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FILED
MAR 21 2005

DEPARTMENT OF REAL ESTATE

By Juan Alvarez

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-2395 SD
DAUN LYNELL SHERR,)	
)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 21, 1998, 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 November 30, 1998, and Respondent has operated as a restricted licensee since that time.

On February 23, 2004, 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 the petition of Respondent and the evidence and arguments in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance to Respondent of an unrestricted real estate broker
4 license and that it would not be against the public interest to
5 issue said license to Respondent.

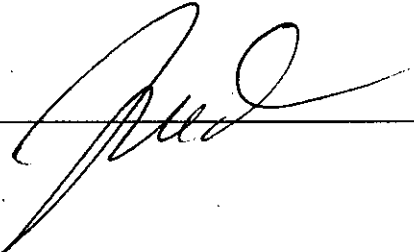
6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for reinstatement is granted and that a real estate
8 broker license be issued to Respondent if Respondent satisfies
9 the following condition within nine months from the date of this
10 Order:

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

13 This Order shall be effective immediately.

14
15 DATED: 3-16, 2005.

16 JEFF DAVI
17 Real Estate Commissioner

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1 to demonstrate to my satisfaction that Respondent has undergone
2 sufficient rehabilitation to warrant the reinstatement of
3 Respondent's real estate broker license. Respondent's conduct
4 that led to the disciplinary action in this matter involved a
5 failure on the part of Respondent to supervise a real estate
6 brokerage business for which Respondent acted as the designated
7 broker officer and which business was owned by another. Among
8 the violations resulting, in part, from Respondent's failure to
9 supervise was a trust account shortage in excess of \$14,000.

10 Respondent has been working in the employ of another
11 real estate broker since the issuance of her restricted real
12 estate broker license. Respondent has spent less than two years
13 in such employment and has thus not demonstrated her ability to
14 act as a broker supervising the licensed acts of others.
15 Additional time is required in order for Respondent to
16 demonstrate a change in attitude from that which existed at the
17 time of the conduct in question and in order to establish
18 compliance with Section 2911(j) and (m) of the Regulations.

19 Consequently, I am not satisfied that Respondent is
20 sufficiently rehabilitated to receive an unrestricted real estate
21 broker license.

22 NOW, THEREFORE, IT IS ORDERED that Respondent's
23 petition for reinstatement of her real estate broker license is
24 denied.

25 ///
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27 ///

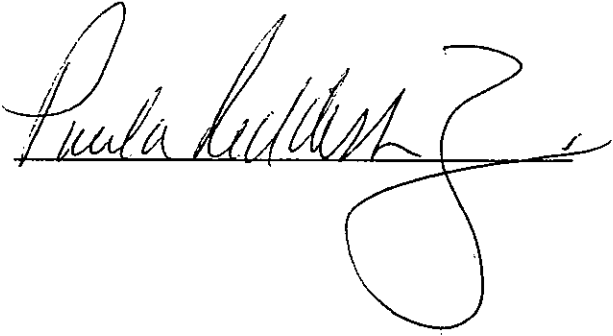
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This Order shall become effective at 12 o'clock

noon on September 7, 2000.

DATED: July 28, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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

FILED
NOV 10 1998
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 MICAL MORTGAGE, INC.,) NO. H-2395 SD
13 and DAUN LYNELL SHERR,) STIPULATION AND AGREEMENT
14 Respondents.) (AS TO DAUN LYNELL SHERR)

15 It is hereby stipulated by and between DAUN LYNELL SHERR
16 ("Respondent"), acting by and through David S. Bright, her
17 attorney of record; and the Complainant, acting by and through
18 Thomas C. Lasken, Counsel for the Department of Real Estate; as
19 follows, for the purpose of settling and disposing of the
20 Accusation filed on March 30, 1998, in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA) (Government Code Section 11500 et seq.), shall
26 instead and in place thereof be submitted solely on the basis of
27 the provisions of this Stipulation and Agreement.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA, and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On April 14, 1998, Respondent filed her Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 her Notice of Defense. Respondent acknowledges that by
10 withdrawing said Notice of Defense she will thereby waive her
11 right to require the Commissioner to prove the allegations in the
12 Accusation at a contested hearing held in accordance with the
13 provisions of the APA and that she will waive other rights
14 afforded to her in connection with the hearing such as the right
15 to present evidence in defense of the allegations in the
16 Accusation and the right to cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations of the
19 Accusation filed in this proceeding are true and correct and the
20 Real Estate Commissioner shall not be required to provide further
21 evidence of such allegations.

