

FILED

APR 20 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
MCDONNELL & CHURCH, )  
INVESTMENTS INC., )  
Respondent. )

No. H-2304 SD

ORDER GRANTING REINSTATEMENT OF LICENSE

On June 11, 1997, 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 July 9, 1997, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On March 14, 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.

1 I have considered the petition of Respondent and the  
2 evidence and arguments in support thereof including Respondent's  
3 record as a restricted licensee. Respondent has demonstrated to  
4 my satisfaction that Respondent meets the requirements of law for  
5 the issuance to Respondent of an unrestricted real estate broker  
6 license and that it would not be against the public interest to  
7 issue said license to Respondent.

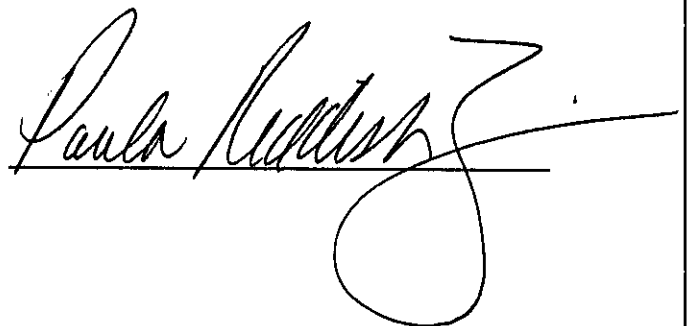
8 NOW, THEREFORE, IT IS ORDERED that Respondent's  
9 petition for reinstatement is granted and that a real estate  
10 broker license be issued to Respondent if Respondent satisfies  
11 the following condition within nine months from the date of this  
12 Order:

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

15 This Order shall be effective immediately.

16 DATED: April 9, 2001

17 PAULA REDDISH ZINNEMANN  
18 Real Estate Commissioner

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Department of Real Estate  
107 So. Broadway, Room 8107  
Los Angeles, CA 90012  
(213) 897-3937

**FILED**  
JUN 19 1997  
DEPARTMENT OF REAL ESTATE

By Laura B. Aron

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of )	No. H-2304 SD
MCDONNELL & CHURCH INVESTMENTS, )	<u>STIPULATION AND AGREEMENT</u>
INC.; DAVID ANTHONY CHURCH, )	<u>IN</u>
individually and as )	<u>SETTLEMENT AND ORDER</u>
designated officer of )	
McDonnell & Church Investments, )	
Inc., )	
Respondents )	
_____ )	

It is hereby stipulated by and between MCDONNELL & CHURCH INVESTMENTS, INC., and DAVID ANTHONY CHURCH, individually and now as designated officer of McDonnell & Church Investments, Inc., (sometimes referred to as respondents) 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 January 30, 1997, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and respondents at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative  
2 Procedure Act (APA), shall instead and in place thereof be  
3 submitted solely on the basis of the provisions of this  
4 Stipulation.

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

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

21 4. This Stipulation is based on the factual allegations  
22 contained in the Accusation. In the interest of expedience and  
23 economy, respondents choose not to contest these allegations, but  
24 to remain silent and understand that, as a result thereof, these  
25 factual allegations, without being admitted or denied, will serve  
26 as a prima facie basis for the disciplinary action stipulated to  
27



1 herein. The Real Estate Commissioner shall not be required to  
2 provide further evidence to prove said factual allegations.

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

17 6. It is understood by the parties that the Real Estate  
18 Commissioner may adopt the Stipulation as his decision in this  
19 matter thereby imposing the penalty and sanctions on respondents'  
20 real estate licenses and license rights as set forth in the  
21 "Order" hereinbelow. In the event that the Commissioner in his  
22 discretion does not adopt the Stipulation, it shall be void and of  
23 no effect, and respondents shall retain the right to a hearing and  
24 proceeding on the Accusation under the provisions of the APA and  
25 shall not be bound by any admission or waiver made herein.

26 7. The Order or any subsequent Order of the Real Estate  
27 Commissioner made pursuant to this Stipulation shall not



1 constitute an estoppel, merger or bar to any further  
2 administrative or civil proceedings by the Department of Real  
3 Estate with respect to any matters which were not specifically  
4 alleged to be causes for accusation in this proceeding.

