

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

FILED
NOV - 8 2001

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zini*

10 BEFORE THE DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of) DRE No. H-2638 SD
14)
15 AMERICAN HOME MARKETING, INC.,) STIPULATION AND AGREEMENT
16 AMERICAN HOME BUYERS MORTGAGE,)
17 INC., and ROBERT JUSTUS SWANSON,)
Respondents.)

18 It is hereby stipulated by and between Respondents
19 AMERICAN HOME MARKETING, INC. a corporation (hereinafter
20 "MARKETING"), AMERICAN HOME BUYERS MORTGAGE, INC., a corporation
21 (hereinafter "MORTGAGE"), and ROBERT JUSTUS SWANSON (hereinafter
22 "SWANSON"), individually and by and through Steven M. Kries,
23 Esq., attorney of record herein for Respondents MARKETING,
24 MORTGAGE, and SWANSON (hereinafter "Respondents"), and the
25 Complainant, acting by and through James L. Beaver, Counsel for

26 DRE No. H-2638 SD

27 AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 the Department of Real Estate (herein "the Department"), as
2 follows for the purpose of settling and disposing of the
3 Accusation filed on June 7, 2001 in this matter (herein "the
4 Accusation"):

5 1. All issues which were to be contested and all
6 evidence which was to be presented by Complainant and Respondents
7 at a formal hearing on the Accusation, which hearing was to be
8 held in accordance with the provisions of the Administrative
9 Procedure Act (APA), shall instead and in place thereof be
10 submitted solely on the basis of the provisions of this
11 Stipulation and Agreement.

12 2. Respondents have received, read and understand the
13 Statement to Respondent, the Discovery Provisions of the APA and
14 the Accusation filed by the Department in this proceeding.

15 3. On June 22, 2001, Respondents filed a Notice of
16 Defense pursuant to Section 11505 of the Government Code for the
17 purpose of requesting a hearing on the allegations in the
18 Accusation. Respondents each hereby freely and voluntarily
19 withdraw said Notice of Defense. Respondents acknowledge that
20 Respondents understand that by withdrawing said Notice of Defense
21 Respondents will thereby waive Respondents' right to require the
22 Real Estate Commissioner (herein "the Commissioner") to prove the
23 allegations in the Accusation at a contested hearing held in
24 accordance with the provisions of the APA and that Respondents
25 will waive other rights afforded to Respondents in connection
26 with the hearing such as the right to present evidence in defense

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 of the allegations in the Accusation and the right to cross-
2 examine witnesses.

3 4. Respondents deny the allegations of Paragraph X of
4 the Accusation as they relate to B/A #2, and Respondents deny the
5 allegations of Paragraph XVII of the Accusation, but Respondents,
6 pursuant to the limitations set forth below, hereby admit that
7 all factual allegations in the Accusation, other than the
8 allegations of Paragraph X as they relate to B/A #2 and the
9 allegations of Paragraph XVII, are true and correct and stipulate
10 and agree that the Real Estate Commissioner shall not be required
11 to provide further evidence of such allegations.

12 5. It is understood by the parties that the
13 Commissioner may adopt the Stipulation and Agreement as her
14 decision in this matter, thereby imposing the penalty and
15 sanctions on Respondents' real estate license and license rights
16 as set forth in the "Order" below. In the event that the
17 Commissioner in her discretion does not adopt the Stipulation and
18 Agreement, it shall be void and of no effect, and Respondents
19 shall retain the right to a hearing and proceeding on the
20 Accusation under all the provisions of the APA and shall not be
21 bound by any admission or waiver made herein.

22 6. This Stipulation and Agreement shall not
23 constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department with
25 respect to any matters which were not specifically alleged to be
26 causes for accusation in this proceeding.

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

DETERMINATION OF ISSUES

1
2 By reason of the foregoing stipulations, admissions and
3 waivers and solely for the purpose of settlement of the pending
4 Accusation without hearing, it is stipulated and agreed that the
5 following Determination of Issues shall be made:

I

6
7 The acts and omissions of Respondent MARKETING
8 described in the Accusation constitute cause for the suspension
9 or revocation of the licenses and license rights of Respondent
10 MARKETING under the Real Estate Law pursuant to the following
11 provisions of the Code and/or Chapter 6, Title 10, California
12 Code of Regulations (hereinafter "the Regulations"):

13 (a) as to Paragraph X(a) under Section 10145 of the
14 Code and Section 2831 of the Regulations in conjunction with
15 Section 10177(d) of the Code;

16 (b) as to Paragraph X(b) under Section 10145 of the
17 Code and Section 2831.1 of the Regulations in conjunction with
18 Section 10177(d) of the Code;

19 (c) as to Paragraph X(c) under Section 10145 of the
20 Code and Section 2831.2 of the Regulations in conjunction with
21 Section 10177(d) of the Code;

22 (d) as to Paragraph X(f) under Section 10145 of the
23 Code and Section 2834(b) of the Regulations in conjunction with
24 Section 10177(d) of the Code;

25 (e) as to Paragraph XI(a) under Section 10161.8(a) of

26
27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 the Code in conjunction with Sections 10165 and 10177(d) of the
2 Code; and

3 (f) As to Paragraph XI(b) under Section 2726 of the
4 Regulations in conjunction with Section 10177(d) of the Code.

