

FILED
JAN 25 2001

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MARILYN HOPE JOHNSTON,) No. H-2193 SD
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On June 11, 1996, an Order was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on August 13, 1996.

On March 28, 2000, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that she has undergone

1 sufficient rehabilitation to warrant the reinstatement of his
2 real estate broker license. The Order in this matter found that
3 Respondent, while licensed as a real estate broker, failed to
4 properly handle trust funds and failed to submit trust fund
5 reports required by law.

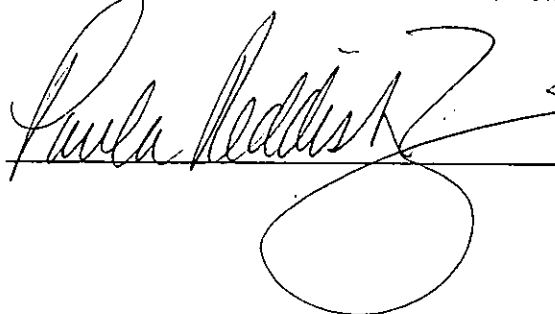
6 Given the violations found and the fact that Respondent
7 has not engaged as a broker in the operation of a real estate
8 brokerage business or otherwise acted in a fiduciary capacity,
9 Respondent has not established that she has complied with Section
10 2911 (j), Title 10, California Code of Regulations. Consequently,
11 I am not satisfied that Respondent is sufficiently rehabilitated
12 to receive an unrestricted real estate broker license.
13 Additional time and evidence of correction as a restricted real
14 estate broker is necessary to establish that Respondent is
15 rehabilitated.

16 NOW, THEREFORE, IT IS ORDERED that Respondent's
17 petition for reinstatement of her real estate broker license is
18 denied.

19 This Order shall become effective at 12 o'clock
20 noon on February 14, 2001.

21 DATED: DECEMBER 6, 2000.

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

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FILED
JAN 13 1998
DEPARTMENT OF REAL ESTATE

By R. Kiederkopf

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	DRE No. H-2193 SD
)	
UNIFIED MORTGAGE SERVICES, INC)	
MICHELE ANN BROCK)	
individually and as designated)	
officer of Unified Mortgage)	
Services, Inc.)	OAH No. L-9512116
)	
Respondents.)	
)	

DECISION AFTER REJECTION

The matter came on for hearing before James Ahler, Administrative Law Judge of the Office of Administrative hearings, in Los Angeles, California, on June 6, 1997.

Elliott MacLennan, Counsel, represented the complainant. Respondents were present and represented by Gregg A. Johnson.

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

On June 12, 1997 the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government Code of



1 the State of California, Respondents were served with notice of my
2 determination not to adopt the Proposed Decision of the
3 Administrative Law Judge along with a copy of said Proposed
4 Decision. Respondents were notified that the case would be
5 decided by me upon the record, the transcript of proceedings held
6 on June 6, 1997, and upon any written argument offered by
7 Respondents. No such argument was submitted.

8 I have given careful consideration to the record in this
9 case, including the transcript of proceedings of June 6, 1997.

10 The following shall constitute the Decision of the Real
11 Estate Commissioner in this proceeding:

12 FINDING OF FACT

13 I have determined that the Findings of Fact in the
14 Proposed Decision of the Administrative Law Judge are appropriate
15 in all respects and they are adopted as the Findings of Fact of
16 the Real Estate Commissioner in this proceedings.

17 DETERMINATION OF ISSUES

18 I have also determined that the Determinations of Issues
19 proposed by the Administrative Law Judge are appropriate in all
20 respects and they are adopted as the Determination of Issues of
21 the Real Estate Commissioner in this proceedings.

22 ORDER

23 I.

24 The Proposed Order of the Administrative Law Judge as it
25 pertains to MICHELE ANN BROCK is adopted.

26

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II.

1
2 The real estate broker license and license rights of
3 Respondent UNIFIED MORTGAGE SERVICES, INC., under the Real Estate
4 Law (Part 1 of Division 4 of the Code) are hereby revoked.

5 However, Respondent shall be entitled to apply for and
6 be issued a restricted real estate broker licenses if it makes
7 application therefor and pays to the Department of Real Estate the
8 appropriate fee for said license within ninety (90) days of the
9 effective date of the Decision herein.

10 The restricted real estate broker license issued to
11 Respondent shall be subject to all of the provisions of Section
12 10156.7 of the Code and the following limitations, conditions and
13 restrictions imposed under authority of Section 10156.6 of the
14 Code:

15 A. The restricted license may be suspended prior to
16 hearing by Order of the Real Estate Commissioner in the event of a
17 Respondent's conviction (including conviction of a plea of nolo
18 contendere) to a crime which bears a significant relationship to
19 said Respondent's fitness or capacity as a real estate licensee.

20 B. The restricted license may be suspended prior to
21 hearing by Order of the Real Estate Commissioner on evidence
22 satisfactory to the Commissioner that Respondent has, after the
23 effective date of the Order herein, violated provisions of the
24 California Real Estate Law, the Subdivided Lands Law, Regulations
25 of the Real Estate Commissioner or conditions attaching to said
26 restricted license.

27



1 C. Respondent shall obey all laws of the United States,
2 the State of California and its political subdivisions, and shall
3 further obey and comply with all rules and regulations of the Real
4 Estate Commissioner.

5 D. Respondent shall not be eligible for the issuance of
6 unrestricted real estate license nor the removal of any of the
7 conditions, limitations or restrictions of the restricted license
8 until at least two (2) years has elapsed from the issuance of any
9 restricted real estate license.

10 E. As a further condition of any restricted license
11 being issued to Respondent, Respondent shall first provide evidence
12 satisfactory to the Commissioner that the deficit in the amount of
13 \$12,064.23, has been cured including the identity of the source of
14 funds used to cure the deficit.

15 III

16 A. Respondent UNIFIED MORTGAGE SERVICES, INC., shall
17 pay, pursuant to Section 10148 of the Code, the Commissioner's
18 reasonable cost for an audit to determine if Respondent has
19 corrected the trust fund violations found in the Determination of
20 Issues and is now otherwise operating in compliance with Real
21 Estate Law. In calculating the amount of the Commissioner's
22 reasonable costs, the Commissioner may use the estimated average
23 hourly salary for all persons performing audits of real estate
24 brokers, and shall include an allocation for travel costs,
25 including mileage, time to and from the auditor's place of work,
26 and per diem.

