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On November 19, 1997, an Order Denying Reinstatement was rendered in the above-entitled matter to become effective January 28, 1997.

On December 26, 1997, Respondent petitioned for reconsideration of the Order of November 19, 1997. I have considered said petition and said Order and have concluded that cause exists to grant Respondent's petition for reconsideration.

I have reconsidered Respondent's petition and the evidence and arguments in support thereof, including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

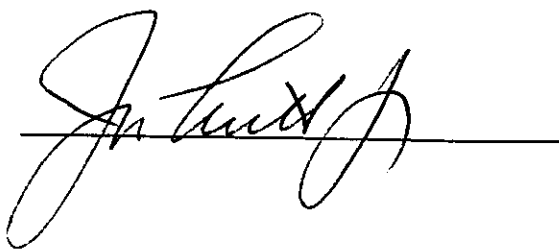
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate salesperson license be issued to Respondent if Respondent satisfies the following condition within six months from the date of this Order:

- 1. Submittal of a completed application and payment of the fee for a real estate salesperson license.

This Order shall be effective immediately.

DATED: 1/22, 1998.

JIM ANTT, JR.
Real Estate Commissioner



1 demonstrate to my satisfaction that Respondent has undergone
2 sufficient rehabilitation to warrant the reinstatement of
3 Respondent's real estate salesperson license, in that Respondent
4 has failed to discharge adjudicated debts including the following:

5 1. \$995.50 Judgment in PCDK, Inc. v. Ward, El Dorado
6 County Municipal Court Case No. WS95S01180.

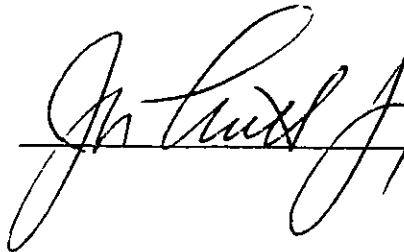
7 Further, in response to a question in the petition
8 application, "Have you ever been a defendant in any civil court
9 litigation, including small claims court", Respondent failed
10 to disclose in her petition the judgment described above.
11 Respondent's concealment of facts and lack of candor, demonstrates
12 that Respondent has not changed her attitude from that which
13 existed at the time the disciplinary action was taken in this
14 matter.

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

18 This Order shall become effective at 12 o'clock
19 noon on December 29, 1997.

20 DATED: 11/19, 1997.

21 JIM ANTT, JR.
22 Real Estate Commissioner

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1 "5. Respondent shall report in writing to the
2 Department of Real Estate as the Real Estate
3 Commissioner shall direct by his Decision
4 herein or by separate written order issued
5 while the restricted license is in effect,
6 such information concerning respondent's acti-
7 vities for which a real estate license is
8 required as the Commissioner shall deem to be
9 appropriate to protect the public interest.

6 Such reports may include, but shall not be
7 limited to, periodic independent accountings
8 of trust funds in the custody and control of
9 respondent and periodic summaries of salient
10 information concerning each real estate
11 transaction in which the respondent engaged
12 during the period covered by the report."

10 Pursuant to said term and condition "5", Respondent
11 PETTYJOHN is hereby ordered as a part of this Decision to report
12 in writing to the Department of Real Estate as follows:

13 1. Respondent shall submit to the Department of Real
14 Estate a Licensed Activity Report as of the last day of each
15 calendar quarter (reporting date) for so long as Respondent's
16 restricted license shall remain in effect.

17 A. The Licensed Activity Report shall consist of the
18 following:

19 1) A list of all transactions in which Respondent has
20 performed acts for which a real estate license was required,
21 including all such transactions which have taken place between the
22 effective date of this Decision and the reporting date.

23 Subsequent activity reports shall cover the period from the
24 previous reporting date to the current reporting date.

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- 1 2) The list shall identify each transaction by:
- 2 (a) Type of transaction (purchase or sale, property
- 3 management, mortgage loan, etc.);
- 4 (b) The address of the real property involved;
- 5 (c) The name and address of each party to the
- 6 transaction;
- 7 (d) The name and address of any other real estate
- 8 licensees involved in the transaction;
- 9 (e) The name and address of any escrow or title company
- 10 involved in the transaction; and
- 11 (f) A statement regarding the status of the transaction
- 12 as of the reporting date.

