

FILED  
JAN 2 4 1994

DEPARTMENT OF REAL ESTATE

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Laurie A. Zian

\* \* \*

In the Matter of the Accusation of )  
JOHN R. VANDERMYDEN, )  
Respondent. )

NO. H-2922 SAC

N-08139

In the Matter of the Application of )  
JAMES CARL SCHUMAKER, )  
Respondent. )

NO. H-2925 SAC

N-08138

CONSOLIDATED

DECISION

The Proposed Decision dated December 23, 1993, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matters.

This Decision shall become effective at 12 o'clock noon  
on February 14, 1994.

IT IS SO ORDERED January 12, 1994.

CLARK WALLACE  
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	No. H-2922 SAC
Against:	)	
	)	OAH No. N-08139
JOHN R. VANDERMYDEN,	)	
	)	
Respondent.	)	
<hr/>		
In the Matter of the Statement of	)	No. H-2925 SAC
Issues of:	)	
	)	OAH No. N-08138
JAMES CARL SCHUMAKER,	)	
	)	
Respondent.	)	<u>CONSOLIDATED</u>
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PROPOSED DECISION

On November 8, 1993; in Sacramento, California, Stephen J. Smith, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters. Counsel, Department of Real Estate, State of California, represented the complainant.

Frank Petteway, Attorney at Law, represented John R. Vandermyden and James Carl Schumaker, both of whom appeared in person.

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

## FINDINGS OF FACT

### I

On July 29, 1993, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (hereafter "the Department"), acting in his official capacity, made the charges and allegations contained in the Accusation against John R. Vandermyden and caused it to be filed. In so doing, he acted pursuant to the authority of Business and Professions Code section 10175, which provides the Department jurisdiction to suspend, revoke or otherwise impose disciplinary action upon any holder of a real estate license or licensing rights issued by the Department on behalf of the State of California, provided clear and convincing competent evidence exists to support the action.

Mr. Vandermyden timely filed a Notice of Defense to the Accusation pursuant to the authority of Government Code section 11506.

On August 9, 1993, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (hereafter "the Department"), acting in his official capacity, made the charges and allegations contained in the Statement of Issues regarding James Carl Schumaker and caused it to be filed. In so doing, he acted pursuant to the authority of Business and Professions Code section 10177, which provides the Department jurisdiction to deny the issuance of a real estate license to any applicant therefor to be issued by the Department on behalf of the State of California, provided competent evidence supports the denial.

Mr. Schumaker timely filed a Request for a Hearing on the Statement of Issues pursuant to Government Code section 11506. Due to an identity of issues and evidence expected to be presented, the matters were consolidated for a single hearing before an Administrative Law Judge of the Office of Administrative Hearings in accordance with the provisions of Government Code sections 11500, et.seq.

### II

On October 22, 1991, the Department issued a real estate broker's license to Mr. Vandermyden. The license has been continuously renewed and is currently in full force and effect, due to expire on October 21, 1995, unless renewed. On a date not established but before January 1, 1990, the Department issued Mr. Vandermyden a real estate salesperson's license. That real estate salesperson's license was terminated on October 22, 1991, contemporaneously with the issuance of the broker's license to Mr. Vandermyden. On January 17, 1992, a dba of Greater Sacramento Mortgage was added to Mr. Vandermyden's license, and on May 21, 1992, another dba, that of Investors Realty, was added to the

license. Both dba's are currently still on the license records of Mr. Vandermyden with the Department.

### III

At no time relevant to this Decision was James Carl Schumaker licensed by the Department in any capacity. On May 20, 1993, Mr. Schumaker applied to the Department for the issuance of a real estate salesperson license. The Department has declined to issue the license and has denied the application. Mr. Schumaker has requested an evidentiary hearing to determine whether the Department has cause to deny his application. The Department's licensing records as of August 10, 1993 reveal that there is no record that Mr. Schumaker has taken, completed and passed all of the education courses required of applicants for a real estate salesperson license, as set forth in Business and Professions Code section 10153.4.

### IV

At all times relevant to this decision, Mr. Vandermyden was engaged in the mortgage loan brokerage business. From at least the beginning of 1992, Mr. Vandermyden operated under the fictitious business name of Greater Sacramento Mortgage Company. At all times relevant to this Decision, Mr. Vandermyden was engaged in the business of soliciting lenders and members of the public that were potential borrowers for mortgage loans secured directly or collaterally by liens on real property, and soliciting, arranging, negotiating, processing and consummating mortgage loans on behalf of others for compensation.

