions Code.

###### III

Cause was established for discipline against respondent Brodrick under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Brodrick under §10176(i) of the Business and Professions Code.

###### IV

Cause was established for discipline against respondents Glenn and Circle J under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondents Glenn and Circle J under §10176(a) and (i) of the Business and Professions Code.

## SECOND CAUSE OF ACCUSATION

### V

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### VI

Cause was established for discipline against respondents Smart and Noble under §10177(f) and (j) of the Business and Professions Code.

## THIRD CAUSE OF ACCUSATION

### VII

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### VIII

Cause was not established for discipline against respondents Smart and Noble.

## FOURTH CAUSE OF ACCUSATION

### IX

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

## FIFTH CAUSE OF ACCUSATION

### X

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### XI

Cause was established for discipline against respondent Allen under §10176(a) and (i) and §10177(g) of the Business and Professions Code.

### XII

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.



## SIXTH CAUSE OF ACCUSATION

### XIII

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### XIV

Cause was established for discipline against respondent Allen under §10177(f) and (j) of the Business and Professions Code.

### XV

Cause was established for discipline against respondent Baker under §10177(f) and (j) of the Business and Professions Code.

### XVI

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

### XVII

Cause was established for discipline against respondent Beaver under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Beaver under §10176(i) of the Business and Professions Code.

## SEVENTH CAUSE OF ACCUSATION

### XVIII

Cause was established for discipline against respondent Gammill under §10177(f) and (j) of the Business and Professions Code.

### XIX

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

XX

Cause was established for discipline against respondent Beaver under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Beaver under §10176(i) of the Business and Professions Code.

EIGHTH CAUSE OF ACCUSATION

XXI

Cause was established for discipline against respondent Allen under §10177(f) and (j) of the Business and Professions Code.

XXII

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

XXIII

Cause was established for discipline against respondent Beaver under §10176(a) and §10177(g) of the Business and Professions Code.

Cause was not established for discipline against respondent Beaver under §10176(i) of the Business and Professions Code.

NINTH CAUSE OF ACCUSATION

XIV

Cause was established for discipline against respondent Allen under §10176(a) and (i) and §10177(g) of the Business and Professions Code.

XXV

Cause was established for discipline against respondent Baker under §10176(a) and (i) and §10177(g) of the Business and Professions Code.

XXVI

Cause was established for discipline against respondent Scotch under §10177(g) and (h) of the Business and Professions Code.

Cause was not established for discipline against respondent Scotch under §10176(a) and (i) of the Business and Professions Code.

#### ALL CAUSES OF ACCUSATION

##### XXVII

The risks inherent in these real estate transactions were, or should have been, obvious to a real estate licensee. The licensee is not a guarantor. However, the duty of the licensee, under the particular offers to purchase involved in this matter, was, at the very least, to explain in ordinary language the consequences to the seller of a default: that the sellers will not receive any money on the note secured by the second and that the sellers will lose the property unless they pay the monthly and balloon payments on the first trust deed (indicating to the seller the amount of the monthly payment and of the balloon payment).

Some of the sellers in these transactions did not have the funds to assume payments on the note secured by the first trust deed; some had the funds but failed to assume payments because it would have been a losing proposition for them to do so. This is not merely the benefit of hindsight; it was obviously foreseeable to a real estate professional, but not to most laymen, given the terms of these offers and all of the surrounding circumstances, that the risk was high.

A seller's agent, faced with such an offer, could have pursued various alternative approaches in discharging the agent's professional responsibility.

##### XXVIII

None of the individuals involved in this matter have any connection with respondent Circle J. The current owners, licensees and employees of Circle J were not involved in the transactions giving rise to these causes for accusation. Therefore, it would not be against the public interest to dismiss the accusation as to Circle J.

#### ORDER

##### FIRST CAUSE OF ACCUSATION

###### I

The licenses and licensing rights of respondent Gammill are revoked.