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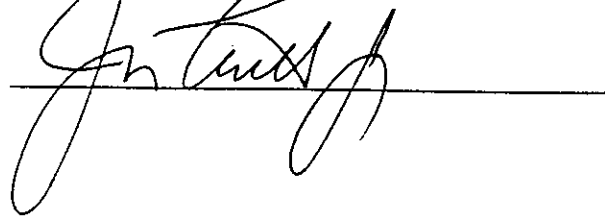
(1) Respondent shall pay such cost within 45 days of receipt of an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities;

(2) If Respondent fails to pay, within forty-five (45) days from receipt of the invoice specified above, the Commissioner's reasonable costs for an audit to determine if Respondent has corrected the violations found in the Determination of Issues, the Commissioner may order the indefinite suspension of Respondent's real estate license and license rights. The suspension shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for such payment. The Commissioner may impose further reasonable disciplinary terms and conditions upon Respondent's real estate license and license rights as part of any such agreement.

This Decision shall become effective at 12 o'clock noon on January 12, 1998.

Dated: 1/12/98

JIM ANTT, JR.
Real Estate Commissioner

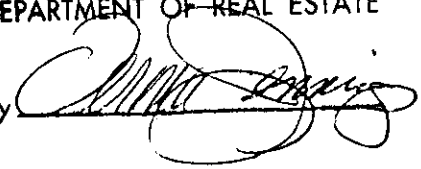


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Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
JUL 22 1996
DEPARTMENT OF REAL ESTATE
By 

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-2193 SD
UNIFIED MORTGAGE)	<u>STIPULATION AND AGREEMENT</u>
SERVICES, INC.,)	
a corporation; and)	<u>IN</u>
MARILYN HOPE JOHNSTON,)	
individually and as)	<u>SETTLEMENT AND ORDER</u>
designated officer of)	
Unified Mortgage)	
Services Inc.,)	
)	
)	
)	
Respondents.)	

It is hereby stipulated by and between MARILYN HOPE JOHNSTON (sometimes referred to as respondent) and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on October 31, 1995 in this matter:

- 1. All issues which were to be contested and all evidence which was to be presented by Complainant and respondent

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

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

10 3. Respondent timely filed a Notice of Defense pursuant
11 to Section 11505 of the Government Code for the purpose of
12 requesting a hearing on the allegations in the Accusation.
13 Respondent hereby freely and voluntarily withdraws said Notice of
14 Defense. Respondent acknowledges that she understands that by
15 withdrawing said Notice of Defense she thereby waives her right to
16 require the Commissioner to prove the allegations in the
17 Accusation at a contested hearing held in accordance with the
18 provisions of the APA and that she will waive other rights
19 afforded to her in connection with the hearing such as the right
20 to present evidence in his defense and the right to cross-examine
21 witnesses.

22 4. This Stipulation and Agreement in Settlement and
23 Order (Stipulation) is based on the factual allegations contained
24 in the Accusation. In the interest of expedience and economy,
25 respondent chooses not to contest these allegations but to remain
26 silent and understands that, as a result thereof, these factual
27 allegations, without being admitted or denied, will serve as a



1 prima facie basis for the disciplinary action stipulated to
2 herein. This Stipulation is based on respondent's decision not to
3 contest the Accusation. The Real Estate Commissioner shall not be
4 required to provide further evidence to prove said factual
5 allegations.

6 5. This Stipulation is based on respondent's decision
7 not to contest the allegations set forth in the Accusation as a
8 result of the agreement negotiated between the parties. This
9 Stipulation, based on respondent's decision not to contest the
10 Accusation, is expressly limited to this proceeding and any
11 further proceeding initiated by or brought before the Department
12 of Real Estate based upon the facts and circumstances alleged in
13 the Accusation, and made for the sole purpose of reaching an
14 agreed disposition of this proceeding. The decision of respondent
15 not to contest the factual statements alleged, and as contained in
16 the stipulated Order, is made solely for the purpose of
17 effectuating this Stipulation. It is the intent and understanding
18 of the parties that this Stipulation shall not be binding or
19 admissible against respondent in any actions against respondent by
20 third parties.

21 6. It is understood by the parties that the Real Estate
22 Commissioner may adopt the Stipulation as his decision in this
23 matter thereby imposing the penalty and sanctions on respondent's
24 real estate licenses and license rights as set forth in the
25 "Order" herein below. In the event that the Commissioner in his
26 discretion does not adopt the Stipulation, the Stipulation shall
27 be void and of no effect, and respondent shall retain the right to



1 a hearing and proceeding on the Accusation under the provisions of
2 the APA and shall not be bound by any admission or waiver made
3 herein.

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

10 DETERMINATION OF ISSUES

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

15
16 The acts or omissions of MARILYN HOPE-JOHNSTON, as
17 described in Paragraph 4, above, are in violation of Sections
18 10145 and 10232.25 of the California Business and Professions Code
19 and Sections 2832.1 and 2834 of the California Code of Regulations
20 and additionally consist of negligence and/or incompetence and are
21 a basis for the suspension or revocation of said respondent's
22 licenses and license rights pursuant to Sections 10177(d) and
23 10177(g) of the California Business and Professions Code.

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

4 C. Respondent shall obey all laws of the United States,
5 the State of California and its political subdivisions, and shall
6 further obey and comply with all rules and regulations of the Real
7 Estate Commissioner.

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

20 E. Respondent shall not be eligible for the issuance of
21 an unrestricted real estate license nor the removal of any of the
22 conditions, limitations or restrictions of the restricted license
23 until at least two (2) years have elapsed from the effective date
24 of the Decision.

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F. Respondent shall not be a designated officer for any real estate corporation during the restricted period.

DATED: 5-28-96 Elliott Mac Lennan
ELLIOTT MAC LENNAN
Counsel for Complainant

* * * *

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

DATED: 5/24/96 Marilyn Hope Johnston
MARILYN HOPE JOHNSTON

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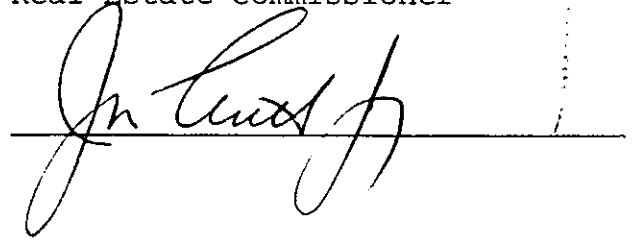
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The foregoing Stipulation and Agreement in Settlement is
hereby adopted by me as my Decision and Order and shall become
effective at 12 o'clock noon on August 13, 1996.