13 B. The Licensed Activity Report shall be submitted by

14 Respondent to the Sacramento District Office of the Department of

15 Real Estate not later than thirty (30) days after each reporting

16 date. If Respondent has conducted no licensed activity during the

17 reporting period, his report to the Department shall so state.

18 C. Respondent shall certify the completeness and

19 accuracy of each Licensed Activity Report to the best of his

20 knowledge and belief.

21 2. In addition to the Licensed Activity Report,

22 Respondent shall submit to the Department of Real Estate a Trust

23 Fund Position Statement as of the last day of each calendar

24 quarter (the accounting date) for so long as Respondent's

25 restricted license shall remain in effect.

26 A. The Position Statement shall consist of the

27 following:

1 1) A schedule of trust fund accountability with the
2 following information for each transaction in which Respondent is
3 accountable as agent or trustee to the owner of funds:

4 (a) Account number;

5 (b) Type of transaction (purchase and sale, property
6 management, loan collection);

7 (c) Name of principal or beneficiary;

8 (d) Description of real property; and

9 (e) Trust fund liability.

10 2) A report of trust funds in the custody and control
11 of Respondent as of the accounting date consisting of:

12 (a) A copy of Respondent's trust account bank statement
13 showing the balance of funds in the account as of the
14 accounting date; and

15 (b) A schedule of uncleared checks drawn on the account
16 adjusting the account to its true balance as of the
17 accounting date.

18 B. A statement explaining any discrepancy between the
19 total liability shown under (1) above and the adjusted trust
20 account balance shown under (2) above.

21 C. The Trust Fund Position Statement shall be submitted
22 by Respondent to the Sacramento District Office of the Department
23 of Real Estate not later than thirty (30) days after each
24 accounting date. If Respondent has no trust fund liability as of
25 an accounting date, his report to the Department shall so state.

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1 D. If Respondent does not maintain a trust account,
2 Respondent shall so state and shall submit a record of all trust
3 funds received, but not placed in a trust fund account.

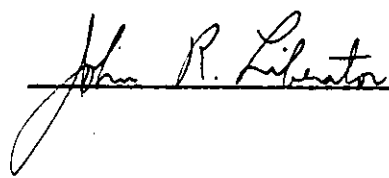
4 E. Respondent shall certify the completeness and
5 accuracy of each Position Statement to the best of his knowledge
6 and belief.

7 The Proposed Decision dated March 8, 1989 as modified by
8 the Order herein pursuant to the provisions of the Proposed
9 Decision is hereby adopted as the Decision of the Real Estate
10 Commissioner.

11 This Decision and Order shall become effective at
12 12 o'clock noon on May 12, 1989.

13 IT IS SO ORDERED April 14, 1989.

14 JAMES A. EDMONDS, JR.
15 Real Estate Commissioner

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III

Respondent Robert John Pettyjohn has been licensed as a real estate broker by the Department from at least January 1, 1987, with a listed dba of Fischer Financial Services. Respondent Pettyjohn's broker's license is due to expire on November 16, 1989 and has never been the subject of any previous disciplinary action by the Department.

Respondent Pettyjohn was duly notified of the date, time and place of the hearing pursuant to Government Code sections 11509 and 11505. Respondent Pettyjohn did not appear at the hearing despite the notice, and therefore the hearing proceeded as a default as to him.

IV

Respondent Theresa Marie Ward has been licensed by the Department as a real estate salesperson since 1979. As of January 1, 1987, her employing broker was listed as respondent Pettyjohn. This status changed on July 28, 1987, when respondent Ward notified the Department that she was in the employ of respondent FMI, Inc. Respondent Ward's real estate salesperson's license is due to expire on July 27, 1991.