5 II

6 The acts and omissions of Respondent MORTGAGE described
7 in the Accusation constitute cause for the suspension or
8 revocation of the licenses and license rights of Respondent
9 MORTGAGE under the Real Estate Law pursuant to the following
10 provisions of the Code and/or the Regulations:

11 (a) as to Paragraph XVI(a) under Section 10145 of the
12 Code and Section 2831 of the Regulations in conjunction with
13 Section 10177(d) of the Code;

14 (b) as to Paragraph XVI(b) under Section 10145 of the
15 Code and Section 2831.1 of the Regulations in conjunction with
16 Section 10177(d) of the Code;

17 (c) as to Paragraph XVI(c) under Section 10145 of the
18 Code and Section 2831.2 of the Regulations in conjunction with
19 Section 10177(d) of the Code;

20 (d) as to Paragraph XVI(d) under Section 10145 of the
21 Code and Section 2832.1 of the Regulations in conjunction with
22 Section 10177(d) of the Code;

23 (e) as to Paragraph XVI(e) under Section 10145 of the
24 Code and Section 2834(b) of the Regulations in conjunction with
25 Section 10177(d) of the Code;

26 DRE No. H-2638 SD

27 AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 (f) as to Paragraph XVIII under Section 10240 of the
2 Code in conjunction with Section 10177(d) of the Code;

3 (g) as to Paragraph XIX(a) under Section 10161.8(a) of
4 the Code in conjunction with Sections 10165 and 10177(d) of the
5 Code; and

6 (h) As to Paragraph XIX(b) under Section 2726 of the
7 Regulations in conjunction with Section 10177(d) of the Code.

8 III

9 The acts and omissions of Respondent SWANSON described
10 in Paragraphs XXI and XXII of the Accusation constitute cause for
11 the suspension or revocation of the licenses and license rights
12 of Respondent SWANSON under Section 10177(g) and/or Section
13 10177(h) of the Code and Section 10159.2 of the Code in
14 conjunction with Section 10177(d) of the Code.

15 ORDER

16 I

17 All licenses and licensing rights of Respondent
18 AMERICAN HOME MARKETING, INC. under the Real Estate Law are
19 suspended for a period of sixty (60) days from the date of
20 issuance of the Decision herein; provided, however,

21 (a) If Respondent MARKETING petitions, twenty (20)
22 days of said sixty (60) day suspension (or a portion thereof)
23 shall be stayed upon condition that:

24 (i) Respondent MARKETING pays a monetary penalty
25 pursuant to Section 10175.2 of the Business and Professions Code

26 DRE No. H-2638 SD

27 AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 at the rate of \$250.00 for each day of the suspension for a total
2 monetary penalty of \$5,000.00.

3 (ii) Said payment shall be in the form of a cashier's
4 check or certified check made payable to the Recovery Account of
5 the Real Estate Fund. Said check must be received by the
6 Department prior to the effective date of the Decision in this
7 matter.

8 (iii) If Respondent fails to pay the monetary penalty in
9 accordance with the terms and conditions of the Decision, the
10 Commissioner may, without a hearing, vacate and set aside the
11 stay order, and order the immediate execution of all or any part
12 of the stayed suspension.

13 (iv) No final subsequent determination be made, after
14 hearing or upon stipulation, that cause for disciplinary action
15 against Respondent MARKETING occurred within two (2) years of the
16 effective date of the Decision herein. Should such a
17 determination be made, the Commissioner may, in his or her
18 discretion, vacate and set aside the stay order, and order the
19 execution of all or any part of the stayed suspension, in which
20 event the Respondent shall not be entitled to any repayment nor
21 credit, prorated or otherwise, for money paid to the Department
22 under the terms of this Decision.

23 (v) If Respondent pays the monetary penalty and if no
24 further cause for disciplinary action against the real estate
25 license of Respondent occurs within two (2) years from the
26 effective date of the Decision herein, then the stay hereby

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 granted shall become permanent.

2 (b) Forty (40) days of said sixty (60) day suspension
3 shall be stayed upon condition that:

4 (i) All trust funds received by Respondent MARKETING,
5 including but not limited to any funds retained by Respondent for
6 use in the improvement of a Buyer's real property ("Miracle
7 Money"), shall be maintained in accordance with the provisions
8 for trust accounts contained in Section 10145 of the Code and
9 Article 15 (commencing with Section 2830.1) of the Regulations.

10 (ii) No final subsequent determination be made, after
11 hearing or upon stipulation, that cause for disciplinary action
12 against Respondent occurred within two (2) years of the effective
13 date of the Decision herein. Should such a determination be made,
14 the Commissioner may, in his or her discretion, vacate and set
15 aside the stay order, and order the execution of all or any part
16 of the stayed suspension, in which event the Respondent shall not
17 be entitled to any repayment nor credit, prorated or otherwise,
18 for money paid to the Department under the terms of this
19 Decision.