### V

From at least December, 1992 through April 1993, Mr. Schumaker was employed by Mr. Vandermyden as a mortgage loan broker. In this capacity, Mr. Schumaker was engaged in the business of soliciting lenders and members of the public that constituted potential mortgage loan borrowers for mortgage loans secured directly or collaterally by liens on real property. During this period, Mr. Schumaker was engaged in the business of soliciting, arranging, negotiating, processing, and consummating mortgage loans on behalf of others for compensation. Throughout this period, Mr. Schumaker ran most if not all of the daily operations of Greater Sacramento Mortgage, including being responsible for its advertising campaign, as more particularly set forth below. During his association with Greater Sacramento Mortgage, Mr. Schumaker acted as a real estate broker, although he was not licensed by the Department in any capacity. Mr. Vandermyden exercised minimal, if any, supervision over Mr. Schumaker's activities for which a real estate license was required, and permitted Mr. Schumaker to operate as a de facto real estate broker during this period of time.

## VI

On July 1, 1991, the Department issued a Desist and Refrain Order to Mr. Schumaker, which was filed with the Department on July 3, 1991. The Desist and Refrain Order determined that Mr. Schumaker's activities as a mortgage broker constituted activities for which a real estate license was required within the meaning of Business and Professions Code section 10130. The Department Ordered Mr. Schumaker to desist and refrain from all activities for which a real estate license is required, including but not limited to negotiating with various borrowers in connection with arranging loans secured directly or indirectly by liens on real property for or with the expectation of compensation.

At the time the Department first issued the Desist and Refrain Order, Mr. Schumaker was working as a mortgage broker, supervising the local operations of a branch office of Old Stone Mortgage. At this time, Mr. Schumaker was overseeing all operations of this mortgage brokerage, and was regularly engaged in acts for which a real estate license was required, without having a license issued by the Department. Mr. Schumaker acknowledged receipt of the Desist and Refrain Order on or about the date it was filed and served by the Department. He further acknowledged that he did not cease his activities for which a real estate license is required in response to the Desist and Refrain Order. Mr. Schumaker intentionally declined to comply with the Order.

Mr. Schumaker contended that the Desist and Refrain Order was wrongfully served because he was working as an employee of a bank's mortgage loan operation at the time, and that bank employment entitles him to an exemption from the license requirements. Mr. Schumaker contends Old Stone Mortgage was a branch of a Rhode Island branch of a Washington bank. Mr. Schumaker further contends that he discussed the Desist and Refrain Order with his Old Stone Mortgage employers, who advised him to continue working as he had been doing.

Other than Mr. Schumaker's own entirely uncorroborated testimony, there was no evidence at all presented to support the claim that an exemption for a bank employee should have applied to Mr. Schumaker at the time the Order was issued. Mr. Schumaker did not contest the issuance of the Order at the time, when presumably a phone call from the parent organization bank or the submission of supporting documentation could have settled the matter of exempt bank employment with finality, particularly since Mr. Schumaker contends he advised his employers at Old Stone about the Order. Mr. Schumaker made no effort at any time to contact the Department and verify whether he was entitled to an exemption or whether what he had been told was legally accurate. Mr. Schumaker's testimony regarding the corporate and financial institution structure of Old Stone Mortgage at the time the Order was issued is rejected as lacking in credibility and extrinsic evidentiary support.

## VII

Following his employment with Old Stone Mortgage, which continued for an unascertained duration after his receipt of the July 3, 1991 Desist and Refrain Order, Mr. Schumaker went on to work for Western Residential Mortgage as their branch manager. There was no contention that Western Residential is an exempt bank or financial institution. Rather, it is clear that Western Residential is a mortgage broker outside the ambit of any exempt financial institution. Mr. Schumaker contends he advised his employers at Western Financial that he had been served with the Desist and Refrain Order, but that his employers told him that he need not comply with the Order because he was a salaried employee that received a W-2 form each year. Mr. Schumaker made no effort to contact the Department and determine whether this advice was legally accurate.

Mr. Schumaker continued employment at Western Residential for an undetermined period of time. During the course of his employment as Western's local branch manager in Sacramento, Mr. Schumaker contacted brokers and solicited the public to arrange loans secured directly or indirectly by interests in real property, all in the expectation of compensation for his services.