V

Respondent FMI, Inc. is a closely-held California corporation that has been in existence since at least November 1, 1986. Respondent Ward is the chief executive officer of the corporation and holds one hundred percent of the shares of the corporation together with her husband Richard. Richard is not a Department licensee and is not active in the daily affairs of the business.

FMI, Inc. is in the mortgage loan brokering and packaging business, acting as intermediary between borrower clients seeking loans secured by interests in real property and client lenders consisting of several banks and savings and loan associations. FMI, Inc. also services existing loans. FMI, Inc. generates income by obtaining a commission for each loan generated and charging a servicing fee annually for each loan serviced.

VI

Respondent FMI, Inc. maintained three trust accounts through November 30, 1987. The first trust account was maintained at the Hibernia Bank and was used for the deposit of loan payments made by borrowers and the disbursement of payments, less servicing fees, to the lenders. The second trust account was also maintained at the Hibernia bank, in the name of Fischer Financial Services, and was used to deposit funds received from lenders, which were then disbursed to title companies to fund loans. The account was also used to receive loan payoffs which were then disbursed to lenders. The third trust account was maintained at 49'er Credit Union and was used to receive

fees for credit reports and appraisals from borrowers, and for disbursements to appraisers and credit reporting agencies. A fourth, nontrust account was maintained by Fisher Financial Services as a general corporate bank account.

VII

On November 1, 1986, respondents FMI, Inc. and Pettyjohn entered into a written "Brokerage Agreement", in which Pettyjohn agreed to become the real estate broker for the corporation. The agreement specified as follows:

"The Corporation agrees to allow Broker access to all of the Corporate records and further agrees through its Chief Executive Officer, to keep Broker informed of all corporate activities. Specifically, Broker shall have the right to approve all forms used by the Corporation as well as advertising used by the Corporation. Broker shall further have the right to approve all loan procedures and policies, and shall be kept informed of those policies and procedures at all times. The Corporation agrees to abide by all rules and regulations through its Chief Executive Officer, which rules and regulations are promulgated by the Department of Real Estate, the Administrative Code, and the Business and Professions Code of the State of California relating to the regulation of conduct by real estate brokers and arrangers of credit."

Later in the agreement, FMI, Inc. agreed it would not commit any act that would violate any provision of the Business and Professions Code, the Administrative Code or the rules and regulations of the Department, and further agreed it would not commit any act that could constitute cause for the Commissioner of the Department to suspend or revoke Pettyjohn's license.

VIII

Respondent Pettyjohn did not exercise any supervision over the activities of respondents FMI, Inc. or Ward during the period November 1, 1986 through June 20, 1988. In an interview with Department investigators, Pettyjohn denied being an officer of the corporation. His role with the corporation was little more than stopping by the corporate offices once in awhile to "ask how things were going". Pettyjohn was unaware of any of the details of the operations of Ward or the corporation. There was no evidence that Pettyjohn had any awareness of or involvement in any of the acts or omissions of Ward or the corporation that constitute the basis of the allegations of the Accusation.

The corporation's activities were supervised exclusively by respondent Ward. During the relevant period she oversaw the activities of the corporation as well as at least one Department salesperson licensee.

Respondent Pettyjohn did not review or initial any document produced by the corporation, nor did he ever review or approve any form or procedure adopted and used by the corporation.

IX

During the period January 1, 1987 through early 1988, respondent Pettyjohn, the corporate real estate broker, was not a signatory on any of the three trust accounts maintained by the corporation. At the same time, Richard Ward was a signatory on all three accounts, each of which were authorized to pay checks drawn with one signature. Richard Ward is not a real estate broker or salesperson licensee and is not covered by a fidelity bond of any sort.

X

During the period January 1, 1987 through April, 1988, the corporation's trust account at the 49'er Credit Union was used as depository of borrower's fees collected for credit reports and appraisals. The corporation collected a flat fee for these expenses of \$310.00 per loan. In a few cases, the receipt of borrower's funds for credit reports and appraisals were deposited into the corporation's general nontrust account, and then were transferred into this trust account. The average expenses of the credit reports and appraisals were \$269.00, leaving an average overage of \$41.00. This overage was transferred back from the trust account to the corporation's general account, where the funds were used to pay expenses such as postage, fax charges, phone call charges, and any excess was retained as office petty cash.