20 (iii) Pursuant to Section 10148 of the Business and
21 Professions Code, Respondent pays the Commissioner's cost, in the
22 sum of \$6,113.32, of the audit which resulted in the
23 determination that Respondent MARKETING committed the trust fund
24 violation(s) found in paragraph I, above, of the Determination of
25 Issues. Respondent shall pay such cost within 60 days of the
26 effective date of the Decision herein. Pursuant to Section 10148

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 of the Business and Professions Code, Respondent shall also pay
2 the Commissioner's reasonable cost. not to exceed \$6,113.32, for
3 an audit to determine if Respondent has corrected the trust fund
4 violation(s) found in paragraph I of the Determination of Issues.
5 In calculating the amount of the Commissioner's reasonable cost,
6 the Commissioner may use the estimated average hourly salary for
7 all persons performing audits of real estate brokers, and shall
8 include an allocation for travel time to and from the auditor's
9 place of work. Respondent shall pay such cost within 60 days of
10 receiving an invoice from the Commissioner detailing the
11 activities performed during the audit and the amount of time
12 spent performing those activities. The Commissioner may, in his
13 or her discretion, vacate and set aside the stay order if payment
14 is not timely made as provided for herein, or as provided for in
15 a subsequent agreement between the Respondent and the
16 Commissioner. The vacation and the set aside of the stay shall
17 remain in effect until payment is made in full, or until
18 Respondent enters into an agreement satisfactory to the
19 Commissioner to provide for payment.

20 (iv) If no order vacating the stay is issued, and if no
21 further cause for disciplinary action against the real estate
22 license of Respondent occurs within two (2) years from the
23 effective date of the Decision, then the stay hereby granted
24 shall become permanent.

25 ///

26 DRE No. H-2638 SD

27 AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

II

1 All licenses and licensing rights of Respondent
2 AMERICAN HOME BUYERS MORTGAGE, INC. under the Real Estate Law are
3 suspended for a period of sixty (60) days from the date of
4 issuance of the Decision herein; provided, however,

5 (a) If Respondent MORTGAGE petitions, twenty (20) days
6 of said sixty (60) day suspension (or a portion thereof) shall be
7 stayed upon condition that:

8 (i) Respondent MORTGAGE pays a monetary penalty
9 pursuant to Section 10175.2 of the Business and Professions Code
10 at the rate of \$250.00 for each day of the suspension for a total
11 monetary penalty of \$5,000.00.

12 (ii) Said payment shall be in the form of a cashier's
13 check or certified check made payable to the Recovery Account of
14 the Real Estate Fund. Said check must be received by the
15 Department prior to the effective date of the Decision in this
16 matter.

17 (iii) If Respondent fails to pay the monetary penalty in
18 accordance with the terms and conditions of the Decision, the
19 Commissioner may, without a hearing, vacate and set aside the
20 stay order, and order the immediate execution of all or any part
21 of the stayed suspension.

22 (iv) No final subsequent determination be made, after
23 hearing or upon stipulation, that cause for disciplinary action
24 against Respondent MARKETING occurred within two (2) years of the
25 effective date of the Decision herein. Should such a

26 DRE No. H-2638 SD

27 AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 determination be made, the Commissioner may, in his or her
2 discretion, vacate and set aside the stay order, and order the
3 execution of all or any part of the stayed suspension, in which
4 event the Respondent shall not be entitled to any repayment nor
5 credit, prorated or otherwise, for money paid to the Department
6 under the terms of this Decision.

7 (v) If Respondent pays the monetary penalty and if no
8 further cause for disciplinary action against the real estate
9 license of Respondent occurs within two (2) years from the
10 effective date of the Decision herein, then the stay hereby
11 granted shall become permanent.

12 (b) Forty (40) days of said sixty (60) day suspension
13 shall be stayed upon condition that:

14 (i) No final subsequent determination be made, after
15 hearing or upon stipulation, that cause for disciplinary action
16 against Respondent occurred within two (2) years of the effective
17 date of the Decision herein. Should such a determination be made,
18 the Commissioner may, in his or her discretion, vacate and set
19 aside the stay order, and order the execution of all or any part
20 of the stayed suspension, in which event the Respondent shall not
21 be entitled to any repayment nor credit, prorated or otherwise,
22 for money paid to the Department under the terms of this
23 Decision.

24 (ii) Pursuant to Section 10148 of the Business and
25 Professions Code, Respondent pays the Commissioner's cost, in the
26 sum of \$6,421.93, of the audit which resulted in the

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 determination that Respondent MORTGAGE committed the trust fund
2 violation(s) found in paragraph II, above, of the Determination
3 of Issues. Respondent shall pay such cost within 60 days of the
4 effective date of the Decision herein. Pursuant to Section 10148
5 of the Business and Professions Code, Respondent shall also pay
6 the Commissioner's reasonable cost, not to exceed \$6,421.93, for
7 an audit to determine if Respondent has corrected the trust fund
8 violation(s) found in paragraph II of the Determination of
9 Issues. In calculating the amount of the Commissioner's
10 reasonable cost, the Commissioner may use the estimated average
11 hourly salary for all persons performing audits of real estate
12 brokers, and shall include an allocation for travel time to and
13 from the auditor's place of work. Respondent shall pay such cost
14 within 60 days of receiving an invoice from the Commissioner
15 detailing the activities performed during the audit and the
16 amount of time spent performing those activities. The
17 Commissioner may, in his or her discretion, vacate and set aside
18 the stay order if payment is not timely made as provided for
19 herein, or as provided for in a subsequent agreement between the
20 Respondent and the Commissioner. The vacation and the set aside
21 of the stay shall remain in effect until payment is made in full,
22 or until Respondent enters into an agreement satisfactory to the
23 Commissioner to provide for payment.