IT IS SO ORDERED 6-11, 1996.

JIM ANTT, JR.
Real Estate Commissioner



facts given

FILED
JUL 14 1997
DEPARTMENT OF REAL ESTATE

By *K. H. ederholt*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
UNIFIED MORTGAGE SERVICES, INC.,)
a corporation, and)
MICHELE ANN BROCK and)
MARILYN HOPE JOHNSTON,)
individually and as designated)
officers of United Mortgage)
Services, Inc.,)
Respondents.)

NO. H-2193 SD
L-9512116

NOTICE

TO: UNIFIED MORTGAGE SERVICES, INC. and MICHELE ANN BROCK,
Respondents
and
GREGG A JOHNSON, their Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated June 12, 1997, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated June 12, 1997, is attached
for your information.

In accordance with Section 11517(c) of the Government

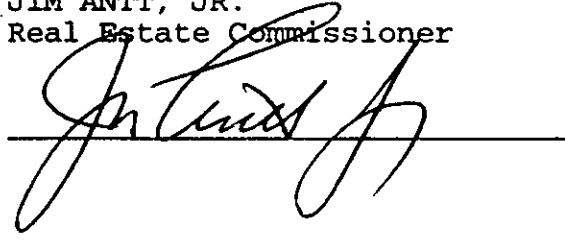
1 Code of the State of California, the disposition of this case
2 will be determined by me after consideration of the record herein
3 including the transcript of the proceedings held on June 6, 1997,
4 and any written argument hereafter submitted on behalf of
5 respondents and complainant.

6 Written argument of respondents to be considered by me
7 must be submitted within 15 days after receipt of the transcript
8 of the proceedings of June 6, 1997, at the Los Angeles office of
9 the Department of Real Estate unless an extension of the time is
10 granted for good cause shown.

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

16 DATED: 7/8/97

17 JIM ANTT, JR.
18 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)
UNIFIED MORTGAGE SERVICES, INC.,) DRE No. H-2193 SD
a corporation, and) OAH No. L-9512116
MICHELE ANN BROCK and)
MARILYN HOPE JOHNSTON,)
individually and as designated)
officers of Unified Mortgage)
Services, Inc.,)
Respondents.)

PROPOSED DECISION

On June 6, 1997, James Ahler, Administrative Law Judge, heard this matter in San Diego.

Elliott Mac Lennan, Counsel, represented complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate (hereafter the Department).

Gregg A. Johnson, Attorney at Law, represented Unified Mortgage Services, Inc. (hereafter respondent Unified) and Michele Ann Brock (hereafter respondent Brock), who was present throughout the proceedings.

No appearance was made by or on behalf of Marilyn Hope Johnston, who settled the administrative action before hearing.

The record was opened, the Department's unopposed motions to amend paragraphs XXIV, XXVIII (a) and (b), and XXIX of the Amendment to Accusation were granted, complainant waived the right to make an opening statement, an opening statement was made on respondents' behalf, official notice was taken of Paragraph XV of the Amendment to Accusation, oral and documentary evidence was received, closing statements were given, the record was closed, and the matter was submitted.

FINDINGS OF FACT

I

On October 31, 1995, complainant J. Chris Graves, Deputy Real Estate Commissioner, Department of Real Estate, State

of California, signed the Accusation in his official capacity.

The Accusation and other required jurisdictional documents were served on respondents Unified Mortgage Service, Inc., and Marilyn Hope Johnston. The Accusation did not name Michele Ann Brock as a respondent.

Respondents timely filed notices of defense.

On March 6, 1997, the Amendment to Accusation was filed with the Department of Real Estate by complainant in his official capacity. The Amendment to Accusation and other required jurisdictional documents were served on respondents Unified Mortgage Service, Inc., and Michele Ann Brock.

Respondent Brock filed a timely notice of defense. The new allegations against respondent Unified were controverted under Government Code section 11507.

On May 24, 1996, respondent Marilyn Hope Johnston signed a stipulation and agreement in settlement. On June 11, 1996, the stipulation and agreement in settlement was adopted by Jim Antt, Jr., Real Estate Commissioner.

The hearing was originally set for October 11, 1996. Complainant's unopposed motion for a continuance was granted and the hearing was reset for June 6, 1997.

II

On June 9, 1994, the Department issued respondent Unified Mortgage Services, Inc., corporate real estate broker license identification no. 01182001. Respondent's main office was located at 591 Camino de La Reina, Suite 910, San Diego, CA 92108. Marilyn Hope Johnston was identified as respondent's designated officer.

Respondent's designation of Marilyn Hope Johnston was canceled on August 2, 1995, and Michele Ann Brock was identified as respondent's designated officer.

Respondent's corporate real estate broker's license expires on June 8, 1998, unless renewed, suspended, or revoked. The designation of Michele Ann Brock as respondent's designated officer expires on June 8, 1998, as well.

There is no history of any discipline against the corporate real estate broker's license issued to respondent Unified.

III

On December 12, 1994, the Department issued real estate salesperson's license identification number 0119065 to Michele Ann Brock, who was then employed by respondent Unified. Respondent Brock's salesperson's license expired on May 25, 1995.

On May 25, 1995, the Department issued real estate broker's license identification no. 0119605 to respondent Brock, which expires on May 24, 1999, unless renewed, suspended, or revoked.

On August 2, 1995, respondent Brock was identified as the designated officer of respondent Unified. Respondent Brock's designation expires on June 8, 1998, unless her real estate broker's license is renewed, suspended, or revoked.

There is no history of any discipline against the licenses issued to respondent Brock.

IV

Respondent Unified engages in trust deed servicing. It collects payments coming due on real properties and distributes those payments to persons to whom the payments are owed. Respondent is a "threshold broker" and is subject to Business and Professions Code section 10232. Respondent Unified does not participate in transactions involving the purchase or sale of real property.

Respondent engaged and uses Maloy, Rosner & Brown, Certified Public Accountants, to provide accounting services including an annual trust fund accounts review. Maloy, Rosner & Brown's offices are located in San Diego. Kevin Brown, a Certified Public Accountant, is the partner responsible for providing respondent with accounting services.

Respondent does not advertise. Respondent obtains most of its business through referrals from independent real estate brokers. About one-third to one-half of respondent's business arises out of referrals from Milton Brock, respondent Brock's father, who maintains business offices in the same office building as respondent Unified.