During the period January 1, 1987 through late December, 1987, the trust account at 49'er Credit Union was interest-bearing. During this period the account generated \$7.69 in interest, which was retained by the corporation. The account did not name Pettyjohn as trustee for any principal or beneficiary. The funds in the account were commingled, with funds belonging to borrowers and the corporation not separately accounted and ledgered. When respondent Ward was advised by the Department's auditor in late December of the problem with the account, she immediately phoned the credit union and had the account changed to a noninterest bearing account.

The commingled funds of this trust account were out of trust by a shortfall of \$7.31 when the Department audited the account in late December, 1987. The shortfall was produced by a clerical error that resulted when a clerk paid a credit report invoice twice by mistake. The clerical error was discovered quickly and rectified by a deposit of funds from the corporation's general account to cover the shortfall.

XI

The corporation's records for the beneficiaries of the funds in the the third trust account at the 49'er Credit Union were not separately stated for each beneficiary. The transactions for each

beneficiary are mixed together on a common record. Receipts and disbursements are not separately stated and accountability for the funds of each beneficiary could not be determined. Following the Department's advisement to respondent Ward of the problem with this trust account, she immediately corrected the records so that each beneficiary's account was separately stated.

XII

From November, 1987 through March, 1988, the corporation received 46 applications for loans for which \$12,740.00 was received for credit report and appraisal fees at the rate of \$310.00 per application. All of the \$12,740.00 was expended by the corporation for credit reports and appraisals except \$1,832.00, which was retained by the corporation and transferred to the corporation's general account. Of this \$1,832.00 retained by the corporation, \$1,384.10 was identified as corporate expenses such as postage, Federal Express charges, tax charges, and long distance telephone charges attributable to the processing of the applications. The remainder, \$447.90, was retained by the corporation as petty cash.

XIII

Respondent Ward contends each of the 46 borrowers who applied for loans through the corporation received both verbal and written disclosures that the \$310.00 represented fees for credit reports and appraisals, and that the extra would be used for additional expenses of processing the loan. Witnesses confirmed their understanding that when they applied for a loan with the corporation, the excess beyond the credit report and appraisal fees was to be retained by the corporation for processing expenses. The witnesses confirmed that they had received this information by verbal disclosure by the corporation's representatives when the application was made. However, the written loan packaging disclosure that each borrower received states as follows:

"Please enclose your check in the amount of \$310.00 payable to: Fischer Mortgage and Investments Corp., which represents our appraisal and application fee."

Although the written disclosure provided each borrower does not specifically state that the excess of the \$310.00 over credit report and appraisal fees would be retained for additional processing costs, it is clear that the borrowers understood this was to be the case. On the written disclosure this excess fee is referred to as an application fee, which is somewhat misleading. However, the verbal disclosures made clarified the purpose of most of the overage. No client was advised, either verbally or in writing, that any portion of the overage not used for additional processing expenses would become the corporation's money, and would become corporate petty cash.

It was not established that the corporation's conduct in retaining the excess funds constituted fraud or dishonest dealing.

The corporation's procedure was an attempt to collect in advance an estimated average of anticipated extra expenses involved in an expeditious processing of each application. In some cases, these expenses exceeded the \$310.00, and in others, there were few expenses in excess of the credit report and appraisal fee. Thus, the corporation tried to compute an average that would cover all applications, and anticipated that the excess retained from one application would offset the overage experienced on another. The procedure is a common business practice in which the business attempts to estimate an average of overhead expenses that can be passed along to the client in advance. To the extent these extra funds were used to offset actual expenses of processing that person's application, the procedure is effected with the knowing consent of the client. To the extent that the actual expenses do not consume the payment, and the corporation retains the excess, such is not with the client's knowing consent. Such conduct constitutes a misrepresentation, but it could hardly be characterized as substantial. The misrepresentation was based upon what the corporation and respondent Ward believed was a prudent business practice and did not involve any intent to cheat or defraud any client. The business practice, however, of retaining the excess over actual expenses, was ill advised and negligent. Although the actual amount retained was small, \$447.90 for 46 applications, the amounts over and above actual expenses consented to by the various clients must be identified to the appropriate client and returned.

