



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

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

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

14 2. Submittal of evidence of having, since the most  
15 recent issuance of an original or renewal real estate license,  
16 taken and successfully completed the continuing education  
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
18 for renewal of a real estate license.

19 This Order shall be effective immediately.

20 DATED: 5/18, 1998.

21 JIM ANTT, JR.  
22 Real Estate Commissioner

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FILED  
DEC 27 1993  
DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-2830 SAC  
)  
JAMES MICHAEL DUKE, ) OAH NO. N-42711  
VICKI ANN UMLAND, )  
) ORDER DENYING  
Respondents. ) RECONSIDERATION AS TO  
\_\_\_\_\_ ) VICKI ANN UMLAND ONLY

On November 8, 1993, a Decision was rendered in the above-entitled matter. The Decision is to become effective December 30, 1993.

On November 30, 1993, Respondent VICKI ANN UMLAND petitioned for reconsideration of the Decision of November 8, 1993.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of November 8, 1993, and reconsideration is hereby denied.

IT IS HEREBY ORDERED December 23, 1993.

CLARK WALLACE  
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator  
Chief Deputy Commissioner

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**FILED**  
NOV 30 1993  
DEPARTMENT OF REAL ESTATE

By Kathleen Conteras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	NO. H-2830 SAC
JAMES MICHAEL DUKE, )	OAH NO. N-42711
VICKI ANN UMLAND, )	<u>ORDER STAYING</u>
Respondents. )	<u>EFFECTIVE DATE</u>

On November 8, 1993, a Decision was rendered in the above-entitled matter to become effective November 30, 1993.

On November 30, 1993, Respondent VICKI ANN UMLAND petitioned for reconsideration of the Decision of November 8, 1993. IT IS HEREBY ORDERED that the effective date of the Order of the Commissioner of November 8, 1993, as to VICKI ANN UMLAND only, is stayed for a period of thirty (30) days.

The Order of the Commissioner of November 8, 1993, shall become effective at 12 o'clock noon on December 30, 1993.

DATED: November 30, 1993

CLARK WALLACE  
Real Estate Commissioner

By: John R. Liberator  
JOHN R. LIBERATOR  
Chief Deputy Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No. H-2830 SAC
	)	
JAMES MICHAEL DUKE,	)	OAH No. N-42711
VICKI ANN UMLAND,	)	
	)	
	)	
Respondents.	)	
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PROPOSED DECISION

On August 5, 1993, in Sacramento, California, M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David Seals, Staff Counsel, represented the State of California, Department of Real Estate.

Respondent Vicki Ann Umland appeared in propria persona. The Accusation was dismissed as to respondent James Michael Duke; respondent Duke entered into a STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER with the Department prior to the commencement of the subject hearing.

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

FINDINGS OF FACT

I

Charles W. Koenig is a Deputy Real Estate Commissioner of the State of California, Department of Real Estate (hereinafter "the Department"), and made and filed the Accusation against Vicki Ann Umland in his official capacity.

## II

Vicki Ann Umland (hereinafter "respondent") is presently licensed and/or has license rights under the Real Estate Law, Part One of Division Four of the California Business and Professions Code. Respondent holds Salesperson License No.00588777, which will expire on November 20, 1994.

## III

Respondent was the salesperson-owner of a loan brokerage business under the fictitious business name of Neighbors Mortgage Company in Marysville, California from approximately May 31, 1991. The loan brokerage business operated under Duke's license from approximately May 31, 1991 until respondent's employing broker was changed to Raymond Garcia as of October 25, 1992.

Duke visited the loan brokerage business on only two occasions from the time he was listed as respondent's employing broker on April 16, 1991. Duke regularly worked out of his office in Fresno, California.

The dba Neighbors Mortgage Company was never registered with the Department.

## IV

Without any real supervision by a broker, respondent engaged in the business of, and acted in the capacity of, a real estate broker in the State of California within the meaning of Business and Professions Code section 10131(d), including the operation of a loan brokerage business with the public. Respondent on cross-examination admitted that she operated the loan brokerage business without real supervision and acted as a broker, a capacity for which she was not licensed.