IV

All evidence relating to the Amendment to Accusation arises out of two separate audits performed by the Department of Real Estate.

The first audit was performed by Jennifer Borrromeo (hereafter Borrromeo) and covered the audit period September 1

through December 31, 1994. The second audit was performed by Edilberto "Bobby" Datan (hereafter Datan) and covered the audit period July 1, 1995, through July 31, 1996.

V

In mid-February 1995, Borrromeo began her audit. She wanted to determine if respondent Unified handled and accounted for trust funds in accordance with the Real Estate Law and the Real Estate Commissioner's regulations. Marilyn Hope Johnston was then respondent Unified's designated officer and its Vice President/Secretary.

Borrromeo reviewed respondent Unified's bank statements, canceled checks, deposit slips, control record, receipts and disbursement journals, borrower ledger cards, loan servicing files, licenses and agreements, and other related documents. Borrromeo spoke with both Johnston and respondent Brock.

Johnston told Borrromeo respondent Unified serviced approximately 800 loans for 500 customers and collected approximately \$300,000 each month.

Borrromeo's audit disclosed three primary areas of concern.

First, respondent Unified did not prepare and forward to the Department a quarterly report for the quarter ending September 30, 1994, within thirty days as required by law.

Second, there were two distinct problems with a trust account over which the Department had jurisdiction.

Borrromeo determined respondent Unified opened and maintained trust account no. 04-315426 at the Bank of Commerce in San Diego. This trust account was used to handle loan payments received from borrowers. Funds from this account were disbursed to lenders and to respondent Unified in payment of its services.

Respondent Brock was signatory on the trust account, as was Johnston. While respondent Brock was given authority by Johnston to sign on the trust account, there was no written document from Johnston authorizing respondent Brock to be a signatory on the trust account as required by regulation.

In addition to the problem of Brock's lack of written authority to withdraw funds from the trust account, the trust account did not balance. Borrromeo calculated the adjusted bank balance for trust account no. 04-315426 and compared that figure to the total balance due each lender from separate beneficiary records. She found the adjusted bank balance on December 31, 1994, was \$191,180.18, but the total balance due all lenders,

based on the separate beneficiary records, was \$204,140.42. Thus, there was a shortage of \$12,960.21 in trust account no. 04-315426 on December 31, 1994.

VI

By letter dated May 10, 1995, Donna M. Beck, a Deputy Real Estate Commissioner, wrote to Johnston and asked for "an explanation of the issues listed above and what, if any, steps have been taken to correct and then prevent future violations." Johnston responded by letter dated May 19, 1995.

Johnston represented the "total negative beneficiary balance of \$13,060.24 [\$100 of which was respondent Unified's own funds used to open the account] was due to non sufficient funds and an error. All negative balances have been corrected. A five day hold of checks is enforce and our bank faxes non sufficient funds to us as soon as they are notified in order to help prevent these errors."

Johnston reported when Brock signed the trust account signature cards, there was not formal written authorization, but that omission was remedied on March 6, 1995.

Finally, Johnston stated respondent Unified's failure to file the quarterly report on time was "due to an error."

VII

Because of the size of the trust fund shortage, the Department's standard practice was to file an accusation. That practice was followed in this matter.

The decision to file an accusation against respondents Johnston and Unified was not the result of Milon Brock's possible involvement in respondent Unified's business, but the result of the relatively large trust fund shortage.

In March 1996 the Department had become increasingly concerned about Milon Brock's possible involvement respondent Unified's business. Although an accusation had been filed and was pending against respondents Unified and Johnston, an additional audit was requested. Datan was assigned to conduct that audit.

VIII

In early October 1996, Datan began his audit.

Datan wanted to determine if respondent Unified handled and accounted for trust funds in accordance with the Real Estate Law and the Real Estate Commissioner's regulations and, further,

he wanted to examine the Bennett and Flint loans (which were the subject of an investigation by the San Diego County District Attorney's Office). By the time of Datan's audit, respondent Michele Ann Brock was respondent Unified's designated officer.

Datan reviewed respondent Unified's bank statements, canceled checks, deposit slips, control record, receipts and disbursement journals, borrower ledger cards, loan servicing files, licenses and agreements, quarterly and annual trust fund reports, and related documents. Datan spoke with respondent Brock during and following his audit.

Respondent Brock told Datan respondent Unified serviced approximately 350 loans for 250 customers. The total amount of loans being serviced by respondent Unified was approximately \$15,500,000.

Datan found respondent Unified prepared and had sent to the Department all quarterly report in a timely fashion since Borromeo's audit.

Datan determined respondent Unified maintained one trust account at the Bank of Commerce in San Diego (account no. 04-315426) which was used to deposit loan payments received from borrowers. Funds from this account were disbursed to lenders and to respondent Unified in payment of its services. Respondent Brock was the only signatory on that trust account.

Datan determined the adjusted bank balance for trust account no. 04-315426, when compared to the total balance due each lender according to the separate beneficiary records, was fairly represented and balanced.

The three areas of principal concern identified in the Department's last audit had been fully remedied.

Datan findings concerning the Bennett and Flint loans did not disclose any wrongdoing.

However, Datan determined the "control records maintained for Trust Account No. 004315426 were inadequate" in that:

"because dates of deposit were not recorded and the total amount deposited on a specific date was not cross-referenced to a specific report printout (deposit register) where the detail of the total amount deposited on that given date, by payor and amount paid, were recorded. For example, on May 29, 1966, four separate deposits were made on that date. Each deposit has to be examined and match the total recorded on the control recorded to the total shown on the deposit

register. Had the total of each deposit recorded on the control record for that date been referenced to a specific deposit register by a batch reference number, for example, then each deposit total recorded on the control number is cross-referenced to a specific deposit register batch number. The deposit register did not have the information of the payors in cash."

Datan, who was not and is not a certified public accountant, felt respondent's control records were cumbersome and did not comply with generally accepted accounting principles requiring "readily available information." Nevertheless, Datan was able to trace each trust account transaction, identify the total amount deposited, the date of the deposit, the name of the payor, and gain other required information from respondent's records, albeit not as quickly as he would have liked.

The trust account "violations" Datan found were common. Datan estimated about thirty percent of the audits he conducts result in his determination a broker failed to maintain "readily available information." Datan did not consider respondent's violations to be of a serious nature.