XIV

Respondent Ward has been a real estate salesperson licensee for twenty-three years without a previous disciplinary action having been taken against her. She has also held disability insurance and escrow licenses, without disciplinary action. She began Fischer Mortgage ten years ago and incorporated the business with her husband.

Most of respondent's problems with corporate operations as reflected in the charges against her were due to a lack of understanding of the legal and technical requirements of operation as a corporate licensee. She believed her sales license status was adequate as signatory on the corporate trust accounts. She believed she, as a sales licensee with over two years experience, had been delegated by virtue of her brokerage agreement with Pettyjohn, to be the overseer of the daily activity of the corporation, with Pettyjohn available to help her if she needed him. She was unaware of the need to keep precise, separately stated beneficiary records for the trust account receiving and disbursing credit report and appraisal fees until the Department's auditor so advised her. The commingled funds in these accounts resulted from clerical errors by her staff which were corrected. These errors resulted when her clerks deposited credit report and appraisal fees by mistake into the corporation's general account. In order to make the appropriate disbursements, the funds then had to be transferred to the trust account.

Respondent Ward adamantly denied conversion, fraud or other wrongdoing regarding the extra fees on credit report and appraisal

deposits retained by the corporation. She contends the extra \$40.00 retained by the corporation is always less than the actual cost of setting up the loan. It was found in Finding XIII that respondent's conduct in retaining these fees was not fraudulent. However, respondent's contention that the costs retained did not cover the costs of setting up the loan is rejected as controverted by the Department's audit. It is clear that respondent's contention as such included the costs of staff time in processing the application as well. However, there was no disclosure of any sort that excess fees would be retained to cover staff time or other office overhead other than direct costs generated by each individual application.

It is quite clear that respondent Ward was acting in the capacity of a real estate broker during 1987 and 1988 in daily directing the affairs of the corporation during this time period. As such, she was directly responsible for all the acts and omissions of the corporation during the period.

DETERMINATION OF ISSUES

I

Cause exists pursuant to Business and Professions Code section 10175 to suspend or revoke the real estate broker's license of respondent John Robert Pettyjohn as follows:

- a. For failure to supervise both the activities of the corporation and respondent Ward during the period November 1, 1986 through June 20, 1988, as set forth in Finding VIII, thereby violating Business and Professions Code section 10177(h).
- b. For his negligent failure in overseeing the activities of the corporation and respondent Ward, thereby permitting the corporation and Ward to commit the violations as set forth in Determination of Issues II, respondent Pettyjohn violated Business and Professions Code section 10177(g).
- c. For his failure to review and initial any corporate documents that may have had a material effect upon the rights or obligations of the parties to the transaction, thereby violating Business and Professions Code section 10177(h) by violating Title 10, California Code of Regulations ("CCR") section 2725(a), as set forth in Finding VIII. Pursuant to Title 10, CCR section 2725(b), the broker may delegate some of his oversight authority to a salesperson licensee of more than two years experience. However, the Brokerage Agreement does not, even liberally construed, make such a delega-

tion, and even if it did, does not enumerate specific functions to be delegated. Even in the presence of a valid written delegation agreement, the broker may not relinquish his overall supervisory authority, which is precisely what he did, as set forth in Findings VIII and XIV.