24 (iii) If no order vacating the stay is issued, and if
25 no further cause for disciplinary action against the real estate
26 license of Respondent occurs within two (2) years from the

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 effective date of the Decision, then the stay hereby granted
2 shall become permanent.

3 III

4 All licenses and licensing rights of Respondent ROBERT
5 JUSTUS SWANSON under the Real Estate Law are suspended for a
6 period of sixty (60) days from the date of issuance of the
7 Decision herein; provided, however,

8 (a) If Respondent SWANSON petitions, twenty (20) days
9 of said sixty (60) day suspension (or a portion thereof) shall be
10 stayed upon condition that:

11 (i) Respondent SWANSON pays a monetary penalty
12 pursuant to Section 10175.2 of the Business and Professions Code
13 at the rate of \$250.00 for each day of the suspension for a total
14 monetary penalty of \$5,000.00.

15 (ii) Said payment shall be in the form of a cashier's
16 check or certified check made payable to the Recovery Account of
17 the Real Estate Fund. Said check must be received by the
18 Department prior to the effective date of the Decision in this
19 matter.

20 (iii) If Respondent fails to pay the monetary penalty in
21 accordance with the terms and conditions of the Decision, the
22 Commissioner may, without a hearing, vacate and set aside the
23 stay order, and order the immediate execution of all or any part
24 of the stayed suspension.

25 (iv) No final subsequent determination be made, after
26 hearing or upon stipulation, that cause for disciplinary action

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 against Respondent MARKETING occurred within two (2) years of the
2 effective date of the Decision herein. Should such a
3 determination be made, the Commissioner may, in his or her
4 discretion, vacate and set aside the stay order, and order the
5 execution of all or any part of the stayed suspension, in which
6 event the Respondent shall not be entitled to any repayment nor
7 credit, prorated or otherwise, for money paid to the Department
8 under the terms of this Decision.

9 (v) If Respondent pays the monetary penalty and if no
10 further cause for disciplinary action against the real estate
11 license of Respondent occurs within two (2) years from the
12 effective date of the Decision herein, then the stay hereby
13 granted shall become permanent.

14 (b) Forty (40) days of said sixty (60) day suspension
15 shall be stayed upon condition that:

16 (i) Respondent shall, within six (6) months from the
17 effective date of the Decision herein, take and pass the
18 Professional Responsibility Examination administered by the
19 Department, including the payment of the appropriate examination
20 fee. If Respondent fails to satisfy this condition, the
21 Commissioner may, in his or her discretion, vacate and set aside
22 the stay order. The vacation and the set aside of the stay shall
23 remain in effect until until Respondent passes the examination.

24 (ii) No final subsequent determination be made, after
25 hearing or upon stipulation, that cause for disciplinary action
26 against Respondent occurred within two (2) years of the effective

27 DRE No. H-2638 SD

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 date of the Decision herein. Should such a determination be made,
2 the Commissioner may, in his or her discretion, vacate and set
3 aside the stay order, and order the execution of all or any part
4 of the stayed suspension, in which event the Respondent shall not
5 be entitled to any repayment nor credit, prorated or otherwise,
6 for money paid to the Department under the terms of this
7 Decision.

8 (iii) If no order vacating the stay is issued, and if
9 no further cause for disciplinary action against the real estate
10 license of Respondent occurs within two (2) years from the
11 effective date of the Decision, then the stay hereby granted
12 shall become permanent.

13 October 1, 2001
14 DATED

13 James L. Beaver
14 JAMES L. BEAVER, Counsel
15 Department of Real Estate
16 * * *

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

26 DRE No. H-2638 SD

27 AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

1 defense and mitigation of the charges.

2
3 10/9/01
4 DATED

AMERICAN HOME MARKETING, INC.
Respondent

5 By Robert Justus Swanson
6 ROBERT JUSTUS SWANSON
7 Designated Officer

8
9 10/9/01
10 DATED

AMERICAN HOME BUYERS MORTGAGE, INC.
Respondent

11 By Robert Justus Swanson
12 ROBERT JUSTUS SWANSON
13 Designated Officer

14
15 10/9/01
16 DATED

17 By Robert Justus Swanson
18 ROBERT JUSTUS SWANSON
19 Respondent

20 * * *

21 I have reviewed the Stipulation and Agreement as to
22 form and content and have advised my clients accordingly.

23
24 10/1/01
25 DATED

26 Steven M. Kries
27 STEVEN M. KRIES
Attorney for Respondents

* * *

28 The foregoing Stipulation and Agreement is hereby
29 adopted by me as my Decision in this matter and shall become
30 effective at 12 o'clock noon on NOVEMBER 29, 2001.