Datan also determined dates for certain transactions contained in records were incorrect in that:

(1) on July 1, 1996, respondent Unified received \$102.00 which was not recorded until the following day;

(2) on July 16, 1996, respondent Unified received \$1,733.52 which was not recorded until the next day;

(3) on July 16, 1996, respondent Unified received \$979.31 which was not recorded until the next day; and,

(4) on July 29, 1996, respondent Unified received \$1,576.00 which was not recorded until the next day.

Finally, Datan believed respondent Unified charged fees in excess of the amount authorized by Civil Code section 2941(e)(1). Datan's testimony regarding this issue was presented in aggravation as complainant elected not to further amend the Amendment to the Accusation to include this alleged violation as a grounds for license discipline.

Datan testified respondent Brock was helpful and candid throughout his audit. There was no effort by either respondent Unified or Brock to deceive any person or entity concerning the status of trust account.

IX

Kevin Brown (hereafter Brown), the certified public accountant respondent hired to provide independent accountings, has several clients who engage in trust deed servicing and has substantial experience in the field. In contrast to Datan's opinion, Brown believed the trust account reports prepared by respondent Unified from Applied Business Software, Inc.'s software complied with generally accepted accounting principles and complied with the law.

X

Respondent Michele Ann Brock graduated from the University of San Diego with a Bachelor of Arts degree in 1993. She is currently pursuing her Master of Arts degree at the University of San Diego.

Respondent Brock is the President and sole shareholder of respondent Unified. She purchased the shares from Golden Pacific Capital Group in May 1995 and then became a corporate officer. Respondent Brock currently supervises three corporate employees.

Respondent Brock is current in her professional continuing education requirements.

Since respondent Brock became the designated officer, respondent Unified has maintained its trust records on a computer. Unified used and uses a trust deed servicing software program called TDS Financier (Software for the Mortgage Industry). Respondent purchased the computer software from Applied Business Software, Inc., whose offices are in California.

In addition to computer generated trust account reports, respondent Brock relies on the advice of CPA Brown, who told her the computer generated trust account records complied with the law and with generally accepted accounting principles.

With regard to respondent Unified's failure to correctly record the date funds were received in July 1996, it was established the TDS Financier program "assumes that funds are deposited on the same day they are received."¹

The software's assumption does not always prove to be the case, and respondent Brock has since insisted that a receipt for funds which are not deposited the same day they are received

¹ This assumption is set forth in the written materials accompanying the computer software at section 7-9.

must contain a written notation to that effect. Respondent Brock reviews the firm's receipts on a daily basis.

XI

Concerning the evidence offered in aggravation - that respondent Unified charged "excessive fees" - respondent Brock testified the purported "excessive" fees were, in fact, standard charges in the industry. Respondent Unified's fees of \$25 per fax, a \$60 demand fee, a \$75 reconveyance fee, and extra charges for expedited and special services were and are common according to respondent Brock.

Respondents argue Civil Code section 2941(e)(2) simply sets forth a conclusive presumption: Fees less than \$65 for services relating to the preparation, execution and recordation of a full reconveyance, including, but not limited to, document preparation and forwarding services rendered to effect a full reconveyance and, in addition, official fees, are statutorily reasonable; however, the statute does not define what constitutes excessive fees.

Without admitting respondent Unified charged excessive fees, respondent Brock testified respondent reduced its fees on the average of \$65/transaction following Datan's audit.

XII

Between June 9, 1994, and August 2, 1995, respondent Johnston was respondent Unified's designated corporate officer.

It was not established respondent Brock had any ownership interest in respondent Unified before May 1995, nor was it established respondent Brock was involved in the operation or management of respondent Unified before then.

Respondent Brock purchased all corporate shares of respondent Unified in May 1995 and became a corporate officer.

Between August 2, 1995, and the present, respondent Brock was respondent Unified's designated corporate officer.

DETERMINATION OF ISSUES

I

Cause exists to suspend or revoke respondent Unified's real estate broker's license under Business and Professions Code sections 10145 and 10159.2 and Title 10, California Code of Regulations, section 2832.1. Clear and convincing evidence established respondent Unified permitted, allowed, and caused a

deficit of \$12,064.23 to exist in its client trust account on December 31, 1994.² This determination is based on Finding of Fact V.

II

Cause exists to suspend or revoke respondent Unified's real estate broker's license pursuant to Business and Professions Code sections 10145 and Title 10, California Code of Regulations, sections 2834. Clear and convincing evidence established respondent Unified permitted Michele Ann Brock to withdraw funds from its client trust account before March 6, 1995, when written authorization permitting her to withdraw trust funds did not exist. This determination is based on Finding of Fact V.

III

Cause exists to suspend or revoke respondent Unified's real estate broker's license pursuant to Business and Professions Code section 10177(d). Clear and convincing evidence established respondent Unified violated Business and Professions Code section 10232.25 by failing to file with the Department a quarterly trust fund status report for the quarter ending September 30, 1994, within thirty days after the quarter ended. This determination is based on Findings of Fact V.

IV

Cause does not exist to suspend or revoke respondent Unified's real estate broker's license pursuant to Business and Professions Code section 10145 and Title 16, California Code of Regulations, section 2831. It was not established by clear and convincing evidence respondent Unified failed to maintain an adequate columnar record showing from whom all trust funds were received. This determination is based on Findings of Fact VIII and IX.

Title 16, California Code of Regulations, section 2831)b) provides as follows:

"Maintenance of trust ledgers of separate beneficiaries or transactions, or similar records, or automated data processing systems, in accordance with generally accepted accounting principles shall constitute compliance with subdivision (a)."

² The degree of proof required in this matter is clear and convincing proof to a reasonable certainty. See, Realty Projects, Inc. v. Smith (1973) 32 Cal.App.3d 204, 212-213.

While Datan found respondent's records to be somewhat cumbersome, he was able to identify all of the information respondent Unified was required to maintain. Datan believed the records were not kept in accordance with generally accepted accounting principles. Datan was not and is not a certified public accountant.

Brown, who was and is a certified public accountant, testified respondent's records were kept in accordance with generally accepted accounting principles.

Brown's opinion on the issue of respondent's compliance with generally accepted accounting principles was more convincing than the evidence opposed to it.

Datan's opinion was weighed against Brown's. Consideration was given to each expert's qualifications, the believability of each expert, the reasons for each expert's opinion, and the matter upon which the expert's opinions were based.