II

Cause exists for the suspension or revocation of respondent Theresa Marie Ward's real estate salesperson's license and respondent FMI, Inc.'s corporate real estate license pursuant to Business and Professions Code section 10175 as follows:

- a. The corporate real estate broker/designated officer was not an authorized signatory on any of the corporate trust accounts in violation of Business and Professions Code section 10145(c). The requirements of this code section cannot be met by a salesperson unless the broker is a signatory to the salesperson's trust account, or the funds are deposited into the broker's trust account. As set forth in Finding IX, neither was done by either respondent;
- b. An unlicensed signer was permitted via single signature authorization access to corporate trust funds without a fidelity bond to protect the trust funds, in violation of Business and Professions Code section 10177(h) and Title 10, California Code of Regulations ("CCR") section 2834, as set forth in Finding IX.
- c. The trust account at the 49'er Credit Union was interest-bearing without compliance with the requirements of Business and Professions Code section 10145(d)(1) and (3), thereby violating Business and Professions Code section 10177(h), as set forth in Finding X.
- d. Some deposits of trust funds were made into the nontrust corporate general account and then were transferred into the trust fund at 49'er Credit Union, violating Business and Professions Code section 10145(a), as set forth in Finding X.
- e. Trust and general corporate funds were commingled, resulting in a minor, momentary shortage, violating Business and Professions Code sections 10145(a), and 10177(d) due to violations of Title 10, CCR sections 2830,

2832, and 2832.1, as set forth in Finding X. This conduct did not establish a violation of Business and Professions Code section 10176(a) in that substantial misrepresentation was not established.

- f. The trust account at 49'er Credit Union for receipt and disbursement of fees for credit reports and appraisals did not separately state accounts for each beneficiary, in violation of Business and Professions Code section 10177(d) due to a violation of Title 10, CCR section 2831.1, as set forth in Finding XI.
- g. Respondents FMI, Inc. and Ward negligently failed to disclose to loan application clients that a small portion of their \$310.00 fee for a credit report, appraisal and processing fees might not be used, and if not, would become corporation property, in violation of Business and Professions Code section 10177(g) as set forth in Findings XIII and XIV. This conduct did not violate Business and Professions Code sections 10176(a), 10177(g) nor 10176(i) as it was not established that a substantial misrepresentation, fraud or dishonest dealing occurred.
- h. Respondent Ward has been operating as a real estate broker while licensed as a salesperson, without the supervision of a broker having lawfully delegated authority to her, in violation of Business and Professions Code sections 10130 and 10131, as set forth in Findings VIII through XIV. Respondent's honest but unreasonable belief that she was operating pursuant to a valid delegation of authority to her by her broker pursuant to a written agreement meeting the requirements of Title 10 CCR section 2725(b) mitigates but does not excuse the violation.

III

The other allegations of the Accusation not specifically mentioned in Determination of Issues I and II were not established and are thereby dismissed.

ORDER

I

All real estate licenses and licensing rights issued to respondent John Robert Pettyjohn by the Department of Real Estate are

revoked separately and severally for each of Determination of Issues I a - c provided, however, a restricted real estate license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor within thirty days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.
4. Respondent shall, within two (2) years from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

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

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

II

All real estate licenses and licensing rights issued to respondents Fischer Mortgage and Investments Inc. and Theresa Marie Ward by the Department of Real Estate are revoked separately and severally for each of Determination of Issues II a - h provided, however, a restricted real estate license shall be issued to respondents pursuant to section 10156.5 of the Business and Professions Code if respondents make application therefor within thirty days from the effective date of this decision. The restricted license issued to respondents shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. Any restricted license issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of any respondents' conviction or plea of nolo contendere to a crime which bears a significant relation to respondents' fitness or capacity as a real estate licensee.
2. Any restricted license issued to respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that any respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondents shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the con-

ditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

4. Respondent Ward shall, within two (2) years from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that she has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If she fails to satisfy this condition, the Commissioner may order the suspension of her restricted license until the respondent presents such evidence. The Commissioner shall afford respondent Ward the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent Ward shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker which shall certify:
 - (1) That the employing real estate broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (2) That the employing real estate broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

Respondents shall, within ninety days of the effective date of this decision, furnish in a form satisfactory to the Commissioner or his delegate, an accounting for the \$447.90 in trust funds retained as corporate petty cash. The accounting shall separately state the expenses actually paid in processing the loan for each beneficiary and shall separately state the amount of the \$447.90 assignable to each beneficiary as unexpended and retained funds. Within thirty days of the Commissioner's approval of this accounting, respondents shall refund these amounts to the various beneficiaries thereby refunding the entire \$447.90. The Department shall immediately suspend the licenses of respondents, and each of them, for failure to comply with this provision, unless good cause is shown for the delay or failure.