On a date not established in late 1991 or early 1992, Mr. Schumaker came to work for Mr. Vandermyden. Mr. Vandermyden had previously established his firm, Greater Sacramento Mortgage Company, as early as January 8, 1991. The firm's business was and remains loan brokerage. Mr. Schumaker joined Mr. Vandermyden as a principal, to operate the local office of Greater Sacramento Mortgage. Although it appears that Mr. Vandermyden was actively involved in the business, he permitted Mr. Schumaker to operate with little or no supervision as a principal in the business. In one advertisement for the firm's loan brokerage services, disseminated to the general public, Mr. Schumaker held himself out as the "Owner/President" of Greater Sacramento Mortgage. Mr. Schumaker acknowledged that he caused this advertisement to be prepared and disseminated.

On March 20, 1992, Mr. Vandermyden was served a copy of the Desist and Refrain Order directed at Mr. Schumaker dated July 3, 1991. Mr. Schumaker was also served another copy of the Order on or about the same date. Mr. Vandermyden did not apparently respond to the Order in any manner, and continued to allow Mr. Schumaker to continue to operate in the capacity set forth above for at least another year.

## VIII

On December 11, 1992, Mr. Schumaker negotiated a loan secured by a lien on real property for borrowers Loren and Patricia Brookshire with respect to the Brookshire's real property located

at 7319 Grandall Way, Citrus Heights, California. The loan concerned a refinance of the existing loan secured by the Brookshire's real property. The Brookshires met with Mr. Schumaker at least twice at the premises of Greater Sacramento Mortgage, wherein the terms and conditions of the secured loan were negotiated. Mr. Vandermyden was in attendance at both meetings, and actively participated in the negotiations. There was no evidence that Mr. Schumaker acted on his own or without Mr. Vandermyden's knowledge of his activities in negotiating and closing this loan. It appears that both acted as equals in this transaction.

## IX

In June 1990, Mr. Schumaker negotiated a mortgage loan secured by an interest in real property for James Watson. There was no evidence regarding the particulars of this transaction. Mr. Schumaker was working for Old Stone Mortgage at the time. The Department's July 3, 1991 Desist and Refrain Order was issued in response to this transaction. Although he did not provide any particulars regarding the transaction, Mr. Schumaker acknowledged that the transaction took place as alleged, and that he was not licensed by the Department when he arranged the loan for Mr. Watson.

## X

On March 6, 1993, Mr. Schumaker solicited and negotiated a loan secured by a lien on real property for borrowers Charles and Sharon Hilty. The property involved was located at 7901 Saybrook Drive, Citrus Heights, California. Mr. Vandermyden permitted Mr. Schumaker to solicit and negotiate this loan through Mr. Schumaker's employment with Greater Sacramento Mortgage, for which Mr. Vandermyden served as principal and broker. The solicitation occurred after Mr. Vandermyden had been advised by receipt of a copy of the Desist and Refrain Order that Mr. Schumaker was violating the Real Estate Law by soliciting and negotiating loans secured by interests in real property.

## XI

On April 1, 1993, Mr. Schumaker solicited Gary Sibner for a loan to be secured by an interest in real property. The solicitation consisted of Mr. Schumaker providing Mr. Sibner with rates and terms quotations for a loan to be secured by real property. Mr. Sibner was at all times an employee of the Department, acting in an undercover capacity at the time he was solicited for the loan by Mr. Schumaker. Mr. Vandermyden permitted Mr. Schumaker to solicit Mr. Sibner for the loan. The solicitation occurred after Mr. Vandermyden had been advised by receipt of a copy of the Desist and Refrain Order that Mr. Schumaker was

violating the Real Estate Law by soliciting and negotiating loans secured by interests in real property.

## XII

As set forth above, Mr. Vandermyden permitted the issuance of printed advertisements soliciting business for Greater Sacramento Mortgage, some of which were disseminated between March and May 1993. Each of the two printed advertisements issued by Greater Sacramento Mortgage contained misleading information regarding the rates, terms and conditions for the negotiating and making of loans secured by interests in real property.

One of these printed advertisements was composed and issued by Mr. Schumaker. The advertisement contained the following language:

"Refinance your home now!

"Along with economic recovery, will come higher interest rates.