22 5. It is understood by the parties that the Real Estate
23 Commissioner may adopt the Stipulation and Agreement as his
24 Decision in this matter, thereby imposing the penalty and
25 sanctions on Respondent's real estate license(s) and license
26 rights as set forth in the below "Order". In the event that the
27 Commissioner in his discretion does not adopt the Stipulation and



1 Agreement, it shall be void and of no effect, and Respondent shall
2 retain the right to a hearing and proceeding on the Accusation
3 under all the provisions of the APA and shall not be bound by any
4 admission or waiver made herein.

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

11 7. Respondent has received, read, and understands the
12 "Notice Concerning Costs of Subsequent Audits". Respondent
13 understands that by agreeing to this Stipulation and Agreement in
14 Settlement, the findings set forth below in the DETERMINATION OF
15 ISSUES become final, and that the Commissioner may charge
16 Respondent for the cost of any audit conducted pursuant to Section
17 10148 of the Business and Professions Code to determine if the
18 violations have been corrected. The maximum costs of said audit
19 will not exceed \$4,300.00.

20 DETERMINATION OF ISSUES

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

25 I

26 The conduct of the Respondent, as described in the
27 Accusation, constitutes cause for the suspension or revocation of



1 the real estate license and license rights of Respondent under the
2 provisions of Section 10177(h) of the California Business and
3 Professions Code.

4 ORDER

5 A. The real estate broker license and all license rights of
6 Respondent under the Real Estate Law are revoked.

7 B. A restricted real estate broker license shall be issued to
8 Respondent pursuant to Business and Professions Code Section
9 10156.5, if Respondent makes application therefor and pays to
10 the Department the appropriate fee for said license within
11 ninety (90) days from the effective date of this ORDER.

12 C. The restricted license issued to Respondent shall be subject
13 to all the provisions of Section 10156.7 of the Business and
14 Professions Code and to the following limitations, conditions
15 and restrictions imposed under authority of Section 10156.6
16 of said Code:

17 (1) The license shall not confer any property right in the
18 privileges to be exercised, and the Real Estate
19 Commissioner may by appropriate order suspend the right
20 to exercise any privileges granted under the restricted
21 license in the event of:

22 (a) The conviction of Respondent (including a plea of
23 nolo contendere) to a crime which bears a
24 significant relation to Respondent's fitness or
25 capacity as a real estate licensee; or,

26 (b) The receipt of evidence that Respondent has
27 violated provisions of the California Real Estate



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

4 (2) Respondent shall not be eligible to apply for issuance
5 of an unrestricted real estate license nor the removal
6 of any of the conditions, limitations or restrictions
7 attaching to the restricted license until one (1) year
8 has elapsed from the date of issuance of a restricted
9 license to Respondent.

10 D. Respondent shall pay, pursuant to Section 10148 of the
11 Business and Professions Code, the Commissioner's reasonable
12 cost for an audit to determine if Respondent has corrected
13 the trust fund violations as set forth in the Determination
14 of Issues above. In calculating the amount of the
15 Commissioner's reasonable costs, the Commissioner may use the
16 estimated average hourly salary for all persons performing
17 audits of real estate brokers, and shall include an
18 allocation for travel costs, including mileage, time to and
19 from the auditor's place of work, and per diem. The
20 Commissioner's reasonable costs shall in no event exceed
21 \$4,300.00.

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

26 (2) If Respondent fails to pay, within 45 days from receipt
27 of the invoice specified above, the Commissioner's



1 reasonable costs for an audit to determine if Respondent
2 has corrected the violations found as set forth in the
3 Determination of Issues above, the Commissioner may
4 order the indefinite suspension of Respondent's real
5 estate licenses and license rights. The suspension
6 shall remain in effect until payment is made in full, or
7 until Respondent enters into an agreement satisfactory
8 to the Commissioner to provide for such payment. The
9 Commissioner may impose further reasonable disciplinary
10 terms and conditions upon Respondent's real estate
11 license and license rights as part of any such
12 agreement.

13 (3) Respondent, and co-Respondent MICAL MORTGAGE, INC.,
14 shall be jointly liable for the payment of said invoice.