In respondent's loan brokerage business lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and such loans were processed on behalf of clients for compensation or in expectation of compensation.

## V

As part of the loan application process respondent charged fees to clients for credit reports and appraisals on the various subject properties.

## VI

As of May 31, 1991, respondent's loan brokerage business had a trust account with the Bank of America in Colusa, California. Respondent failed to have the trust account in the name of the broker or a filed dba.

Trust funds within the meaning of Business and Professions Code section 10145 consisting of fees charged and collected for credit reports and appraisals were placed in that trust account until November 29, 1991. Respondent closed the account on that date.

For the trust funds received respondent failed to maintain a separate record for each beneficiary or transaction as provided in Department Regulation 2831.1. Respondent further failed to maintain a record of all trust funds received and paid out in compliance with Department Regulation 2831. Finally, respondent failed to monthly maintain and perform a reconciliation with the records of all trust funds received and disbursed, as required by Department Regulation 2831.2.

### VII

The Department audited the financial records of respondent's loan brokerage business commencing in March 1992. The Department's audit included a bank reconciliation and calculation of respondent's trust fund liabilities based upon unpaid credit and appraisal invoices as of the date the trust account was closed. The shortage in the account as of that date was \$3,525.

Due to the paucity of records maintained by respondent, the source(s) of \$3,796.97 of the shortage could not be identified. Eight unauthorized disbursements totaling \$7,321.97 were discovered; they consisted of the following checks made and signed by respondent:

<u>DATE</u>	<u>PAYEE</u>	<u>CHECK #</u>	<u>CHECK AMOUNT</u>
6/14/91	Dunne Printing	103	\$ 386.62
7/17/91	Dunne Printing	104	\$ 180.44
7/18/91	Neighbors Mortgage	105	\$ 1,500.00
8/15/91	Neighbors Mortgage	110	\$ 1,200.00
9/13/91	Neighbors Mortgage	112	\$ 2,200.00
9/23/91	Yuba City Honda	114	\$ 1,127.67
10/2/91	Neighbors Mortgage	115	\$ 500.00
11/4/91	Neighbors Mortgage	117	\$ 227.24

A total of \$5,627.24 was thus transferred by respondent from the trust account to her general business account for payment of the expenses of her loan brokerage business.

As of the date of the Department's audit, respondent had not cured the trust account shortage. Respondent did not have written consents from the beneficiaries of the trust funds, the borrower-clients, to disburse their funds from the account when it

would reduce the balance of the account to below trust fund liability.

Subsequent to the Department's audit, once respondent was aware of the Department's scrutiny, she did deposit checks into the general business account in the amount of \$5,627.24.

VIII

Respondent argues that the sorry history set forth above, including her conversion of trust funds to personal expenses and keeping her failing business afloat was merely an error in judgment. The theory is not persuasive. Respondent's actions occurred over more than a year, consisted of numerous violations and an apparent inability to competently run a business and keep records, and included her acting in excess of the authority of her license for more than a year. She took trust account funds by writing unauthorized checks for a period of more than half a year. The record is devoid of any effort to reconcile her activities to the requirements of the Real Estate Law until she was aware of the Department's scrutiny. No evidence suggests that respondent could conform her activities to the requirements of law under even the most strict license restrictions.


DETERMINATION OF ISSUES

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent's license for violation of Business and Professions Code sections 10176(i) and (j), 10177(d), and 10130.

ORDER

All licenses and licensing rights of respondent are revoked.

Dated: October 7, 1993

  
M. AMANDA BEHE  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
JUN 10 1993  
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 **JAMES MICHAEL DUKE,** ) NO. H-2830 SAC  
13 **VICKI ANN UMLAND,** ) STIPULATION AND AGREEMENT  
14 \_\_\_\_\_ ) IN SETTLEMENT AND ORDER  
Respondents. )

15 It is hereby stipulated by and between **JAMES MICHAEL**  
16 **DUKE** (sometimes referred to as Respondent) and his attorney of  
17 record, Hanno T. Powell, and the Complainant, acting by and  
18 through Roland Adickes, Counsel for the Department of Real Estate,  
19 as follows, for the purpose of settling and disposing of the  
20 Accusation filed on December 4, 1992, in this matter with respect  
21 to respondent **JAMES MICHAEL DUKE**.