Respondents shall have the right to a hearing pursuant to the Administrative Procedure Act should the Department suspend their licenses, or any of them, for failure to comply with this section.

Dated: March 8, 1984

Stephen J. Smith

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 24 1988

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

DEPARTMENT OF REAL ESTATE

By Laurie A. Ryan

In the Matter of the Accusation of

FISCHER MORTGAGE & INVESTMENTS,
CORPORATION, et al.,

Case No. H-2359 SAC

OAH No. N 32439

Respondent(s)

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 501 J Street, Suite 220 (Second Floor Hearing Rooms), Sacramento, CA 95814 on the 6th day of January, 19 89, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: 10/24/88

By Roland Adickes
ROLAND ADICKES Counsel

1 ROLAND ADICKES, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 (916) 739-3607

FILED
SEP 16 1988

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 FISCHER MORTGAGE & INVESTMENTS)
13 CORPORATION,)
14 JOHN ROBERT PETTYJOHN,)
15 TERESA MARIE WARD,)
Respondents.)

NO. H-2359 SAC

ACCUSATION

16 The Complainant, Charles W. Koenig, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against FISCHER MORTGAGE & INVESTMENTS CORPORATION, JOHN ROBERT
19 PETTYJOHN, and TERESA MARIE WARD (hereinafter referred to as
20 "Respondents") is informed and alleges as follows:

21 1.

22 The Complainant, Charles W. Koenig, a Deputy Real Estate
23 Commissioner of the State of California, is acting in his official
24 capacity in making this Accusation against Respondents.

25 2.

26 Respondents are presently licensed and/or have license
27 rights under the Real Estate Law (Part 1 of Division 4 of the
28 Business and Professions Code) (Code) as follows:

1 (a) FISCHER MORTGAGE & INVESTMENTS CORPORATION, as a
2 real estate broker through John Robert Pettyjohn as designated
3 broker-officer as of May 16, 1988.

4 (b) JOHN ROBERT PETTYJOHN, as a real estate broker.

5 (c) TERESA MARIE WARD, as a real estate salesperson.

6 3.

7 From time to time during the years 1987 and 1988,
8 Respondents conducted a mortgage loan brokerage business at
9 Placerville, California. During this period, respondent Pettyjohn
10 permitted respondent Ward to run the business as if Ward were
11 licensed as a real estate broker, and Pettyjohn failed to exercise
12 reasonable supervision over the mortgage loan broker activities of
13 respondent Fischer Mortgage & Investments (the "Corporation") and
14 of the real estate licensees employed by the Corporation. In
15 particular, Pettyjohn caused and/or permitted the following:

16 (a) Pettyjohn failed to deposit and maintain trust
17 funds received by the Corporation in that Pettyjohn was not an
18 authorized signatory on any of the trust accounts of the
19 Corporation.

20 (b) Pettyjohn permitted an unlicensed person to be a
21 signatory on trust accounts without securing a fidelity bond
22 covering the unlicensed person.

23 (c) Pettyjohn permitted some of the trust accounts of
24 the Corporation to be interest-bearing accounts without complying
25 with the requirements of Section 10145(d)(1) and (3) of the Code.

26 (d) Pettyjohn permitted the deposit of trust funds into
27 the Corporation's general account and/or the transfer of trust

1 funds from a trust account to the general account of the
2 Corporation.

3 (e) Pettyjohn failed to review, initial, and date all
4 documents prepared or signed by real estate licensees employed by
5 the Corporation which documents may have a material effect upon
6 the rights or obligations of parties to the transactions.

7 (f) Pettyjohn permitted the commingling of funds of the
8 Corporation with trust funds and failed to assure that trust funds
9 were accurately accounted for, resulting in a minor trust fund
10 shortage as of November 30, 1987.

11 (g) Pettyjohn failed to assure that the Corporation's
12 trust fund records were kept showing separately the separate
13 accounts of each trust fund beneficiary.