31 IT IS SO ORDERED October 22, 2001.

32 PAULA REDDISH ZINNEMANN
33 Real Estate Commissioner

34 Paula Reddish Zinnemann

35 DRE No. H-2638 SD

36 AMERICAN HOME MARKETING, INC.,
37 AMERICAN HOME BUYERS MORTGAGE,
INC., and ROBERT JUSTUS SWANSON

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JUL 31 2001

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Accusation of

AMERICAN HOME MARKETING, INC.,
AMERICAN HOME BUYERS MORTGAGE
INC. AND ROBERT JUSTUS SWANSON,

Case No. H-2638 SD

OAH No. L-2001070326

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 THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CA 92101 on OCTOBER 1 & 2, 2001, at the hour of 9:00 A.M., 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.

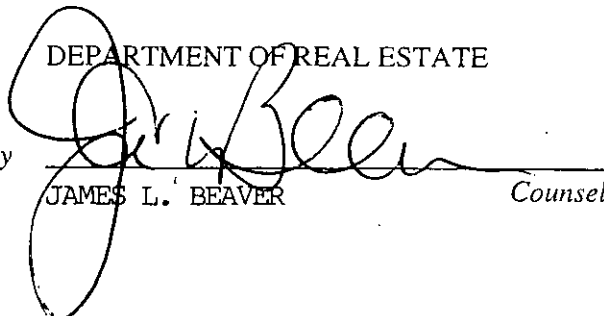
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real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

Dated: JULY 31, 2001

By

DEPARTMENT OF REAL ESTATE


JAMES L. BEAVER

Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 (916) 227-0788 (Direct)

FILED
JUN - 7 2001

DEPARTMENT OF REAL ESTATE

Laurie A. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No.: H-2638 SD
12 AMERICAN HOME MARKETING, INC.,) ACCUSATION
13 AMERICAN HOME BUYERS MORTGAGE,)
14 INC. AND ROBERT JUSTUS SWANSON,)
15 Respondents.)

16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against AMERICAN HOME MARKETING, INC., a corporation
19 (hereinafter "MARKETING"), AMERICAN HOME BUYERS MORTGAGE, INC.,
20 a corporation (hereinafter "MORTGAGE"), and ROBERT JUSTUS
21 SWANSON (hereinafter "SWANSON"), is informed and alleges as
22 follows:

23 PRELIMINARY ALLEGATIONS

24 I

25 The Complainant, J. Chris Graves, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 in his official capacity.

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

II

At all times herein mentioned, Respondents MARKETING, MORTGAGE and SWANSON (hereinafter "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code").

III

At all times herein mentioned, Respondent MARKETING was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent SWANSON as designated officer-broker of Respondent MARKETING to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, Respondent MORTGAGE was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent SWANSON as designated officer-broker of Respondent MORTGAGE to qualify said corporation and to act for said corporation as a real estate broker.

V

At all times herein mentioned, Respondent SWANSON was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondents MARKETING and MORTGAGE. As said designated officer-broker,

1 Respondent SWANSON was at all times mentioned herein responsible
2 pursuant to Section 10159.2 of the Code for the supervision of
3 the activities of the officers, agents, real estate licensees
4 and employees of Respondents MARKETING and MORTGAGE for which a
5 license is required.

6
7 VI

8 Whenever reference is made in an allegation in this
9 Accusation to an act or omission of a corporate Respondent, such
10 allegation shall be deemed to mean that the officers, directors,
11 employees, agents and real estate licensees employed by or
12 associated with such corporate Respondent committed such act or
13 omission while engaged in the furtherance of the business or
14 operations of such corporate Respondent and while acting within
15 the course and scope of their corporate authority and
16 employment.

17 FIRST CAUSE OF ACCUSATION

18 VII

19 At all times herein mentioned Respondents MARKETING
20 engaged in the business of, acted in the capacity of,
21 advertised, or assumed to act as a real estate broker within the
22 State of California within the meaning of Section 10131(a) of
23 the Code, including the operation and conduct of a real estate
24 resale brokerage business with the public wherein, on behalf of
25 others, for compensation or in expectation of compensation, such
26 Respondent sold and offered to sell, bought and offered to buy,
27 solicited prospective sellers or purchasers of, solicited and
obtained listings of, and negotiated the purchase, sale and

1 exchange of real property, and conducted escrows consummating
2 purchases and sales of real property negotiated and arranged by
3 such Respondents.
4

5 VIII

6 In so acting as a real estate broker, as described in
7 Paragraph VII above, Respondent MARKETING accepted or received
8 funds in trust (hereinafter "trust funds") from or on behalf of
9 sellers, buyers, borrowers, lenders and others and thereafter
10 from time to time made disbursements of said funds.