5 DETERMINATION OF ISSUES

6 By reason of the foregoing stipulations, admissions and  
7 waivers and solely for the purpose of settlement of the pending  
8 Accusation without a hearing, it is stipulated and agreed that the  
9 following determination of issues shall be made:

10 I

11 The acts or omissions of respondent MCDONNELL & CHURCH  
12 INVESTMENTS, INC., as described in Paragraph 4, above, are in  
13 violation of Section 10145 of the California Business and  
14 Professions Code (Code) and Sections 2831.1, 2832, 2832.1 and  
15 2950(h) of Title 10, Chapter 6 of the California Code of  
16 Regulations, and are a basis for the suspension or revocation of  
17 said respondent's license and license rights pursuant to Section  
18 10177(d) of the Code.

19 II

20 The acts or omissions of DAVID ANTHONY CHURCH, as  
21 described in Paragraph 4, above, constitutes a failure to  
22 supervise the acts of McDonnell & Church Investments, Inc.,  
23 requiring a license and is cause for the suspension or revocation  
24 of said respondent's licenses and license rights pursuant Section  
25 10177(h) 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 not be eligible for the issuance of  
9 unrestricted real estate license nor the removal of any of the  
10 conditions, limitations or restrictions of the restricted license  
11 until at least two (2) years has elapsed from the effective date  
12 of the Decision.

13 II

14 A. All licenses and licensing rights of respondent  
15 DAVID ANTHONY CHURCH under the Real Estate Law are suspended for a  
16 period of ninety days (90) days from the effective date of this  
17 Order; provided however, that thirty (30) days of said suspension  
18 shall be permanently stayed upon the terms and conditions of this  
19 paragraph:

20 (1) Respondent pays a monetary penalty pursuant to  
21 Section 10175.2 of the Business and Professions of \$1,000;

22 (2) Said payment shall be in the form of a cashier's  
23 check or certified check made payable to the  
24 Recovery Account of the Real Estate Fund. Said  
25 check must be delivered to the Department prior to  
26 the effective date of the Order in this matter;

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(3) If respondent fails to pay the monetary penalty in accordance with the terms of this paragraph or this Order, the Commissioner may, without a hearing, order the immediate execution of all or any part of the thirty (30) day stayed suspension, in which event respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Order.

B. Sixty (60) days of the ninety (90) day suspension provided in paragraph "II" shall be stayed for one (1) year upon the following terms and conditions:

(1) Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of real estate licensees in the State of California;

(2) That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred one (1) year of the effective date of this Order;

(3) If no further cause for disciplinary action against the real estate licenses of respondent occurs within two (2) years from the effective date of this Order, the sixty (60) day stay granted pursuant to this paragraph shall become permanent

B. Respondent shall, within twelve months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most

1 recent issuance of an original or renewal real estate license,  
2 taken and successfully completed the continuing education  
3 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for  
4 renewal of a real estate license.

5 III

6 A. Pursuant to Section 10148 of the Business and  
7 Professions Code, respondents MCDONNELL & CHURCH INVESTMENTS, INC.  
8 and DAVID ANTHONY CHURCH, or either of them, shall pay the  
9 Commissioner's reasonable cost for an audit to determine if  
10 respondent has corrected the trust fund violation(s) found in  
11 paragraph I of the Determination of Issues, In calculating the  
12 amount of the Commissioner's reasonable cost, the Commissioner may  
13 use the estimated average hourly salary for all persons performing  
14 audits of real estate brokers, and shall include an allocation for  
15 travel time to and from the auditor's place of work. Respondent  
16 shall pay such cost, not to exceed \$2,500, within 45 days of  
17 receiving an invoice from the Commissioner detailing the activities  
18 performed during the audit and the amount of time spent performing  
19 those activities. The Commissioner may suspend the restricted  
20 license issued to respondent pending a hearing held in accordance  
21 with Section 11500, et seq., of the Government Code, if payment is  
22 not timely made as provided for herein, or as provided for in a  
23 subsequent agreement between the respondent and the Commissioner.  
24 the suspension shall remain in effect until payment is made in full  
25 or until respondent enters into an agreement satisfactory to the  
26 Commissioner to provide for payment, or until a decision providing

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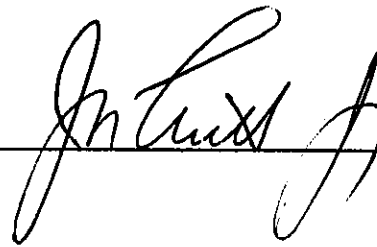


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2           The foregoing Stipulation and Agreement for Settlement  
3 is hereby adopted as my Decision and Order and shall become  
4 effective at 12 o' clock noon on July 9, 1997.

5  
6           DATED: 6/11, 1997.