"FIXED INTEREST RATES for homes just like yours are now in the HIGH 5 TO MID 7%. This means a monthly savings to you of up to \$300 or more if your interest rate is currently 9% or higher...

"I can help you!

"Hello, I'm Jim Schumaker. I'm the owner of Greater Sacramento Mortgage. Having over 10 years of residential lending experience, I can help you in obtaining the best possible loan program rate, and fee available to fit your needs. If you currently have a VA or FHA loan, we can also help you reduce your rate and payment.

"If you thought income or past credit problems would stop you from qualifying, think again. Most of these problems are not problems at all.

"Greater Sacramento Mtg. has the lowest rates and fees in town.

"There is no cost or obligation, just make a call!!"  
(emphasis original)

The other advertisement was nearly identical, but listed another employee of Greater Sacramento Mortgage as the contact person. Neither advertisement disclosed within its printed text the license under which the loan would be made or arranged.



### XIII

From January 1991 to date, Mr. Vandermyden failed to deposit all trust funds received by Greater Sacramento Mortgage in the course of its business as a mortgage broker into a trust fund account with the name of the broker as trustee at a bank or other financial institution. From its inception, the trust account of Greater Sacramento Mortgage was held in the name of the firm, and not in Mr. Vandermyden's name, although he was a signatory to the account. The account registration had not been corrected as of the date of the hearing.

### XIV

Mr. Schumaker admitted that he continued to perform acts for which a real estate license was required long after having been served the Department's Desist and Refrain Order, and long after moving on to other employment from Old Stone Mortgage, which he contended was an employer exempt from the licensure requirements. With respect to the arrangement of the mortgage loan for the Hiltis, Mr. Schumaker contended he was just helping out an old friend, and that even though he was performing acts for which a real estate license is required, and he was aware of that fact, he believed he was not hurting anyone. He pointed to his numerous years in the mortgage lending business as evidence that consumers were not harmed by his unlicensed acts because he has the experience and competence to make certain his customers are well served.

Mr. Schumaker minimized his lengthy and continuous disregard of the requirement that he be licensed by the Department in order to act as a mortgage broker as "technical violations". This rather cavalier disregard of the requirement to be licensed by the Department continued despite two rather pointed, official notices from the Department advising him quite clearly that he was required to get licensed or desist from working in the mortgage loan brokerage business. Mr. Schumaker's excuses for his failure to afford these Orders any respect or regard are unpersuasive and without any merit. There is little doubt that Mr. Schumaker is seeking licensure here because the Department has forced the issue. There is also little doubt that Mr. Schumaker failed to carry his burden pursuant to Business and Professions Code section 10152 to demonstrate that he is of such character that the license should be issued.

Mr. Vandermyden did not testify and has, by so doing, attempted to portray himself as an unwitting participant in Mr. Schumaker's pattern of disregard of the licensing requirements. He stipulates that he was negligent in his supervision of Mr. Schumaker and his activities for which a real estate license is required, but seeks to contain his culpability at this relatively benign border. However, the evidence indicates that Mr.

Vandermyden's knowledge and involvement in the disregard of the Department's Order was active and knowing, particularly after he was personally advised of the existence of the Order and its terms in March 1993. After that advisement, Mr. Vandermyden did nothing of any sort to correct the violations, other than encourage Mr. Schumaker to obtain a license.

No consumers were actually harmed by Mr. Vandermyden's failure to supervise and exclude Mr. Schumaker from acting as an unlicensed mortgage broker. However, this is merely one factor in mitigation to be considered in weighing all the evidence, and does not serve to render the violations "technical" or trivial. A significant penalty together with educational requirements is mandated in order to impress upon Mr. Vandermyden that negligent supervision of his mortgage brokerage operations, and particularly, active participation in Mr. Schumaker's disregard of the requirements to be licensed and disregard of the Department's Order is neither trivial nor merely technical.

#### DETERMINATION OF ISSUES

##### I

Mr. Schumaker violated Business and Professions Code section 10130. As set forth in the Findings, Mr. Schumaker continuously and repeatedly engaged in conduct for which a real estate license is required. Business and Professions Code section 10131(d) requires a person that, in expectation of compensation, solicits, negotiated or arranges loans secured, directly or indirectly, by interests in real property to have a real estate license issued by the Department. Mr. Schumaker's conduct set forth above was that of a mortgage broker, an activity for which Business and Professions Code section 10131(d) requires licensure. Mr. Schumaker was never licensed by the Department through this nearly three year course of continuous mortgage brokering, despite having been formally Ordered by the Department to desist on two separate occasions and that he was violating the real estate law.