Brown had more formal qualifications than Datan, although each expert was believable. Brown's conclusion made sense because all of the information was available from respondent's records; indeed, Datan was able to determine the required information. Datan conceded there was no effort by respondent to deceive or mislead. Finally, the records were generated by a large software company based in California whose business includes providing service to the real estate industry, a fact known to Brown but not to Datan.

V

Cause exists to suspend or revoke respondent Unified's real estate broker's license pursuant to Business and Professions Code section 10145 and Title 16, California Code of Regulations, section 2831.1. Clear and convincing evidence established in four instances respondent Unified failed to maintain an accurate trust record setting forth the actual date trust funds were received. This determination is based on Finding of Fact VIII.

Substantial mitigation exists with regard to these four violations. First, the violations were de minimis. The records were less than twenty-four hours in error. Second, Title 16, California Code of Regulations, section 2831.2(a) requires that trust funds be deposited "not later than the next business day following receipt of the funds by the broker or the broker's salesperson." No evidence established that respondent violated this statute as a consequence of any failure to set forth the actual date trust funds were received. Third, the violations were the result of respondent's use of the ABS' software program and while this is not a complete defense, it is certainly a

mitigating factor. Fourth, as soon as the problem was brought to respondent's attention, its record keeping practice was corrected.

Under these circumstances, the suspension or revocation of respondent Unified's license or respondent's Brock license would not be warranted. It was not established that the fees charged by respondent Unified were excessive. In light of the substantial mitigation and the lack of aggravation, the imposition of a suspension or revocation for these four violations would not serve the ends of substantial justice.

VI

Cause does not exist to suspend or revoke respondent Brock's real estate broker's license pursuant to Business and Professions Code sections 10145 and 10159.2 and Title 16, California Code of Regulations, section 2831. It was not established respondent Unified failed to maintain an adequate columnar record showing from whom all trust funds were received. This determination is based on Findings of Fact VIII and IX and on the reasoning and authority set forth in Determination of Issues IV, supra.

VII

Cause exists to suspend or revoke respondent Brock's real estate broker's license pursuant to Business and Professions Code sections 10145 and 10159.2 and Title 16, California Code of Regulations, section 2831.1. Clear and convincing evidence established in four instances respondent Unified failed to maintain an accurate record setting forth the actual date trust funds were received when Brock was the designated officer. This determination is based on Findings of Fact VIII and XII.

However, and as noted in Determination of Issues V, supra, substantial mitigation exists. Under the circumstances, the imposition of a suspension or revocation is not warranted.

VIII

Cause does not exist to suspend or revoke respondent Brock's real estate broker's license pursuant to Business and Professions Code sections 10159.2, 10177(g), and 10177(h). It was not established respondent Brock failed to adequately supervise her employees or that she demonstrated negligence or incompetence. Respondent Brock's failure to ensure her company maintained an accurate trust record setting forth the actual date trust funds were received and the existence of a one day error between the date of receipt and the date of recording resulted from the use of a computer software program relied on extensively within the industry. It was a very minimal error and was

sufficiently common as to not fall outside the conduct of an ordinary, reasonable and prudent broker in similar circumstances.

IX

Cause exists under Business and Professions Code section 10148(b) to order respondent Unified to pay to the Real Estate Commissioner the cost of the Borromeo audit and the cost of the Datan audit. Clear and convincing evidence established each audit resulted in findings of violations of Business and Professions Code section 10145. This determination is based on Findings of Fact VI and VIII and on Determination of Issues I, II, and V.

In light of the order pertaining to respondent Brock, there is no basis to order respondent Brock, who technically violated Business and Professions Code section 10145 (see Determination of Issue VII), to make such payments to the Real Estate Commissioner.

ORDER

All licenses and licensing rights of respondent Unified Mortgage Services, Inc., under the Real Estate Law are suspended for a period of thirty (30) days; provided, however, that the suspension shall be stayed in its entirety for one (1) year following the effective date of the Decision and a restricted real estate broker's license shall be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision.

The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions, which are imposed under Business and Professions Code section 10156.6:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California.

2. The stay of the suspension of the restricted license issued to respondent may be vacated in part or in its entirety, without any hearing, by Order of the Real Estate Commissioner if event of respondent is convicted on its plea of guilty or on its plea of nolo contendere of a crime which is substantially related to respondent's fitness or capacity as a real estate broker.

3. The Real Estate Commissioner may file a petition to vacate the stay order. Any hearing based on that petition shall

NOT ADOPTED

be in accordance with the provisions of the Government Code and shall be supported by evidence satisfactory to the Real Estate Commissioner that respondent violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

If it is determined after hearing or upon stipulation that cause for disciplinary action occurred within one (1) year of the effective date of this Decision, the Real Estate Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or any portion of the stayed suspension.

Should no such determination be made, the stay shall become permanent.

The filing of a petition to vacate the stay order shall not constitute a waiver of the Real Estate Commissioner's right to take any further disciplinary action he deems appropriate.

4. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein, or in any separate written order issued while the restricted license is in effect, such information concerning respondent's activities as a licensee as the Real Estate Commissioner deems appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of respondent and periodic summaries of salient information concerning any transaction in which respondent engaged during the period covered by the report.

5. Pursuant to Section 10148 of the Business and Professions Code, respondent shall pay the Real Estate Commissioner the reasonable cost of the audits resulting in the determination of trust fund violations referred to in paragraph IX of the Determination of Issues.

In calculating the amount of the reasonable cost of the audits, the Real Estate Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within forty-five (45) days of receiving an invoice from the Real Estate Commissioner detailing the activities performed during the audits and the amount of time spent performing the audits.

The Real Estate Commissioner may, in his discretion, vacate and set aside the stay order imposed herein if payment is

NOT ADOPTED

NOT ADOPTED

not timely made as provided for herein or as provided for in any subsequent agreement between respondent and the Real Estate Commissioner. The vacating of the stay and the imposition of a suspension shall remain in effect until payment is made in full, until respondent enters into an agreement satisfactory to the Real Estate Commissioner to provide for payment, or until respondent serves the entire period of the suspension which was stayed.

6. Should no order vacating the stay of suspension be issued, the stay of the order of suspension shall become permanent.

II

The Amendment to Accusation against respondent Michele Ann Brock is dismissed.

Dated: 6/12/97

James Ahler

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

Sacto
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
MAR 19 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
UNIFIED MORTGAGE SERVICES,)
INC., et al.,)
)
Respondents.)

By 

Case No. H-2193 SD
OAH No. L-9512116

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 1350 Front Street, Room 6022, San Diego, California, on **June 6, 1997**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: March 19, 1997.