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9                           JIM ANTT, JR.  
10                           Real Estate Commissioner

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Sacto. Hwy

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

**FILED**  
APR 11 1997  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of )  
)  
McDONNELL & CHURCH, )  
INVESTMENTS, INC., et al. )  
)  
Respondents. )

Case No. H-2304 SD  
OAH No. L-9702173

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 July 11, 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: April 11, 1997.

cc: McDonnell & Church Invts. Inc.  
David Anthony Church  
Alan V. Edmunds, Esq.  
J. Chris Graves  
Sacto.  
OAH-SD

DEPARTMENT OF REAL ESTATE

[Signature]  
ELLIOTT MAC LENNAN, Counsel



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I

McDONNELL & CHURCH INVESTMENTS, INC. (MCI) and DAVID ANTHONY CHURCH (CHURCH), 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 Title 10, Chapter 6, California Code of Regulations.

III

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

IV

At all mentioned times, CHURCH was licensed by the Department as designated officer of MCI to qualify MCI and to act for MCI 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 MCI 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.



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V

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

VI

At all times mentioned, MCI and CHURCH 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 mentioned, in the City of San Diego, San Diego County, respondent MCI and respondent CHURCH 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 further including broker-controlled escrows of mortgage loans.

VIII

(Audit No. LA 940109)

On December 6, 1996 the Department completed a field audit examination of the books and records of MCI pertaining to its mortgage loan activities described in Paragraph VII, above, for a period of time beginning on February 1, 1994 and ending on October 31, 1995, which revealed violations of the Code and the Regulations as set forth in the following paragraphs.

IX

At all times mentioned, in connection with the activities described in Paragraph VII, above, respondents MCI and CHURCH 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 MCI and CHURCH maintained the following trust account into which they deposited certain of these funds:

"McDonnell & Church Investments, Inc. Dba IFC Mortgage Trust Account  
No. 068-687-222571"  
Metrobank  
3131 Camino Del Rio North, Suite 100  
San Diego, California

X

With respect to the mortgage loan activity trust funds referred to in Paragraph VII, it is alleged that MCI and CHURCH:

(a) Permitted, allowed, or caused a deficit to accumulate in the trust account which on October 31, 1995, was in the amount of \$247.00, in violation of Section 10145 of the Code and Regulation 2832.1;

1 (b) Failed to maintain a separate record for each  
2 beneficiary or transaction, thereby failing to account for all  
3 trust funds received, deposited, and disbursed by the trust  
4 account, as required by Regulation 2831.1;

5 (c) Failed to perform a monthly reconciliation of the  
6 columnar record for the receipt and disposition of all trust funds  
7 received by CHURCH for the trust account, and the balance of all  
8 separate beneficiary or transaction records, as required by  
9 Regulation 2831.2; and

10 (d) Failed to deposit trust funds into the trust account  
11 before the end of the next business day as required by Regulation  
12 2832.

13 XI

14 The conduct of Respondents MCI and CHURCH, described in  
15 Paragraph X, above, violated the Code and the Regulations as set  
16 forth below:

17	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
18	X(a)	Section 10145 & 10159.2 of the Code, and
19		Section 2832.1 of the Regulations
20	X(b)	Section 2831.1 of the Regulations
21	X(c)	Section 2831.2 of the Regulations
22	X(d)	Section 2832 of the Regulations

23  
24 Each of the foregoing violations separately constitutes cause for  
25 the suspension or revocation of the real estate licenses and  
26 license rights of respondents MCI and CHURCH under the provisions  
27 of Section 10177(d) of the Code.

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XII

(Audit No. LA 950026)

On December 6, 1996 the Department completed a field audit examination of the books and records of MCI pertaining to its escrow activities described in Paragraph VII, above, for a period of time beginning on February 1, 1994 and ending on October 31, 1995, which revealed violations of the Code and the Regulations as set forth in the following paragraphs.

XIII

At all times mentioned, in connection with the activities described in Paragraph VII, above, respondents MCI and CHURCH 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 MCI and CHURCH maintained the following trust account into which they deposited certain of these funds:

"McDonnell & Church Investments, Inc. Dba IFC Mortgage Escrow  
Division Trust Account  
No. 068-687-222598"  
Metrobank  
3131 Camino Del Rio North, Suite 100  
San Diego, California

XIV

With respect to the escrow division trust funds referred to in Paragraph XIII, it is alleged that MCI and CHURCH:

(a) Failed to perform a monthly reconciliation of the columnar record for the receipt and disposition of all trust funds received by CHURCH for the trust account, and the balance of all

1 separate beneficiary or transaction records, as required by  
2 Regulation 2831.2.