11 IX

12 Some but not necessarily all of the aforesaid trust
13 funds accepted or received by Respondent MARKETING were
14 deposited or caused to be deposited by Respondent MARKETING into
15 one or more bank accounts (hereinafter "trust fund accounts")
16 maintained by such Respondent for the handling of trust funds,
17 including but not necessarily limited to the following accounts
18 maintained by such Respondent at the San Diego, California,
19 branch of Imperial Bank:

20 (a) The "American Home Marketing, Inc. Escrow Trust
21 II", account number 31-801-184 (hereinafter "B/A #1"); and

22 (b) The "American Home Marketing, Inc. Buyers Credit
23 Account", account number 31-800-250 (hereinafter "B/A #2").

24 X

25 Within the three-year period immediately preceding the
26 filing of this Accusation, in connection with the collection and
27 disbursement of said trust funds, Respondents MARKETING and
SWANSON:

1 (a) Failed to keep a columnar record in chronological
2 sequence of all trust funds received and disbursed from B/A #1
3 and B/A #2 containing all information required by Section 2831
4 of Title 10, California Code of Regulations (hereinafter "the
5 Regulations");

6 (b) Failed to keep a separate record for each
7 beneficiary or transaction, accounting therein for all funds
8 which have been deposited into B/A #1 and B/A #2; containing all
9 information required by Section 2831.1 of the Regulations;

10 (c) Failed to reconcile, at least once a month, the
11 balance of all separate beneficiary or transaction records with
12 the record of all trust funds received into and disbursed from
13 B/A #1 and B/A #2, in compliance with Section 2831.2 of the
14 Regulations;

15 (d) Failed to place trust funds entrusted to
16 Respondent MARKETING into the hands of a principal on whose
17 behalf the funds were received, into a neutral escrow
18 depository, or into a trust fund account in the name of
19 Respondent MARKETING as trustee at a bank or other financial
20 institution, in conformance with the requirements of Section
21 10145 of the Code and Section 2832(a) of the Regulations, in
22 that such Respondents placed such funds in B/A #2, an account
23 that was not in the name of Respondent MARKETING as trustee;

24 (e) Caused, suffered or permitted the balance of
25 funds in B/A #2 to be reduced to an amount which, as of July 31,
26 2000 was approximately \$6,561.73 less than the aggregate
27

///
27

1 liability of Respondent MARKETING to all owners of such funds,
2 without the prior written consent of the owners of such funds;

3 (f) Authorized disbursements to be made from B/A #1
4 by George Cramer, William Rast, Brett Hagen, Peggy Moran, Cathy
5 Martinez, Robert Bourell, Karen Bleckledge and Stephen Kries in
6 violation of Section 2834(b) of the Regulations, in that George
7 Cramer, William Rast, Brett Hagen, Peggy Moran, Robert Bourell,
8 Karen Bleckledge and Stephen Kries were unlicensed persons
9 without fidelity bond coverage at least equal to the maximum
10 amount of the trust funds to which such unlicensed person had
11 access at any one time, and Cathy Martinez was then a
12 salesperson licensed in the employ of Respondent MORTGAGE
13 without fidelity bond coverage at least equal to the maximum
14 amount of the trust funds to which Kathy Martinez had access at
15 any one time; and

16 (g) Authorized disbursements to be made from B/A #2
17 by George Cramer, William Rast and Brett Hagen in violation of
18 Section 2834(b) of the Regulations, in that George Cramer,
19 William Rast and Brett Hagen were unlicensed persons without
20 fidelity bond coverage at least equal to the maximum amount of
21 the trust funds to which such unlicensed person had access at
22 any one time.

23 XI

24 Within the three-year period immediately preceding the
25 filing of this Accusation, in course of the real estate resale
26 brokerage and escrow business described in Paragraph VII, above,
27 Respondents MARKETING and SWANSON:

1 (a) Failed to immediately notify the Real Estate
2 Commissioner in writing when Respondent MARKETING employed
3 various real estate salespersons to act as such. in violation of
4 Section 10161.8(a) of the Code; and

5 (b) Failed to maintain a written agreement covering
6 supervision of licensed activities, duties, and compensation
7 with Christopher Swanson, a broker employed by Respondent
8 MARKETING to act as a real estate salesperson under a broker -
9 salesman arrangement, in violation of Section 2726 of the
10 Regulations.

11 SECOND CAUSE OF ACCUSATION

12 XII

13 There is hereby incorporated in this second, separate
14 and distinct Cause of Accusation, all of the allegations
15 contained in Paragraphs I through XI, inclusive, of the First
16 Cause of Accusation with the same force and effect as if herein
17 fully set forth.