DEPARTMENT OF REAL ESTATE

cc: Unified Mortgage Services Inc.
Michele Ann Brock
Gregg A. Johnson, Esq.
J. Chris Graves
Sacto.
OAH-LA/SD


ELLIOTT MAC LENNAN, Counsel

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ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAR - 6 1997
DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
UNIFIED MORTGAGE,)
SERVICES, INC.;)
MICHELE ANN BROCK, and)
MARILYN HOPE JOHNSON)
individually and as)
designated officers of)
Unified Mortgage)
Services, Inc.,)
Respondents.)

No. H-2193 SD

AMENDMENT TO ACCUSATION

XV

The complainant, J. Chris Graves, makes this amendment to his Accusation filed October 31, 1995, and incorporates Paragraphs I through XIV of that Accusation in this amendment.

XVI

MICHELE ANN BROCK (BROCK) is presently licensed and/or has license rights under the Code.

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XVII

At all mentioned times, USMI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker by and through BROCK as designated officer.

XVIII

At all times mentioned, BROCK was licensed by the Department as designated officer of USMI to qualify USMI and to act for USMI as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of USMI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required by Section 10159.2 of the Code.

XIX

Whenever reference is made in an allegation in the accusation to an act or omission of USMI such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with USMI, including BROCK, committed such act or omission while engaged in the furtherance of the business or operation of USMI and while acting within the course and scope of its corporate authority, agency and employment.

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XX

At all times mentioned, USMI and BROCK were acting as the agent or employee of the other and within the course and scope of such agency or employment.

XXI

At all times mentioned, in the City and County of San Diego, respondent USMI and respondent BROCK engaged in the business of, acted in the capacity of, advertised, or assumed to act real estate brokers, within the meaning of Section 10131(d) of the Code, including the operation of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance and including the collection of monthly mortgage payments.

XXII

(Audit No. LA 940071)

On March 8, 1995 the Department completed a field audit examination of the books and records of USMI pertaining to its collection of mortgage payments activities described in Paragraph VII, above, for a period of time beginning on September 1, 1994 and ending on December 31, 1994, which revealed violations of the Code and the Regulations as set forth in the following paragraphs.

XXIII

At all times mentioned, in connection with the activities described in Paragraph VII, above, respondent USMI

1 accepted or received funds in trust (trust funds) from or on
2 behalf of actual or prospective borrowers and lenders, and
3 thereafter made disposition of such funds. Respondent USMI
4 maintained the following trust account into which they deposited
5 certain of these funds:

6 "Unified Mortgage Services Collection Trust Account
7 No. 004-31526"
8 Bank of Commerce
9 San Diego, California

XXIV

10 With respect to the collection trust funds referred to
11 in Paragraph XXIII, it is alleged that USMI:

12 (a) Permitted, allowed, or caused a deficit to
13 accumulate in the trust account which on December 31, 1994, was in
14 the amount of \$12,064.24.00, in violation of Section 10145 of the
15 Code and Regulation 2832.1; and

16 (b) Permitted an unlicensed person who was not bonded,
17 Michele Ann Brock, prior to the time she was licensed as the
18 designated officer of USMI, to be an authorized signatory on the
19 trust account, in violation of Section 2834 of the Regulations.

XXV

20 The conduct of respondent USMI, described in Paragraph
21 XXIV, above, violated the Code and the Regulations as set forth
22 below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
XXIV (a)	Section 10145 & 10159.2 of the Code, and Section 2832.1 of the Regulations

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PARAGRAPH

PROVISIONS VIOLATED

XXIV (b)

Section 10145 & 10159.2 of the Code, and
Section 2834 of the Regulations

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

XXVI

Respondent USMI as a threshold broker, as described in Code Section 10232, failed to timely file with the Department a quarterly trust fund status report for the fiscal quarter ending September 30, 1994, as required by Section 10232.25 of the Code. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of respondent USMI under the provisions of Section 10177(d) the Code.

XXVII

(Audit No. LA 960051)

On October 23, 1996 the Department completed a field audit examination of the books and records of USMI pertaining to its mortgage payment collection activities described in Paragraph VII, above, for a period of time beginning on July 1, 1995 to July 31, 1996, which revealed violations of the Code and the Regulations as set forth in the following paragraphs.

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XVIII

With respect to the collection trust funds referred to in Paragraph XXVIII, it is alleged that USMI and BROCK:

(a) Failed to maintain an adequate columnar record in chronological order of all trust funds received, as required by Regulation 2831; and

(b) Failed to deposit trust funds into the trust account before the end of the next business day as required by Regulation 2832.

XXIX

The conduct of respondents USMI and BROCK, described in Paragraph XVIII, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
XVIII (a)	Section 10145 & 10159.2 of the Code, and Section 2831 of the Regulations
<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
XVIII (b)	Section 10145 & 10159.2 of the Code, and Section 2832 of the Regulations

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

XXX

The conduct of respondent BROCK, in allowing respondent USMI to violate Sections 10145 of the Code and Regulations 2831 and 2832, as described in Paragraphs XXVIII through XXIX herein

1 above, during the time that BROCK was the designated officer of
2 USMI, constitutes negligence or incompetence. This conduct and
3 violation are cause for the suspension or revocation of the real
4 estate license and license rights of respondent BROCK under the
5 provisions of Section 10177(g) of the Code.

6 XXXI

7 The conduct of respondent BROCK, as described in
8 Paragraphs XXVIII through XXIX herein above, in failing to
9 supervise USMI, during the time that BROCK was its designated
10 officer, constitutes a failure by respondent BROCK to exercise
11 reasonable supervision of the activities of respondent USMI, which
12 require a real estate license. This conduct and violation are
13 cause to suspend or revoke the real estate license and license
14 rights of respondent BROCK under the provisions of Sections
15 10159.2 and 10177(h) of the Code.

16 XXXII

17 On June 11, 1996, the real estate broker license of
18 Marilyn Hope Johnson was revoked and she was given the right to a
19 restricted real estate broker license.