##### II

Mr. Schumaker violated Business and Professions Code section 10177(d) on two separate and discreet occasions. As set forth in the Findings of Fact, Mr. Schumaker willfully and intentionally disregarded and refused to abide by the Department's Desist and Refrain Orders, served upon him on two separate occasions separated by more than one year. This failure to abide by the Desist and Refrain Orders constitutes two separate violations of Business and Professions Code section 10086, which in turn furnishes the violations supporting the Determination that Mr.

Schumaker twice violated Business and Professions Code section 10177(d).

It was not established that these same violations of Business and Professions Code section 10086 furnish a basis for a Determination that Mr. Schumaker violated Business and Professions Code section 10177(f). Section 10177(f) requires as its basis either acts warranting denial of his application for the issuance of a real estate license, which is a redundant allegation in this instance, or acts resulting in disciplinary action taken by another agency that would have resulted in disciplinary action by the Department, had that person been licensed by the Department at the time of those acts. Neither of these statutory bases for action pursuant to Business and Professions Code section 10177(f) are applicable under the circumstances of this particular case.

### III

Mr. Schumaker has failed to demonstrate "other proof ... concerning the honesty and truthfulness of any applicant for a real estate license..." at the hearing upon his application for the issuance of a real estate salesperson's license and in response to the Department's proposed action to deny his application, as set forth in the Findings, and in particular, Finding XIV. It is Mr. Schumaker's burden to prove that cause exists by a preponderance of the evidence that the license he seeks should issue to himself. In light of the Findings, and particularly the Determinations that Mr. Schumaker has knowingly continued to actively pursue mortgage brokerage over a period of more than two years in disregard of the Department's Desist and Refrain Orders and the statutory requirements that his conduct requires licensure, a denial of Mr. Schumaker's application is both warranted and justified. The factors in aggravation are significant, while the factors in mitigation and rehabilitation are minimal. Balanced against the fact that there was no apparent direct harm to consumers as a result of Mr. Schumaker's conduct is his continuous disregard of the requirement that he be licensed to broker mortgages, his disregard of the Department's Desist and Refrain Orders and his remorseless trivialization of these violations as "technical", demonstrating that rehabilitation is minimal.

### IV

Mr. Vandermyden violated Business and Professions Code section 10177(g) in a repeated and continuous fashion from his first employ of Mr. Schumaker, and particularly after March 1993, when he was advised of the Department's Desist and Refrain Order. As set forth in the Findings, Mr. Vandermyden failed to supervise Mr. Schumaker's activities and preclude him from working as a mortgage broker without first having obtaining a real estate license. To aggravate the matter, he entered into a principal arrangement with Mr. Schumaker, which enabled Mr. Schumaker to act

outside of and independent from any supervisory authority he might have over Mr. Schumaker's activities. For the most part, Mr. Schumaker was enabled to operate independently and without any supervision at all.

V

Mr. Vandermyden violated Business and Professions Code section 10137. As set forth in the Findings, Mr. Vandermyden entered into a principal relationship with Mr. Schumaker under which Mr. Schumaker would be compensated for performing acts for which a real estate license is required under the auspices of Mr. Vandermyden's real estate broker's license, all at a time when he knew Mr. Schumaker was not licensed.

VI

Mr. Vandermyden violated Business and Professions Code section 10145 and 10177(d). As set forth in Finding XIII, Mr. Vandermyden violated Title 10, California Code of Regulations section 2830 by failing to deposit trust funds received by Greater Sacramento Mortgage into a trust account at a bank or financial institution where he maintained the trust account under his own name as broker. From 1991 to date the violation has continued. However, there was no evidence that any trust funds or consumers were harmed or compromised by Mr. Vandermyden's handling of trust funds received.

VII

Mr. Vandermyden violated Business and Professions Code sections 10235 and 10177(d). As set forth in Finding XII in particular, and elsewhere in the Findings, Mr. Vandermyden permitted Greater Sacramento Mortgage to issue misleading and unlawful advertising that violated Title 10, California Code of Regulations section 2848, in that the advertisements issued, among other things, used terms in the comparative and superlative to describe terms of loans allegedly available through Greater Sacramento Mortgage.