18 XIII

19 At all times herein mentioned Respondent MORTGAGE
20 engaged in the business of, acted in the capacity of,
21 advertised, or assumed to act as a real estate broker within the
22 State of California:

23 (a) Within the meaning of Sections 10131(d) and
24 10131(e) of the Code, including the operation and conduct of a
25 mortgage loan business with the public wherein, on behalf of
26 others, for compensation or in expectation of compensation, such
27 Respondent solicited borrowers and lenders for and negotiated

1 loans and collected payments and performed services for
2 borrowers and lenders and note holders in connection with loans
3 secured directly or collaterally by liens on real property, and
4 sold or offered to sell, bought or offered to buy, exchanged or
5 offered to exchange, real property sales contracts or promissory
6 notes secured directly or collaterally by a lien on real
7 property, and performed services for the holders thereof; and

8 (b) Within the meaning of Section 10131.1 of the
9 Code, including the operation and conduct of a mortgage loan
10 business with the public wherein such Respondent engaged as a
11 principal in the business of buying from, selling to, and
12 exchanging with the public, real property sales contracts or
13 promissory notes secured directly or collaterally by liens on
14 real property.

15 XIV

16 In so acting as a real estate broker, as described in
17 Paragraph XIII above, Respondent MORTGAGE accepted or received
18 funds in trust (hereinafter "trust funds") from or on behalf of
19 sellers, buyers, borrowers, lenders and others and thereafter
20 from time to time made disbursements of said funds.

21 XV

22 Some but not necessarily all of the aforesaid trust
23 funds accepted or received by Respondent MORTGAGE were deposited
24 or caused to be deposited by such Respondent into one or more
25 bank accounts (hereinafter "trust fund accounts") maintained by
26 such Respondent for the handling of trust funds, including but
27 not necessarily limited to the "American Home Buyers Mortgage

1 Corporation Appraisal and Credit Trust Account", Account Number
2 0011-072-127, maintained by such Respondent at the San Diego,
3 California, branch of Imperial Bank (hereinafter "T/A #1").
4

5 XVI

6 Within the three-year period immediately preceding the
7 filing of this Accusation, in connection with the collection and
8 disbursement of said trust funds, Respondent's MORTGAGE and
9 SWANSON:

10 (a) Failed to keep a columnar record in chronological
11 sequence of all trust funds received and disbursed from T/A #1
12 containing all information required by Section 2831 of the
13 Regulations;

14 (b) Failed to keep a separate record for each
15 beneficiary or transaction, accounting therein for all funds
16 which have been deposited into T/A #1 containing all information
17 required by Section 2831.1 of the Regulations;

18 (c) Failed to reconcile, at least once a month, the
19 balance of all separate beneficiary or transaction records with
20 the record of all trust funds received into and disbursed from
21 T/A #1 in compliance with Section 2831.2 of the Regulations;

22 (d) Caused, suffered or permitted the balance of
23 funds in T/A #1 to be reduced to an amount which, as of July 31,
24 2000 was approximately \$6,180.75 less than the aggregate
25 liability of Respondent MORTGAGE to all owners of such funds,
26 without the prior written consent of the owners of such funds;
27 and

///
27

1 (e) Authorized disbursements to be made from T/A #1
2 by George Cramer, William Rast, Brett Hagen, Peggy Moran, Cathy
3 Martinez and Robert Bourell in violation of Section 2834 of the
4 Regulations, in that Respondent SWANSON, the officer through
5 whom Respondent MORTGAGE was then licensed, was not an
6 authorized signatory of T/A #1, and in that George Cramer,
7 William Rast, Brett Hagen, Peggy Moran, and Robert Bourell were
8 unlicensed persons without fidelity bond coverage at least equal
9 to the maximum amount of the trust funds to which such
10 unlicensed person had access at any one time.

11 XVII

12 Within the three-year period immediately preceding the
13 filing of this Accusation, in course of the mortgage loan
14 brokerage business described in Paragraph VIII(a), above,
15 Respondents MORTGAGE and SWANSON negotiated loans secured by a
16 trust deed on real property to be made by another but failed to
17 cause the trust deed to be recorded in the name of the lender as
18 beneficiary, in violation of Section 10234(a) of the Code.

19 XVIII

20 Within the three-year period immediately preceding the
21 filing of this Accusation, in course of the mortgage loan
22 business described in Paragraph VIII, above, Respondents
23 MORTGAGE and SWANSON failed to comply with Section 10240 of the
24 Code, in that such Respondent:

25 (a) Failed to cause to be delivered to the borrowers
26 any statement in writing required by Section 10241 of the Code
27 (hereinafter "Written Disclosure Statement");

1 (b) Failed to deliver any Written Disclosure
2 Statement to the borrower that was signed by either Respondent
3 MORTGAGE or a real estate licensee acting for Respondent
4 MORTGAGE;

5 (c) Failed to obtain the signature of the borrowers
6 on any Written Disclosure Statement; and/or
7

8 (d) Failed to retain on file for a period of three
9 years a true and correct copy of any Written Disclosure
10 Statement signed by the borrowers.

11 XIX

12 Within the three-year period immediately preceding the
13 filing of this Accusation, in course of the mortgage loan
14 business described in Paragraph VIII, above, Respondents
15 MORTGAGE and SWANSON:

16 (a) Failed to immediately notify the Real Estate
17 Commissioner in writing when Respondent MORTGAGE employed a real
18 estate salesperson, Alma Rodriguez, to act as such. in violation
19 of Section 10161.8(a) of the Code; and

20 (b) Failed to maintain a written agreement covering
21 supervision of licensed activities, duties, and compensation
22 with Cathy Martinez and Alma Rodriguez, licensed real estate
23 salespersons employed by Respondent MORTGAGE to act as such, in
24 violation of Section 2726 of the Regulations.