###### II

The licenses and licensing rights of respondent Brodrick are suspended for twenty (20) days.

III

The licenses and licensing rights of respondent Smart are suspended for twenty (20) days.

IV

The licenses and licensing rights of respondent Noble are suspended for twenty (20) days.

V

The licenses and licensing rights of respondent Glenn are suspended for five (5) days.

VI

The accusation against respondent Circle J is dismissed.

SECOND CAUSE OF ACCUSATION

VII

The licenses and licensing rights of respondent Gammill are revoked.

VIII

The licenses and licensing rights of respondent Noble are suspended for twenty (20) days, the suspension to run consecutively with the twenty (20) day suspension under the First Cause of Accusation, for a total of forty (40) days.

IX

The licenses and licensing rights of respondent Smart are suspended for twenty (20) days, the suspension to run consecutively with the twenty (20) day suspension under the First Cause of Accusation, for a total of forty (40) days.

THIRD CAUSE OF ACCUSATION

X

The licenses and licensing rights of respondent Gammill are revoked.

XI

The accusation against respondent Noble is dismissed as to the Third Cause of Accusation.

XII

The accusation against respondent Smart is dismissed as to the Third Cause of Accusation.

FOURTH CAUSE OF ACCUSATION

XIII

The licenses and licensing rights of respondent Gammill are revoked.

FIFTH CAUSE OF ACCUSATION

XIV

The licenses and licensing rights of respondent Gammill are revoked.

XV

The licenses and licensing rights of respondent Allen are revoked.

XVI

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days.

SIXTH CAUSE OF ACCUSATION

XVII

The licenses and licensing rights of respondent Gammill are revoked.

XVIII

The licenses and licensing rights of respondent Allen are revoked.

XIX

The licenses and licensing rights of respondent Baker are revoked.

XX

The licenses and licensing rights of respondent Scotch are suspended for ten (10) days.

XXI

The licenses and licensing rights of respondent Beaver are suspended for fifteen (15) days.

SEVENTH CAUSE OF ACCUSATION

XXII

The licenses and licensing rights of respondent Gammill are revoked.

XXIII

The licenses and licensing rights of respondent Beaver are suspended for forty-five (45) days.

XXIV

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days.

EIGHTH CAUSE OF ACCUSATION

XXV

The licenses and licensing rights of respondent Allen are revoked.

XXVI

The licenses and licensing rights of respondent Beaver are suspended for thirty (30) days. The suspensions against respondent Beaver shall run consecutively for a total suspension of ninety (90) days.

XXVII

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days.

NINTH CAUSE OF ACCUSATION

XXVIII

The licenses and licensing rights of respondent Allen are revoked.

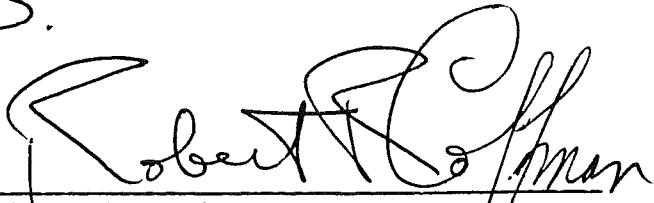
XXIX

The licenses and licensing rights of respondent Baker are revoked.

XXX

The licenses and licensing rights of respondent Scotch are suspended for twenty (20) days. The suspensions against respondent Scotch shall run consecutively for a total suspension of ninety (90) days.

Dated: January 19, 1983.