There was no evidence that Mr. Vandermyden was actively involved with or participated in the issuance of the misleading advertisements. These violations are a matter of negligent oversight and supervision of the activities of his firm.

VIII

Mr. Vandermyden violated Business and Professions Code sections 10235.5 and 10177(d). As set forth in Finding XII, Mr. Vandermyden permitted Greater Sacramento Mortgage to issue advertisements soliciting borrowers for loans secured by interests

in real property that did not identify or disclose the real estate license under which the loans would be made.

## ORDER

### I

The application of James Carl Schumaker for the issuance of a real estate salesperson's license is denied. The Department of Real Estate's refusal to issue the license is affirmed.

### II

All licenses and licensing rights of John R. Vandermyden under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Mr. Vandermyden pursuant to section 10156.5 of the Business and Professions Code if Mr. Vandermyden makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Mr. Vandermyden shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

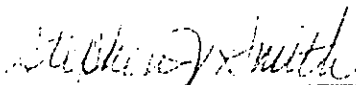
1. The restricted real estate broker's license issued to Mr. Vandermyden shall be actually suspended for a period of forty (40) consecutive calendar days, effective the date the restricted license is issued. However, up to twenty (20) days of the actual suspension may be stayed upon condition that:
  - a. Mr. Vandermyden pays a monetary penalty pursuant to Business and Professions Code section 10175.2, at the rate of \$250 per day for each day of the suspension to be reduced, for a total possible monetary penalty of \$5000.
  - b. The payment of the monetary penalty shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. The payment must be delivered to the Department before the effective date of this Decision.

- c. If Mr. Vandermyden fails to make any portion or all of the monetary penalty payment in accordance with the terms and conditions of this Decision, the Commissioner may, without further hearing, impose any or all of the stayed portion of this suspension in accordance with the amount of monetary penalty payment made by Mr. Vandermyden, if any, pursuant to the terms and conditions of this portion of this Order. Once the monetary penalty payment is made, Mr. Vandermyden will not be entitled to a refund or repayment if at some later point he changes his mind regarding the making all or a portion of the penalty payment.
- d. If Mr. Vandermyden makes all or a portion of the monetary penalty payment in accordance with the terms and conditions of this Order, and if Mr. Vandermyden is otherwise in full compliance with all the terms and conditions of this Order, and if no further cause for disciplinary action against Mr. Vandermyden or his real estate broker's license arises during the two year restricted license period, the portion of the stayed suspension, or all of the stayed portion of the suspension, as the case may be, in accordance with the amount of the monetary penalty payment made by Mr. Vandermyden, or all of it, shall cause the liquidated portion of the stayed suspension to become permanent. If an Accusation or other disciplinary action is filed against Mr. Vandermyden during the two year period set forth herein, the filing of the action shall immediately toll the expiration of the two year period, and the tolling shall continue until such time as a final Decision is issued by the Commissioner on the disciplinary action.
2. The restricted license issued to Mr. Vandermyden may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Mr. Vandermyden's conviction or plea of nolo contendere to a crime which is substantially related to Mr. Vandermyden's fitness or capacity as a real estate licensee.
3. The restricted license issued to Mr. Vandermyden may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory

to the Commissioner that Mr. Vandermyden 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.

4. Mr. Vandermyden shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until a period of two years have elapsed from the effective date of this Decision.
5. Mr. Vandermyden shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Mr. Vandermyden 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 Mr. Vandermyden fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Mr. Vandermyden presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Mr. Vandermyden shall, within six (6) months from the effective date of the issuance of the restricted license, take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If Mr. Vandermyden fails to satisfy this condition, the Real Estate Commissioner may order suspension of the restricted license until Mr. Vandermyden passes the examination.

Dated: December 23, 1993

  
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STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**  
**AUG 20 1993**  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

JOHN R. VANDERMYDEN,

By *Lauria A. Zian*

Case No. H-2922 SAC consolidated  
with H-2925 SAC

OAH No. \_\_\_\_\_

\_\_\_\_\_  
*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, 501 J Street, Suite 220 (Second  
Floor Hearing Rooms), Sacramento, CA 95814

on Monday and Tuesday, November 8th and 9th, 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.