14 (h) Pettyjohn permitted and/or caused the Corporation
15 to collect from prospective borrowers and/or loan applicants fees
16 for appraisals and credit reports on the representation that these
17 amounts were needed to pay for such services, which fees exceeded
18 the charges paid for these services by Respondents. Respondents
19 did not disclose these "mark-ups" to the borrowers or loan
20 applicants, did not obtain their consent to these "mark-ups" and
21 Respondents pocketed the difference between the fees collected and
22 the bills for the services.

23 During the period August 1, 1987 through February 29,
24 1988, Respondents obtained for their own use and benefit
25 approximately \$3,216.10 through the "mark-ups" described above.

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1 4.

2 The acts and/or omissions of respondents Pettyjohn and
3 Fischer Mortgage & Investments Corporation are grounds for the
4 suspension or revocation of their licenses as follows:

5 (a) As to paragraph 3.(a) under Section 10177(d) in
6 conjunction with Section 10145(a) of the Code.

7 (b) As to paragraph 3.(b) under Section 10177(d) of the
8 Code in conjunction with Section 2834 of Title 10 of The
9 California Code of Regulations (the Regulations).

10 (c) As to paragraph 3.(c) under Section 10177(d) in
11 conjunction with Section 10145(d)(1) and (3) of the Code.

12 (d) As to paragraph 3.(d) under Section 10177(d) in
13 conjunction with Section 10145(a) of the Code.

14 (e) As to paragraph 3.(e) under Section 10177(d) of the
15 Code in conjunction with Regulation 2725.

16 (f) As to paragraph 3.(f) under Section 10176(e) and
17 Section 10177(d) in conjunction with Section 10145(a) of the
18 Code.

19 (g) As to paragraph 3.(g) under Section 10177(d) of the
20 Code in conjunction with Regulation 2831.1.

21 (h) As to paragraph 3.(h) under Sections 10176(a), (i)
22 and/or Section 10177(g), (h), (j) of the Code.

23 (i) As to paragraphs 3.(a) through 3.(g) under Sections
24 10177(g), (h) of the Code.

25 5.

26 Respondent Ward did or caused all of the acts,
27 misrepresentations, concealments, misappropriations of money,

1 described in paragraph 3., above and/or caused all of the
2 omissions described in paragraph 3., above, in that Ward actually
3 ran the mortgage loan brokerage business of the Corporation,
4 directed employees of the Corporation, deposited and/or withdrew
5 moneys or caused such deposits and/or withdrawals during the
6 period stated in paragraph 3.

7 6.

8 The acts and/or omissions of respondent Ward are grounds
9 for the suspension or revocation of Ward's license under the
10 following sections of the Code.

11 (1) Section 10177(d) in conjunction with Section 10130.
12 of the Code.

13 (2) Section 10145(c).

14 (3) Section 10176(a), (i).

15 (4) Section 10177(j), (g).

16 7.

17 The acts and/or omissions of Respondents described above
18 are such that the Real Estate Commissioner may require the filing
19 of surety bonds or equivalent financial security pursuant to
20 Section 10156.8 of the Code for the protection of the persons or
21 classes of persons with whom Respondents have dealt and may deal.

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1 WHEREFORE, complainant prays that a hearing be conducted
2 on the allegations of this Accusation and that upon proof thereof,
3 a decision be rendered imposing disciplinary action against all
4 licenses and license rights of Respondents, under the Real Estate
5 Law. (Part 1 of Division 4 of the Business and Professions Code),
6 and that as a condition of a restricted license, Respondents shall
7 render an accounting satisfactory to the Commissioner of all
8 "mark-ups" collected by Respondents without the prior consent of
9 the borrower in question during the years 1987, 1986, and 1985 and
10 that as a further condition of a restricted license, Respondents
11 shall file surety bonds or other financial security securing the
12 repayment of all "mark-ups" collected without the prior consent of
13 the borrowers, and for such other and further relief as may be
14 proper under the provisions of law.

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17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner

19 Dated at Sacramento, California
20 this 12th day of September, 1988.

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