25 THIRD CAUSE OF ACCUSATION

26 XX

27 There is hereby incorporated in this third, separate
and distinct Cause of Accusation, all of the allegations

1 contained in Paragraphs I through XIX, inclusive, of the First
2 and Second Causes of Accusation with the same force and effect
3 as if herein fully set forth.
4

5 XXI

6 Respondent SWANSON failed to exercise reasonable
7 supervision over the acts of Respondent MARKETING in such a
8 manner as to allow the acts and events described in Paragraphs X
9 and XI, above, to occur.

10 XXII

11 Respondent SWANSON failed to exercise reasonable
12 supervision over the acts of Respondent MORTGAGE in such a
13 manner as to allow the acts and events described in Paragraphs
14 XVI through XIX, inclusive, above, to occur.

15 XXIII

16 The acts and omissions of Respondents MARKETING and
17 SWANSON described in the First Cause of Accusation, above,
18 constitute cause for the suspension or revocation of the
19 licenses and license rights of Respondents MARKETING and SWANSON
20 under the Real Estate Law pursuant to the following provisions
21 of the Code and/or Regulations:

22 (a) As to Paragraph X(a), under Section 10145 of the
23 Code and Section 2831 of the Regulations in conjunction with
24 Section 10177(d) of the Code;

25 (b) As to Paragraph X(b), under Section 10145 of the
26 Code and Section 2831.1 of the Regulations in conjunction with
27 Section 10177(d) of the Code;

///
28

1 (c) As to Paragraph X(c), under Section 10145 of the
2 Code and Section 2831.2 of the Regulations in conjunction with
3 Section 10177(d) of the Code;

4 (d) As to Paragraph X(d), under Section 10145 of the
5 Code and Section 2832(a) of the Regulations in conjunction with
6 Section 10177(d) of the Code;

7 (e) As to Paragraph X(e), under Section 10145 of the
8 Code and Section 2832.1 of the Regulations in conjunction with
9 Section 10177(d) of the Code;

10 (f) As to Paragraphs X(f) and X(g), under Section
11 10145 of the Code and Section 2834(b) of the Regulations in
12 conjunction with Section 10177(d) of the Code;

13 (g) As to Paragraph XI(a), under Section 10161.8(a)
14 of the Code in conjunction with Sections 10165 and 10177(d) of
15 the Code; and

16 (h) As to Paragraph XI(b), under Section 2726 of the
17 Regulations in conjunction with Sections 10165 and 10177(d) of
18 the Code.

19 XXIV

20 The acts and omissions of Respondents MORTGAGE and
21 SWANSON described in the Second Cause of Accusation, above,
22 constitute cause for the suspension or revocation of the
23 licenses and license rights of Respondents MORTGAGE and SWANSON
24 under the Real Estate Law pursuant to the following provisions
25 of the Code and/or Regulations:

26 ///

27 ///

1 (a) As to Paragraph XVI(a), under Section 10145 of
2 the Code and Section 2831 of the Regulations in conjunction with
3 Section 10177(d) of the Code;

4 (b) As to Paragraph XVI(b), under Section 10145 of
5 the Code and Section 2831.1 of the Regulations in conjunction
6 with Section 10177(d) of the Code;

7 (c) As to Paragraph XVI(c), under Section 10145 of
8 the Code and Section 2831.2 of the Regulations in conjunction
9 with Section 10177(d) of the Code;

10 (d) As to Paragraph XVI(d), under Section 10145 of
11 the Code and Section 2832.1 of the Regulations in conjunction
12 with Section 10177(d) of the Code;

13 (e) As to Paragraph XVI(e), under Section 10145 of
14 the Code and Section 2834(b) of the Regulations in conjunction
15 with Section 10177(d) of the Code;

16 (f) As to Paragraph XVII, under Section 10234(a) of
17 the Code in conjunction with Section 10177(d) of the Code;

18 (g) As to Paragraph XVIII, under Section 10240 of the
19 Code in conjunction with Section 10177(d) of the Code;

20 (h) As to Paragraph XIX(a), under Section 10161.8(a)
21 of the Code in conjunction with Sections 10165 and 10177(d) of
22 the Code; and

23 (i) As to Paragraph XIX(b), under Section 2726 of the
24 Regulations in conjunction with Sections 10165 and 10177(d) of
25 the Code.

26 ///

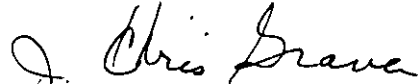
27 ///

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

XXV

The acts and omissions of Respondent SWANSON described in Paragraphs XXI and XXII within the Third Cause of Accusation, above, constitute cause for the suspension or revocation of the licenses and license rights of Respondent SWANSON under Section 10177(g) and/or Section 10177(h) of the Code and Section 10159.2 of the Code in conjunction with Section 10177(d) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.



J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 31st day of May, 2001.