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

22 F. Respondent shall, within nine (9) months from the effective
23 date of this ORDER, present evidence satisfactory to the Real
24 Estate Commissioner that she has, since the most recent
25 issuance of an original or renewal real estate license, taken
26 and successfully completed the continuing education
27 requirements of Article 2.5 of Chapter 3 of the Real Estate

1 Law for renewal of a real estate license. If Respondent
2 fails to satisfy this condition, the Commissioner may order
3 the suspension of the restricted license until Respondent
4 presents such evidence. The Commissioner shall afford
5 Respondent the opportunity for a hearing pursuant to the
6 Administrative Procedure Act to present such evidence.

7 G. Any restricted real estate broker license issued to
8 Respondent may be suspended or revoked for a violation by
9 Respondents of any of the conditions attaching to the
10 restricted license.

11 July 20 1998
12 DATED

11 Thomas C. Lasken
12 THOMAS C. LASKEN, Counsel
13 DEPARTMENT OF REAL ESTATE

13 * * *

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

25
26 07/14/98
27 DATED

26 By: Daun Lynell Sherr
27 DAUN LYNELL SHERR
Respondent



1 I have reviewed the Stipulation and Agreement as to
2 form and content and have advised my client accordingly.
3

4 7-15-98

5 DATED

6 David S. Bright
7 DAVID S. BRIGHT
8 Attorney for Respondent

9 * * *

10 The foregoing Stipulation and Agreement is hereby
11 adopted by the Real Estate Commissioner as his Decision and Order
12 and shall become effective at 12 o'clock noon on
13 November 30, 1998.

14 IT IS SO ORDERED 10/21, 1998.

15 JIM ANTT, JR.
16 Real Estate Commissioner

17 Jim Antt, Jr.
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1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
NOV 10 1998
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 MICAL MORTGAGE, INC.,) NO. H-2395 SD
13 and DAUN LYNELL SHERR,) STIPULATION AND AGREEMENT
14 Respondents.) (AS TO MICAL MORTGAGE, INC.)

15 It is hereby stipulated by and between MICAL MORTGAGE,
16 INC. ("Respondent"), acting by and through Joel L. Incorvaia, its
17 attorney of record; and the Complainant, acting by and through
18 Thomas C. Lasken, Counsel for the Department of Real Estate; as
19 follows, for the purpose of settling and disposing of the
20 Accusation filed on March 30, 1998, in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA) (Government Code Section 11500 et seq.), shall
26 instead and in place thereof be submitted solely on the basis of
27 the provisions of this Stipulation and Agreement.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA, and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On April 16, 1998, Respondent filed its Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraw its
9 Notice of Defense. Respondent acknowledges that by withdrawing
10 said Notice of Defense it will thereby waive its right to require
11 the Commissioner to prove the allegations in the Accusation at a
12 contested hearing held in accordance with the provisions of the
13 APA and that it will waive other rights afforded to it in
14 connection with the hearing such as the right to present evidence
15 in defense of the allegations in the Accusation and the right to
16 cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations of the
19 Accusation filed in this proceeding are true and correct and the
20 Real Estate Commissioner shall not be required to provide further
21 evidence of such allegations.

22 5. It is understood by the parties that the Real Estate
23 Commissioner may adopt the Stipulation and Agreement as his
24 Decision in this matter, thereby imposing the penalty and
25 sanctions on Respondent's real estate license(s) and license
26 rights as set forth in the below "Order". In the event that the
27 Commissioner in his discretion does not adopt the Stipulation and



1 Agreement, it shall be void and of no effect, and Respondent shall
2 retain the right to a hearing and proceeding on the Accusation
3 under all the provisions of the APA and shall not be bound by any
4 admission or waiver made herein.

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

11 7. Respondent has received, read, and understands the
12 "Notice Concerning Costs of Subsequent Audits". Respondent
13 understands that by agreeing to this Stipulation and Agreement in
14 Settlement, the findings set forth below in the DETERMINATION OF
15 ISSUES become final, and that the Commissioner may charge
16 Respondent for the cost of any audit conducted pursuant to Section
17 10148 of the Business and Professions Code to determine if the
18 violations have been corrected. The maximum costs of said audit
19 will not exceed \$4,300.00.

20 DETERMINATION OF ISSUES

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

25 I

26 The conduct of the Respondent, as described in the
27 Accusation, constitutes cause for the suspension or revocation of

1 the real estate license and license rights of Respondent under
2 the provisions of Section 10176(e) of the California Business
3 and Professions Code ("Code"); Section 10177(d) of the Code in
4 conjunction with Section 10145 of the Code and Section 2832.1
5 of Chapter 6, Title 10, California Code of Regulations
6 ("Regulations"); and Section 10177(d) of the Code in conjunction
7 with Section 10240 of the Code and Sections 2831 and 2834(a) of
8 the Regulations.