  
ROBERT R. COFFMAN  
Administrative Law Judge  
Office of Administrative Hearings

DEPARTMENT OF REAL ESTATE

LARRY A. ALAMAO, Counsel  
Department of Real Estate  
1719 - 24th Street  
P.O. Box 160009  
Sacramento, CA 95816  
  
(916) 445-6112

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 )  
 GWEN PATRICIA ALLEN )  
 PAUL HERMAN BEAVER )  
 ANTHONY G. SCOTCH )  
 LOUIS MICHAEL LEVIN )  
 THERESA D. BAKER )  
 )  
 Respondents. )

NO. H-1848 SAC

## ACCUSATION

The Complainant, Duane A. Aasland, a Deputy Real Estate Commissioner of the State of California, for Cause of Accusation against GWEN PATRICIA ALLEN (Respondent Allen), PAUL HERMAN BEAVER (Respondent Beaver), ANTHONY G. SCOTCH (Respondent Scotch), LOUIS MICHAEL LEVIN (Respondent Levin), and TERESA D. BAKER (Respondent Baker) is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

I

This Accusation is made in Complainant's official capacity as a Deputy Real Estate Commissioner.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

II

Respondent Allen is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Business and Professions Code) (Code).

III

Respondent Beaver is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Code).

IV

Respondent Scotch is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Code).

V

Respondent Levin is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Code).

VI

Respondent Baker is presently licensed and/or has license rights under the Real Estate Law (Part I of Division 4 of the Code).

VII

Each of the respondents at various times (as alleged herein) participated in and contributed to the unlawful acts and schemes complained of herein, and as such whenever reference is

///  
///  
///



1 made to any act of a particular respondent with reference to a  
2 specific Cause of Accusation such reference shall be deemed to  
3 mean the act of each respondent named on the Cause of Accusation  
4 acting individually and jointly.

5 VIII

6 Described herein below are certain transactions  
7 involving agreements to sell various parcels of real property.  
8 In each of these transactions one or more of the respondents  
9 participated, individually and jointly or acted as the agent for  
10 the other respondents. Beginning in approximately June 1980  
11 respondents entered into a plan and scheme with reference to said  
12 transactions, as more fully set forth below, with the intent to  
13 substantially benefit themselves without regard to the injury  
14 their acts would cause to the various sellers named hereinunder  
15 and without disclosing to said sellers their true intentions with  
16 respect to the transactions described in the following Causes of  
17 Accusation.

18 IX

19 The plan and scheme described in Paragraph VIII contem-  
20 plated with respect to each of the transactions, one or more of  
21 the following acts or representations:

22 1. Respondents, as buyers would make a written offer to  
23 purchase the seller's property. Said offer may be presented to  
24 the seller by other respondents acting as agents in the  
25 transaction.

26 2. Said offer would call for encumbrances in excess of  
27 the fair market value of the property being purchased.

1           3. As a term and condition of said offer respondents  
2 would agree to obtain a hard money loan secured by a first or  
3 second deed of trust on the property being purchased. Respondents  
4 would then represent to each seller that after the close of  
5 escrow some of the proceeds of the loan would be held by  
6 respondents to make certain improvements or renovations to the  
7 property being purchased, or for other purposes related to the  
8 property.

9           4. Respondents would pay the balance of the purchase  
10 price by executing a note to the sellers secured by a junior deed  
11 of trust on the property.

12           5. After the close of escrow of each transaction  
13 respondent would receive the amount of money held for property  
14 renovation or improvements and would use said money for their own  
15 use and purpose, and not make any improvements or renovations to  
16 the property. Subsequent to the close of each transaction,  
17 respondents would make one or more payments to the sellers on the  
18 note secured by the junior encumbrance or to the holders of the  
19 senior encumbrance described above and then discontinue performing  
20 all of their duties, responsibilities and obligations necessary to  
21 implement and effect all the terms and conditions of the agreement  
22 to purchase the various properties.

23           6. After the respondents had obtained payment of the  
24 funds being held in escrow, respondent would simply walk away from  
25 their obligations under the contract terms leaving the sellers

26 ///

27 ///



1           4. Thomas and Respondents Allen, Beaver and Scotch  
2 represented that the remaining loan proceeds, less loan fees,  
3 would be paid to Thomas and Respondent Allen for "work credit and  
4 negative cash flow" on Pudding Creek.