3 XV

4 The conduct of respondents MCI and CHURCH, described in  
5 Paragraph XIV, above, violated the Code and the Regulations as set  
6 forth below:

7 PARAGRAPH

PROVISIONS VIOLATED

8 XIV(a)

Section 10145 & 10159.2 of the Code, and  
9 Section 2831.2 of the Regulations

10 Each of the foregoing violations separately constitutes cause for  
11 the suspension or revocation of the real estate licenses and  
12 license rights of respondents MCI and CHURCH under the provisions  
13 of Section 10177(d) of the Code.  
14

15 XVI

16 The audit examination Audit No. LA 950026, described in  
17 Paragraph XIII, revealed that CHURCH failed to review, initial and  
18 date each instrument prepared by real estate salespeople under his  
19 supervision which may have a material effect upon the rights or  
20 obligations of a party to the transaction including, but not  
21 limited to initialing and dating escrow instructions, in violation  
22 of Regulation 2725. This conduct and violation are cause to  
23 suspend or revoke the license and license rights of respondent  
24 CHURCH under Sections 10177(d) and 10177(h) of the Code.

25 XVII

26 Audit 950026 revealed that respondents failed to advise  
27 all parties to the escrow operation of MCI dba Inter Financial

1 Capital and IFC Mortgage of their ownership of said escrow  
2 company, in violation of Regulation 2950(h). Said conduct is  
3 cause to suspend or revoke respondents MCI and CHURCH licenses and  
4 license rights under Section 10177(d) of the Code.

5 XVIII

6 The conduct of respondent CHURCH, in allowing respondent  
7 MCI to violate Sections 10145 of the Code and Regulations 2725,  
8 2831.1, 2831.2, 2832, 2832.1 and 2950(h), as described in  
9 Paragraphs VII through XVII herein above, during the time that  
10 CHURCH was the designated officer of MCI, constitutes negligence  
11 or incompetence. This conduct and violation are cause for the  
12 suspension or revocation of the real estate license and license  
13 rights of respondent CHURCH under the provisions of Section  
14 10177(g) of the Code.

15 XIX

16 The conduct of respondent CHURCH, in failing to  
17 supervise MCI, during the time that CHURCH was its designated  
18 officer, constitutes a failure by respondent CHURCH to exercise  
19 reasonable supervision of the activities of respondent MCI, which  
20 require a real estate license. This conduct and violation are  
21 cause to suspend or revoke the real estate license and license  
22 rights of respondent CHURCH under the provisions of Sections  
23 10159.2 and 10177(h) of the Code.

24 XX

25 On October 2, 1991, in Case No. H-24839 LA, an ORDER TO  
26 DESIST AND REFRAIN was filed against respondent MCI under Section  
27 10086 of the Code (Engaging in Prohibited Activity, Order to

1 Desist and Refrain) for violations of Sections 10137 and 10145,  
2 10240 of the California Business and Professions Code and Sections  
3 2830, 2831, 2831.1, 2831.2, 2832.1 and 2834 of Title 10, Chapter 6,  
4 California Code of Regulations.

5 XXI

6 On September 17, 1991, in Case No. H-24840 LA, an  
7 accusation was filed against respondent MCI that resulted in  
8 discipline for said respondent for violations of Sections 10137,  
9 10145 and 10240 of the California Business and Professions Code and  
10 Sections 2830, 2831, 2831.1, 2831.2, 2832.1 and 2834 of Title 10,  
11 Chapter 6, California Code of Regulations.

12 WHEREFORE, Complainant prays that a hearing be conducted  
13 on the allegations of this Accusation and that upon proof thereof,  
14 a decision be rendered imposing disciplinary action against the  
15 licenses and license rights of respondents McDONNELL & CHURCH  
16 INVESTMENTS, INC.; and DAVID ANTHONY CHURCH, individually and as  
17 designated officer of McDonnell & Church Investments, Inc., under  
18 the Real Estate Law (Part 1 of Division 4 of the Business and  
19 Professions Code) and for such other and further relief as may be  
20 proper under other applicable provisions of law.

21 Dated at San Diego, California  
22 this 30th day of January, 1997.

23 J. CHRIS GRAVES

24 Deputy Real Estate Commissioner

25  
26 cc: McDonnell & Church Investments, Inc.  
27 David Anthony Church  
Sacto.  
DMB