9 ORDER

10 A. The real estate broker license and all license rights of
11 Respondent under the Real Estate Law are revoked.

12 B. A restricted real estate broker license shall be issued to
13 Respondent pursuant to Business and Professions Code
14 Section 10156.5, if Respondent makes application therefor
15 and pays to the Department the appropriate fee for said
16 license within ninety (90) days from the effective date of
17 this ORDER.

18 C. The restricted license issued to Respondent shall be subject
19 to all the provisions of Section 10156.7 of the Business and
20 Professions Code and to the following limitations, conditions
21 and restrictions imposed under authority of Section 10156.6
22 of said Code:

23 (1) The license shall not confer any property right in the
24 privileges to be exercised, and the Real Estate
25 Commissioner may by appropriate order suspend the right
26 to exercise any privileges granted under the restricted
27 license in the event of:



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(a) The conviction of Respondent (including a plea of nolo contendere) to a crime which bears a significant relation to Respondent's fitness or capacity as a real estate licensee; or,

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

(2) Respondent shall not be eligible to apply for issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until one (1) year has elapsed from the date of issuance of a restricted license to Respondent.


D. Respondent shall pay, pursuant to Section 10148 of the Business and Professions Code, the Commissioner's reasonable cost for an audit to determine if Respondent has corrected the trust fund violations as set forth in the Determination of Issues above. In calculating the amount of the Commissioner's reasonable costs, the 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. The Commissioner's reasonable costs shall in no event exceed \$4,300.00.

- 1 (1) Respondent shall pay such cost within 45 days of receipt
2 of an invoice from the Commissioner detailing the
3 activities performed during the audit and the amount of
4 time spent performing those activities;
- 5 (2) If Respondent fails to pay, within 45 days from receipt
6 of the invoice specified above, the Commissioner's
7 reasonable costs for an audit to determine if Respondent
8 has corrected the violations found as set forth in the
9 Determination of Issues above, the Commissioner may
10 order the indefinite suspension of Respondent's real
11 estate licenses and license rights. The suspension
12 shall remain in effect until payment is made in full, or
13 until Respondent enters into an agreement satisfactory
14 to the Commissioner to provide for such payment. The
15 Commissioner may impose further reasonable disciplinary
16 terms and conditions upon Respondent's real estate
17 license and license rights as part of any such
18 agreement.
- 19 (3) Respondent, and co-Respondent Sherr, shall be jointly
20 liable for the payment of said invoice.

21 E. Any restricted real estate broker license issued to
22 Respondent may be suspended or revoked for a violation by
23 Respondents of any of the conditions attaching to the
24 restricted license.

25
26 July 9, 1998

DATED


THOMAS C. LASKEN, Counsel
DEPARTMENT OF REAL ESTATE

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* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, 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.

MICAL MORTGAGE, INC.
Respondent

7-7-98

DATED

By: *Harve L. Lubin*

HARVE L. LUBIN
Executive Vice President

I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

7-6-98

DATED

Anna M. Maella

JOEL L. INCORVAIA
Attorney for Respondent

FILED
MAY 12 1998
DEPARTMENT OF REAL ESTATE

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

In the Matter of the Accusation of

MICAL MORTGAGE, INC.,
and DAUN LYNELL SHERR,

By Kathleen Contreras

Case No. H-2395 SD

OAH No. L-1998050051

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

Office of Administrative Hearings, 1350 Front Street,

Room 6022, San Diego, California 92101

on July 23, 1998 and July 24, 1998, at the hour of 9:30 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: May 12, 1998

By

Thomas C. Lasken
THOMAS C. LASKEN

Counsel

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

5 Telephone: (916) 227-0789

FILED
MAR 30 1998
DEPARTMENT OF REAL ESTATE

By Juan Luna

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MICAL MORTGAGE, INC.,) NO. H-2395 SD
13 and DAUN LYNELL SHERR,) ACCUSATION
14 Respondents.)

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against MICAL MORTGAGE, INC., and against DAUN LYNELL SHERR,
18 individually and as Designated Officer of MICAL MORTGAGE, INC., is
19 informed and alleges as follows:

20 I

21 The Complainant, J. Chris Graves, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 his official capacity.

24 II

25 At all times herein mentioned, Respondent MICAL
26 MORTGAGE, INC. (hereinafter "Respondent MICAL") was licensed
27 and/or had license rights under the Real Estate Law, Part 1 of



1 Division 4 of the Business and Professions Code (hereinafter
2 "Code") as a real estate brokerage corporation, by and through
3 Respondent DAUN LYNELL SHERR (hereinafter Respondent "SHERR") as
4 its Designated Officer.