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

1           2. Respondent has received and read, and understands  
2 the Statement to Respondent, the Discovery Provisions of the  
3 Administrative Procedure Act (Government Code Section 11500 and  
4 following), and the Accusation filed by the Department of Real  
5 Estate in this proceeding.

6           3. Respondent hereby freely and voluntarily withdraws  
7 the Notice of Defense which Respondent filed in this matter.  
8 Respondent acknowledges that he understands that by withdrawing  
9 said Notice of Defense he waives his right to require the  
10 Commissioner to prove the allegations in the Accusation at a  
11 contested hearing held in accordance with the provisions of the  
12 Administrative Procedure Act and that he waives other rights  
13 afforded to him in connection with the hearing such as the right  
14 to present evidence in defense of the allegations in the  
15 Accusation and the right to cross-examine witnesses.

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

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



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(1) A restricted real estate broker license shall be issued to respondent JAMES MICHAEL DUKE on the terms and conditions stated below.

C.

(1) To obtain a restricted license respondent JAMES MICHAEL DUKE shall within 90 days from the effective date of this Order apply for such license and pay the appropriate application fee.

(2) Before the restricted license is issued to respondent JAMES MICHAEL DUKE, Respondent shall provide evidence satisfactory to the Commissioner that Respondent has made restitution of the shortage of \$3,525.00 described in DRE Audit Report No. SC91-0156, dated May 26, 1992.

(3) The restricted license issued to respondent JAMES MICHAEL DUKE 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:

(a) As provided by Business and Professions Code, Section 10156.7, the license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order, suspend the right to exercise any privileges granted under the restricted license in the event of:

(1) The conviction of Respondent or plea of nolo contendere of a crime which bears a substantial

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relation to Respondent's fitness or capacity as a real estate licensee; or,

(2) The receipt of evidence 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.

(b) Respondent shall, within nine (9) months from the effective date of this Order, 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 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

(c) Respondent shall, within six (6) months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order

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suspension of Respondent's license until Respondent passes the examination.

4/18/93

DATED

*Larry Alamas*

for ROLAND ADICKES  
Counsel for Complainant

\* \* \*

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.

4-13-93

DATED

*James Michael Duke*

JAMES MICHAEL DUKE, Respondent

April 12<sup>th</sup> 1993

DATED

*Hanno T. Powell*

HANNO T. POWELL  
Counsel for Respondent

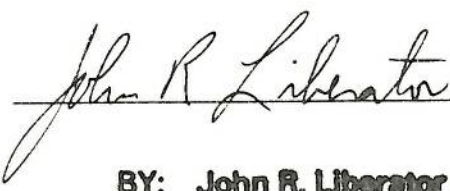
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The foregoing Stipulation and Agreement in Settlement is  
hereby adopted as my Decision and Order and shall become effective  
at 12 o'clock noon on June 30, 1993.

IT IS SO ORDERED June 7, 1993.

CLARK WALLACE  
Real Estate Commissioner



BY: **John R. Liberator**  
**Chief Deputy Commissioner**

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
APR - 9 1993  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JAMES MICHAEL DUKE,  
VICKI ANN UMLAND,

Respondent

By Kathleen Contreras

Case No. H-2830 SAC

OAH No. N-42711

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, California 95814

on Thursday, August 5, 1993, at the hour of 9:00 AM,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: April 8, 1993

DEPARTMENT OF REAL ESTATE

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 Telephone: (916) 739-3607

FILED  
DEC 4 1992  
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of )  
13 JAMES MICHAEL DUKE, ) NO. H- 2830 SAC  
14 VICKI ANN UMLAND, ) ACCUSATION  
15 Respondents. )

16 The Complainant, Charles W. Koenig, a Deputy Real Estate  
17 Commissioner of the State of California for cause of Accusation  
18 against JAMES MICHAEL DUKE and VICKI ANN UMLAND (hereinafter  
19 "Respondents") is informed and alleges as follows:

20 1.