5           5. Prindle would carry a note from Thomas and  
6 Respondent Allen in the amount of \$165,000.00 and secured by a  
7 second trust deed of Pudding Creek.

8                           XII

9           In reliance upon said representations, terms and  
10 conditions, Prindle agreed to sell Pudding Creek.

11                          XIII

12           On or about September 5, 1980, escrow closed on the  
13 purchase of Pudding Creek according to the terms and conditions  
14 described in Paragraph XI.

15                          XIV

16           On or about September 5, 1980, \$10,505.60 was released  
17 from escrow to Thomas and an additional \$10,505.60 was released  
18 from escrow to Respondent Allen. Said funds were not used for  
19 work or for negative cash flow on Pudding Creek.

20                          XV

21           On or about September 5, 1980, \$15,510.00 was paid to  
22 Respondents Allen, Beaver and Scotch as commissions in the sale of  
23 Pudding Creek.

24    ///

25    ///

26    ///

27    ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XVI

Neither Respondent Allen nor Respondents Beaver and Scotch disclosed to Prindle that the true value of Pudding Creek was \$275,000.00 and that the encumbrances described in Paragraph XI totaled \$330,000.00.

XVII

On, before or after escrow closed on the sale of Pudding Creek, Thomas, Respondent Allen and Respondents Beaver and Scotch, with the intent to substantially benefit themselves and without disclosing their true intentions to Prindle, entered into a plan and scheme to deceive and misrepresent to Prindle that Thomas and Respondent Allen would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Pudding Creek.

XVIII

The plan and scheme described in Paragraph XVII contemplated in essence that Respondents Allen, Beaver and Scotch would receive a commission for the sale of Pudding Creek; that Thomas and Respondent Allen would take title to Pudding Creek, rent said property and apply the rental proceeds to their own benefit; that Thomas and Respondent Allen would apply the \$21,011.20 described in Paragraph XIV to their own benefit and not for repairs or improvements or negative cash flow on Pudding Creek and, that Thomas and Respondent Allen would not make payments on the loans secured by first and second deeds of trust on Pudding Creek.

///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XIX

Thomas and Respondent Allen made no payments on the loans secured by deeds of trust on Pudding Creek.

XX

On or about December 30, 1980, a Notice of Default was filed by the holder of the note secured by a first trust deed on Pudding Creek.

XXI

The facts described above are grounds for the suspension or revocation of Respondent Allen's license under the provisions of Sections 10177(f) and 10177(j) of the Code.

XXII

Respondents Beaver and Scotch failed to advise Prindle of the true value of the note secured by a second deed of trust carried by Prindle; failed to fully advise Prindle of the risks inherent in the sales transaction and failed to take steps to insure that the promises made by Thomas and Respondent Allen would be performed.

XXIII

The facts described above are grounds for the suspension or revocation of the licenses of Respondents Beaver and Scotch under Sections 10176(a), 10176(i) or 10177(g) or 10177(h) of the Code.

SECOND CAUSE OF ACCUSATION

There is hereby incorporated into this second, separate and distinct Cause of Accusation, all of the allegations contained  
///

1 in Paragraphs I, II and V of the First Cause of Accusation with  
2 the same force and effect as if herein fully set forth.

3 XXIV

4 On or about July 1, Respondent Levin, acting as an agent  
5 for ERA THE REAL ESTATE COMPANY (ERA) entered into a listing  
6 agreement granting ERA the exclusive right to sell certain real  
7 property owned by HERSCHEL and MILDRED TRAVIS (Travis) and  
8 commonly known as 1013 RIVER ROAD, Modesto, CA (River Road).

9 XXV

10 On or about July 22, 1980, Thomas and Respondent Allen,  
11 acting by and through Respondent Levin offered to purchase River  
12 Road according to the following terms and conditions:

13 1. The purchase price of River Road was \$132,000.00.

14 2. Thomas and Respondent Allen would obtain a loan of  
15 \$79,000.00 secured by a first trust deed on River Road.