5 III

6 At all times herein mentioned, Respondent SHERR was
7 licensed, and/or has license rights under the Code, individually
8 and as Designated Officer of Respondent MICAL.

9 IV

10 At all times mentioned herein, Respondent MICAL engaged
11 in the business of, acted in the capacity of, advertised or
12 assumed to act as a real estate broker within the State of
13 California, including the operation and conduct of a mortgage loan
14 brokerage business with the public wherein lenders and borrowers
15 were solicited for loans secured directly or collaterally by liens
16 on real property, wherein such loans were arranged, negotiated,
17 processed, and consummated on behalf of others for compensation or
18 in expectation of compensation.

19 V

20 During the course of the mortgage loan brokerage
21 activities described in Paragraph IV above, Respondent MICAL
22 received and disbursed funds held in trust on behalf of another or
23 others.

24 VI

25 Within the three-year period immediately preceding the
26 filing of this Accusation, Respondent MICAL maintained the
27 following trust accounts for its mortgage loan business:



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Grossmont Bank
1024 Graves Avenue
El Cajon, CA 92021-4596

- a. Title: Mical Mortgage Inc
Credit and Appraisal Trust
Account No. 02-065622-01 ("Trust #1")
- b. Title: Mical Mortgage Inc
Escrow Trust Division
Account No. 02-069490-01 ("Trust #2")

VII

Commencing on October 16, 1997, and continuing through November 19, 1997, an investigative audit was made by the Department of Real Estate (hereinafter "Department") of Respondent MICAL's records for the period of December 1, 1996, through October 31, 1997, as those records relate to Respondent MICAL's licensed activities in its mortgage loan business.

VIII

In connection with the collection and disbursement of trust funds, Respondent MICAL failed to deposit and maintain trust funds in Trust #1 in such manner that as of September 30, 1997, there was a shortage of \$14,766.50 of trust funds.

IX

As of September 30, 1997, Respondent MICAL disbursed, or caused or permitted the disbursement of, trust funds from Trust #1 without the prior written consent of every principal who was an owner of the funds in the account, where the disbursement reduced the balance of funds in the accounts to an amount which was \$14,766.50 less than the existing aggregate trust fund liability of Respondent MICAL to all owners of said funds, in violation of Section 2832.1 of Title 10, California Code of Regulations (hereinafter "Regulations").

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X

During the period from July 1, 1997, through October 31, 1997, in connection with the collection and disbursement of trust funds as described in Paragraph V above, Respondent MICAL commingled with its own money or property, the money or property of others which was received and held by Respondent MICAL.

XI

During the period from December 1, 1996, through October 31, 1997, Respondent MICAL failed to maintain adequate columnar records of all trust funds received and disbursed for Trust #1 in the manner required by Section 2831 of the Regulations.

XII

During the period from December 1, 1996, through October 31, 1997, Respondent MICAL allowed withdrawals from Trusts #1 and #2, by unlicensed persons who did not have fidelity bond coverage, in violation of Section 2834(a) of the Regulations.

XIII

During the period from December 1, 1996, through October 31, 1997, Respondent MICAL, in connection with the mortgage loan brokerage activities described in Paragraph IV above, failed to maintain on file true and correct signed copies of statements with the contents set forth in Section 10241 of the Code, in violation of Section 10240(a) of the Code.

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XIV

Respondent MICAL's acts and omissions alleged above in Paragraphs IX and X constitute cause for discipline under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations.

XV

Respondent MICAL's acts and omissions alleged above in Paragraph XI constitutes cause for discipline under Section 10176(e) of the Code.

XVI

Respondent MICAL's acts and omissions alleged above in Paragraphs XII through XVIII constitute cause for discipline under the provisions of Section 10177(d) of the Code.

XVII

During the period from December 1, 1996, through October 31, 1997, Respondent SHERR, as designated broker-officer for Respondent MICAL, failed to exercise reasonable supervision and control over the licensed activities of Respondent MICAL as required by Section 10159.2 of the Code. Such failure is cause for the suspension or revocation of Respondent SHERR's licenses and/or license rights under Section 10177(h) of the Code.

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