21 The Complainant, Charles W. Koenig, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Accusation in  
23 his official capacity.

24 2.

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

1 (a) Respondent DUKE, as a real estate broker; and,  
2 (b) Respondent UMLAND as a real estate salesperson.  
3 Respondents were so licensed during 1991 and 1992.

4 3.

5 From time to time during 1991, Respondents operated a  
6 loan brokerage business under the fictitious business name of  
7 Neighbors Mortgage Company in Marysville, California. The  
8 business was operated under the license of respondent DUKE, but  
9 was owned by respondent UMLAND.

10 In the course of this business, Respondents received  
11 funds belonging to others (trust funds) such as appraisal fees,  
12 credit report fees, and other funds. Respondents failed to  
13 maintain all of the trust funds received by them in a bank trust  
14 account and failed to keep trust fund records, as required by the  
15 Real Estate Commissioner's Regulations (Title 10, California Code  
16 of Regulations) (Regulations), as follows:

17 (a) As of November 29, 1991, the adjusted trust account bank  
18 balance was zero while Respondent's accountability for trust  
19 funds previously received was \$3,525.00 resulting in a trust  
20 fund shortage of \$3,525.00 as of that date.

21 (b) During the period June 1, 1991, to November 4, 1991,  
22 Respondents used trust funds in the amount of \$7,321.97 for  
23 Respondents' general business expenses and/or other purposes  
24 not authorized by the owners of the trust funds. Respondent  
25 UMLAND signed the checks by which these trust funds were  
26 withdrawn from the trust account.

27 ///

- 1 (c) During the time the business was operated under the license  
2 of respondent DUKE, DUKE did not maintain or cause to be  
3 maintained the records of trust funds received and paid out  
4 required by Regulations 2831 and 2831.1.
- 5 (d) During said period, respondent DUKE did not reconcile the  
6 balance of all trust funds received and disbursed with the  
7 balances of the separate accounts for each beneficiary or  
8 transaction as required by Regulation 2831.2.
- 9 (e) During said period, the bank trust account of Neighbors  
10 Mortgage Company was not in the name of the broker as  
11 trustee.

12 4.

13 Respondent DUKE failed to exercise reasonable  
14 supervision over the activities of respondent UMLAND in the  
15 operation of the business described in paragraph 3., by permitting  
16 respondent UMLAND to run the business as if she had been a  
17 licensed real estate broker herself and by permitting respondent  
18 UMLAND to practically control disbursements of trust funds, as  
19 described in paragraph 3., above.

20 5.

21 From time to time during 1991, respondent UMLAND held  
22 herself out as a real estate broker to members of the public,  
23 including Mr. and Mrs. Daleiden, without being licensed as a real  
24 estate broker.

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Respondents' acts and/or omissions described above are grounds for the revocation or suspension of Respondents' license as follows:

(a) As to paragraph 3(a), as against respondent DUKE under Section 10177(d) read together with Section 10145(a) of the Code.

(b) As to paragraph 3(b), as against respondent DUKE under Section 10177(d) read together with Section 10145(a) of the Code and Section 10177(g), (h) of the Code, and as against respondent UMLAND under Sections 10176(i) and/or 10177(j) of the Code.

(c) As to paragraph 3(c), as against respondent DUKE under Section 10177(d) of the Code read together with Regulations 2831 and 2831.1.

(d) As to paragraph 3(d), as against respondent DUKE under Section 10177(d) of the Code read together with Regulation 2831.2.

(e) As to paragraph 3(e), as against respondent DUKE under Section 10177(d) read together with Regulation 2830.

(f) As to paragraph 4, as against respondent DUKE under Section 10177(h) of the Code.

(g) As to paragraph 5, as against respondent UMLAND under Section 10177(d) read together with Section 10130 of the Code.

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