16 3. Of that amount, approximately \$22,500.00 would be  
17 used to pay the existing loan on River Road and the Travises would  
18 receive approximately \$31,300.00.

19 4. Thomas and Respondents Allen and Levin represented  
20 that the remaining loan proceeds, less loan fees, would be  
21 received by Thomas and Respondent Allen as "cash back through this  
22 transaction" and that the Travises would be adequately protected  
23 in the transaction.

24 5. The Travises would carry a note from Thomas and  
25 Respondent Allen in the amount of \$79,200.00 and secured by a  
26 second trust deed on River Road.

27 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XXVI

In reliance upon said representation, terms and conditions, the Travises agreed to sell River Road.

XXVII

On or about August 20, 1980, escrow closed on the purchase of River Road according to the terms and conditions described in Paragraph XXV.

XXVIII

On or about August 20, 1980, \$5,500.00 was released from escrow to Respondent Allen and an additional \$2,176.00 was released from escrow to Thomas and Respondent Allen.

XXIX

On or about August 20, 1980, \$3,940.00 was paid to Respondent Levin as a commission in the sale of River Road.

XXX

Neither Respondent Allen nor Respondent Levin disclosed to the Travises that the true value of River Road was \$132,000.00 and that the encumbrances described in XXV totaled \$158,200.00.

XXXI

On, before or after escrow closed on the sale of River Road, Thomas, Respondent Allen and Respondent Levin, with the intent to substantially benefit themselves and without disclosing their true intentions to the Travises, entered into a plan and scheme to deceive and misrepresent to the Travises that Thomas and Respondent Allen would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase River Road.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XXXII

The plan and scheme described in Paragraph XXXI contemplated in essence that Respondent Levin, would receive a commission for the sale of River Road; that Thomas and Respondent Allen would take title to River Road, rent said property and apply the rental proceeds to their own benefit; that Thomas and Respondent Allen would apply the \$7,676.00 described in Paragraph XIV to their benefit and not for use on River Road; and that Thomas and Respondent Allen would not make payments on the loans secured by first and second deeds of trust on River Road.

XXXIII

Thomas and Respondent Allen made no payments on the loans secured by deeds of trust on River Road.

XXXIV

On or about January 22, 1981, a Notice of Default was filed by the holder of the note secured by a first trust deed on River Road.

XXXV

The facts described above are grounds for the suspension or revocation of Respondent Allen's license under the provisions of Sections 10177(d) and 10177(j) of the Code.

XXXVI

Respondent Levin failed to advise the Travises of the true value of the note secured by a second deed of trust carried by the Travises; failed to fully advise the Travises of the risks

///  
///

1 inherent in the sales transaction and failed to take steps to  
2 insure that the promises made by Thomas and Respondent Allen would  
3 be performed.

4 XXXVII

5 The facts described above are grounds for the suspension  
6 or revocation of the licenses of Respondent Levin under Sections  
7 10176(a), 10176(i) or 10177(g) or 10177(h) of the Code.

8 THIRD CAUSE OF ACCUSATION

9 There is hereby incorporated into this third, separate  
10 and distinct Cause of Accusation, all of the allegations contained  
11 in Paragraphs I, II, III and IV of the First Cause of Accusation  
12 with the same force and effect as if herein fully set forth.

13 XXXVIII

14 On or about June 11, 1980, Thomas acting by and through  
15 Respondents Allen, Baker and Scotch offered to purchase real  
16 property owned by ERNEST L. WILLARD, JR. and MARGARET WILLARD  
17 (Willards) and commonly known as 5265 FIFTH STREET, Rocklin, CA  
18 (Fifth Street).

19 XXXIX

20 Said offer to purchase included the following terms and  
21 conditions:

- 22 1. The purchase price of Fifth Street was \$82,000.00.
- 23 2. Thomas would obtain a loan of \$40,000.00 secured by  
24 a first deed of trust on Fifth Street.
- 25 3. Of that amount, the Willards would receive  
26 approximately \$27,000.00.