DEPARTMENT OF REAL ESTATE

Dated: August 20, 1993

By *David A. Peters*  
DAVID A. PETERS *Counsel*



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

5 Telephone: (916) 227-0789

FILED  
JUL 29 1993  
DEPARTMENT OF REAL ESTATE

By Laurie A. Zian

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 JOHN R. VANDERMYDEN, )  
13 Respondent. )  
14 \_\_\_\_\_ )

No. H-2922 SAC

ACCUSATION

15 The Complainant, Charles W. Koenig, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against JOHN R. VANDERMYDEN, dba Greater Sacramento Mortgage and  
18 Investors Realty (hereinafter "Respondent"), is informed and  
19 alleges as follows:

20 I

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.

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II

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code"), as a real estate broker.

III

Within the three-year period immediately preceding the filing of this Accusation and continuing through on or about April 1, 1993, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation within the meaning of Section 10131(d) of the Code.

IV

On or about December 11, 1992, in connection with the mortgage loan brokerage activities described in Paragraph III above, Respondent permitted James Carl Schumaker, an unlicensed person employed by Respondent (hereinafter "Schumaker"), to solicit and negotiate a loan secured by a lien on real property for borrowers Loren and Patricia Brookshire with regard to real property located at 7319 Grandall Way, Citrus Heights, California.

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V

On or about March 6, 1993, in connection with the mortgage loan brokerage activities described in Paragraph III above, Respondent permitted Schumaker to solicit and negotiate a loan secured by a lien on real property for borrowers Charles and Sharon Hilty with regard to real property located at 7901 Saybrook Drive, Citrus Heights, California.

VI

On or about April 1, 1993, in connection with the mortgage loan brokerage activities described in Paragraph III above, Respondent permitted Schumaker to solicit and/or negotiate a loan to be secured by a lien on real property for Gary H. Sibner, a Deputy Real Estate Commissioner of the Department of Real Estate, using the name Jim Landers.

VII

Within the three-year period immediately preceding the filing of this Accusation and continuing thereafter, in connection with the mortgage loan brokerage activities described in Paragraph III above, Respondent employed or compensated, directly or indirectly, Schumaker (a person unlicensed by the Department of Real Estate) to perform acts for which a real estate license is required in violation of Section 10137 of the Code.

VIII

Within the three-year period immediately preceding the filing of this Accusation and continuing thereafter, in connection with the mortgage loan brokerage activities described in Paragraph III above, Respondent failed to deposit all trust funds received

1 into a trust fund account in the name of the broker as trustee at  
2 a bank or other financial institution as required by Section 2830  
3 of Title 10, California Code of Regulations.

4 IX

5 At various times beginning on or before March 11, 1993  
6 and continuing through on or about May 6, 1993, Respondent caused  
7 or permitted statements or representations which were false,  
8 misleading or deceptive with regard to the rates, terms, or  
9 conditions for making, purchasing or negotiating loans or real  
10 property sales contracts, to be advertised, printed, displayed,  
11 and/or distributed in violation of Section 2848 of the Regulations  
12 and Section 10235 of the Code.

13 X

14 At various times beginning on or before March 11, 1993  
15 and continuing through on or about May 6, 1993, Respondent placed  
16 an advertisement for a loan without said advertisement disclosing  
17 within the printed text the license under which the loan would be  
18 made or arranged in violation of Section 10235.5 of the Code.

19 XI

20 On or about July 3, 1991, an Order to Desist and Refrain  
21 No. H-2689 SAC was filed against James C. Schumaker ordering  
22 James C. Schumaker to Desist and Refrain from performing licensed  
23 acts for which a real estate license is required until such time  
24 as he obtained the required license. On or about March 30, 1992,  
25 said Desist and Refrain Order was given to the Respondent.

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XII

The acts and/or omissions of Respondent set forth above, are grounds for the suspension or revocation of all licenses and/or license rights of Respondent under the following sections of the Code and Regulations:

(1) As to Paragraphs IV, V, and VI under Sections 10177(h) and 10177(g) of the Code;

(2) As to Paragraph VII under Section 10137 of the Code;

(3) As to Paragraph VIII under Section 10177(d) of the Code in conjunction with Section 10145 of the Code and Section 2830 of the Regulations;

(4) As to Paragraph IX under Section 10177(d) of the Code in conjunction with Section 2848 of the Regulations and Section 10235 of the Code; and

(5) As to Paragraph X under Section 10177(d) of the Code in conjunction with Section 10235.5 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 Respondent, 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.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California,  
this 28<sup>th</sup> day of July, 1993