20 WHEREFORE, Complainant prays that a hearing be conducted
21 on the allegations made by the accusation and, that upon proof
22 thereof, a decision be rendered imposing disciplinary action
23 against the license and license rights of respondent UNIFIED
24 MORTGAGE SERVICES, INC., and MICHELE ANN BROCK, individually and
25 as designated officer of Unified Mortgage Services, Inc., under
26 the Real Estate Law (Part 1 of Division 4 of the Business and
27

1 Professions Code) and for such other and further relief as may be
2 proper under other applicable provisions of law.

3 Dated at San Diego, California
4 this 6th day of March, 1997.

5 J. CHRIS GRAVES
6 Deputy Real Estate Commissioner
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25 cc: Unified Mortgage Services, Inc.
26 D.O.Michele Ann Brock
27 Gregg A. Johnson, Esq.
Sacto.
OAH
DMB


BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
AUG 27 1996
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
UNIFIED MORTGAGE SERVICES,)
INC., et al.,)
)
Respondents.)

Case No. H-2193 SD
OAH No. L-9512116

By 

NOTICE OF CONTINUED HEARING ON ACCUSATION

To the above-named Respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 1350 Front Street, Room 6022, San Diego, California, on **October 11, 1996**, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: August 27, 1996.

DEPARTMENT OF REAL ESTATE

cc: Unified Mortgage Services Inc.
Gregg A. Johnson, Esq.
J. Chris Graves
Sacto.
OAH-LA/SD



ELLIOTT MAC LENNAN, Counsel

SACD.
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
JAN - 3 1996
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
)
UNIFIED MORTGAGE SERVICES,)
INC., et al.,)
)
Respondents.)
_____)

Case No. H-2193 SD
OAH No. L-9512116

By [Signature]

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 1350 Front Street, Room 6022, San Diego, California, on **March 13 and 14, 1996**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: January 3, 1996.

cc: Unified Mortgage Services Inc.
Marilyn Hope Johnston
Gregg A. Johnson, Esq.
J. Chris Graves
Sacto.
OAH

DEPARTMENT OF REAL ESTATE

[Signature]
ELLIOTT MAC LENNAN, Counsel

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ELLIOTT MAC LENNAN, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
OCT 31 1995

DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-2193 SD
)	
UNIFIED MORTGAGE SERVICES, INC.,)	<u>A C C U S A T I O N</u>
a corporation; and MARILYN HOPE)	
JOHNSTON, individually and as)	
designated officer of Unified)	
Mortgage Services, Inc.,)	
)	
Respondents.)	

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against UNIFIED MORTGAGE SERVICES, INC., a corporation; and MARILYN HOPE JOHNSTON, individually and as designated officer of Unified Mortgage Services, Inc., is informed and alleges in his official capacity as follows:

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I

UNIFIED MORTGAGE SERVICES, INC. (UMSI), and MARILYN HOPE JOHNSTON (JOHNSTON), sometimes collectively referred to as respondents, are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

II

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

III

At all mentioned times, USMI was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker by and through JOHNSTON as designated officer.

IV

At all mentioned times, JOHNSTON was licensed by the Department as designated officer of UMSI to qualify UMSI and to act for UMSI as its real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of UMSI by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespeople licensed to the corporation in the performance of acts for which a real estate license is required by Section 10159.2 of the Code.

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V

Whenever reference is made in an allegation in the Accusation to an act or omission of UMSI, such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with UMSI, including JOHNSTON, committed such act or omission while engaged in the furtherance of the business or operation of UMSI and while acting within the course and scope of its corporate authority, agency and employment.

VI

At all mentioned times, UMSI and JOHNSTON were acting as the agent or employee of the other and within the course and scope of such agency or employment.

VII

At all times herein mentioned, in the city San Diego, San Diego County, respondents UMSI and JOHNSTON engaged in the business of, acted in the capacity of, advertised, or assumed to act real estate brokers, within the meaning of Section 10131(d) of the Code, including the operation of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance.

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VIII

At all times mentioned herein, in connection with the activities described in Paragraph VII, above, respondents accepted or received funds in trust (trust funds) from or on behalf of actual or prospective borrowers and lenders, and thereafter made disposition of such funds. Respondents maintained the following trust accounts into which they deposited certain of these funds:

(Account 1)

"United Mortgage Services Collection Trust Account Trust Account"
4-315426
Bank of Commerce
San Diego, California

(Account 2)

"United Mortgage Services, Inc. Clearing Trust Account Trust Account"
4-315442
Bank of Commerce
San Diego, California

IX

On March 8, 1995, the Department completed a field examination of the books and records of UMSI pertaining to the activities described in Paragraphs VII and VIII, above, beginning on September 1, 1994 and ending on December 31, 1994, which revealed violations of the Code and the Regulations as set forth in the following paragraphs.

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X

With respect to the trust funds referred to in Paragraph VIII, it is alleged that UMSI and JOHNSTON:

(a) Permitted, allowed, or caused a deficit to accumulate in the trust account (Account # 1) which on December 31, 1994 was in the amount of \$12,060.24, in violation of Section 10145 of the Code and Regulation 2832.1.

(b) Permitted the withdrawal of trust funds from the trust accounts by Michele Brock without written approval of JOHNSTON, in violation of Regulation 2834.

XI

The conduct of respondents UMSI and JOHNSTON, described in Paragraph X, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
X(a)	Sections 10145 and 10159.2 of the Code and Regulation 2832.1
X(b)	Regulation 2834

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

XII

Respondents as threshold brokers, as described in Code Section 10232, failed to timely file with the Department a quarterly trust fund status report for the fiscal quarter ending

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September 30, 1994, as required by Section 10232.25 of the Code.

XIII

The overall conduct of respondent JOHNSTON in allowing respondent UMSI to violate Sections 10145 and 10232.25 of the Code and Regulations 2832.1 and 2834, as described in Paragraphs X and XII, above, during the time that JOHNSTON was the designated officer of UMSI, constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the Real Estate licenses and license rights of respondents JOHNSTON and UMSI under the provisions of Section 10177(g) of the Code.

XIV

The acts and omissions of respondent JOHNSTON, described above, independently constitute failure on the part of said respondent, as the officer designated by the corporate broker licensee, to exercise reasonable supervision and control over the activities of UMSI, as required by Section 10159.2 of the Code and are cause for the suspension or revocation of all real estate licenses and license rights of said respondent pursuant to the provisions of Section 10177(h) of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of UNIFIED MORTGAGE SERVICES, INC., a corporation; and MARILYN HOPE JOHNSTON, individually and as designated officer of Unified Mortgage Services, Inc., under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.

Dated at San Diego, California
this 31st day of October, 1995.

J. CHRIS GRAVES
Deputy Real Estate Commissioner

cc: Unified Mortgage Services, Inc.
Marilyn Hope Johnston
Sacto.
DMB