27 ///

1           4. Respondents Allen, Baker and Scotch represented that  
2 the remaining loan proceeds, less loan fees, would be paid to  
3 Thomas for making repairs on Fifth Street.

4           5. The Willards would carry a note from Thomas in the  
5 amount of \$53,200.00 and secured by a second trust deed on Fifth  
6 Street.

7                               XL

8           In reliance upon said representations, terms and  
9 conditions, the Willards agreed to sell Fifth Street.

10                              XLI

11           On or about July 8, 1980, escrow closed on the purchase  
12 of Fifth Street according to the terms and conditions described in  
13 Paragraph XXXIX.

14                              XLII

15           On or about July 8, 1980, \$6,800.00 was released from  
16 escrow to Thomas. Said funds were not used to make repairs on  
17 Fifth Street.

18                              XLIII

19           On or about July 8, 1980, \$4,100.00 was paid to  
20 Respondents Allen, Baker and Scotch as commissions for the sale of  
21 Fifth Street.

22                              XLIV

23           Neither Respondents Allen, Baker nor Scotch disclosed to  
24 the Willards that the true value of Fifth Street was \$82,000.00  
25 and that the encumbrances described in Paragraph XXXIX totaled  
26 \$93,200.00.

27    ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XLV

On, before or after escrow closed on the sale of Fifth Street, Thomas, Respondents Allen, Baker and Scotch, with the intent to substantially benefit themselves and without disclosing their true intentions to the Willards, entered into a plan and scheme to deceive and misrepresent to the Willards that Thomas would perform and take care of all the details, duties and responsibilities necessary to implement and effect the terms and conditions of the agreement to purchase Fifth Street.

XLVI

The plan and scheme described in Paragraph XLV contemplated in essence that Respondents Allen, Baker and Scotch would receive a commission for the sale of Fifth Street; that Thomas would take title to Fifth Street, rent said property and apply the rental proceeds to his own benefit; that Thomas would apply the \$6,800.00 described in Paragraph XIV to his own benefit and not for repairs on Fifth Street; and that Thomas would not make payments on the loans secured by first and second deeds of trust on Fifth Street.

XLVII

After making some payments on said first and second trust deed loans, Thomas and his subsequent assignees of the property, failed to make the payments on said loans when they became due.

///  
///  
///

1 XLVIII

2 Respondents Allen, Baker and Scotch failed to advise the  
3 Willards of the true value of the note secured by a second deed of  
4 trust carried by the Willards; failed to fully advise the Willards  
5 of the risks inherent in the sales transaction and failed to take  
6 steps to insure that the promises made by Thomas would be  
7 performed.

8 XLIX

9 The facts described above are grounds for the suspension  
10 or revocation of the licenses of Respondents Allen, Baker and  
11 Scotch under Sections 10176(a), 10176(i) or 10177(g) or 10177(h)  
12 of the Code.

13 L

14 The purpose of this Accusation is to give the  
15 Respondents notice pursuant to the Administrative Procedure Act of  
16 the acts or omissions with which they are charged to the end that  
17 Respondents will be able to prepare their defense. Accordingly,  
18 Respondents are hereby notified that the Complainant may offer  
19 evidence on all facts and encumbrances preceding, leading up to,  
20 surrounding, accompanying or following the transactions and/or  
21 the acts and omissions alleged above which show or tend to show  
22 the Respondent's motive, intent, modus operandi or other matters  
23 or conduct related to the acts or omissions with which they are  
24 charged. In addition, the Complainant may offer evidence  
25 regarding Respondent's credibility.

26 ///

27 ///

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

9  
10   
11 DUANE A. AASLAND  
Deputy Real Estate Commissioner

12 Dated at Sacramento, California  
13 this 6<sup>th</sup> day of August, 1982.