

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

FILED
JUL - 8 2004

DEPARTMENT OF REAL ESTATE

By *Laurie J. [Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	DRE No. H-2945 SD
EIDON, INC., a Corporation,)	OAH No. L-2004030058
RICHARD MYRON WAGNER, and)	
HAROLD CHARLES TEBBETTS,)	<u>STIPULATION AND AGREEMENT</u>
Respondent.)	

It is hereby stipulated by and between Respondents EIDON, INC., a corporation (herein "EIDON"), RICHARD MYRON WAGNER (herein "WAGNER") and HAROLD CHARLES TEBBETTS (herein "TEBBETTS"), individually and by and through Joel L. Incorvaia, Esq., Incorvaia & Associates, attorneys of record herein for Respondents EIDON, WAGNER and TEBBETTS (herein "Respondents"), and the Complainant, acting by and through James L. Beaver, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on January 20, 2004 in this matter (herein "the Accusation"):

DRE No. H-2945 SD

EIDON, INC., et al.

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

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

11 3. On February 6, 2004, Respondents filed Notices of
12 Defense pursuant to Section 1505 of the Government Code for the
13 purpose of requesting a hearing on the allegations in the
14 Accusation. Respondents each hereby freely and voluntarily
15 withdraw said Notice of Defense. Respondents acknowledge that
16 Respondents understand that by withdrawing said Notice of Defense
17 Respondents will thereby waive Respondents' right to require the
18 Real Estate Commissioner (herein "the Commissioner") to prove
19 the allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that Respondents
21 will waive other rights afforded to Respondents in connection
22 with the hearing such as the right to present evidence in defense
23 of the allegations in the Accusation and the right to cross-
24 examine witnesses.

25 4. This stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of

27 DRE No. H-2945 SD

EIDON, INC., et al.

1 expediency and economy, Respondents choose not to contest these
2 factual allegations, but to remain silent and understand that, as
3 a result thereof, these factual statements will serve as a prima
4 facie basis for the "Determination of Issues" and "Order" set
5 forth below. The Real Estate Commissioner shall not be required
6 to provide further evidence to prove such allegations.

7 5. This Stipulation and Respondents' decision not to
8 contest the Accusation are made for the purpose of reaching an
9 agreed disposition of this proceeding and are expressly limited
10 to this proceeding and any other proceeding or case in which the
11 Department of Real Estate (herein "the Department"), the state or
12 federal government, an agency of this state, or an agency of
13 another state is a party.

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

24 7. This Stipulation and Agreement shall not
25 constitute an estoppel, merger or bar to any further
26 administrative or civil proceedings by the Department with

27 DRE No. H-2945 SD

EIDON, INC., et al.

1 respect to any matters which were not specifically alleged to be
2 causes for accusation in this proceeding. This Stipulation and
3 Agreement shall constitute an estoppel, merger and bar to any
4 further administrative or civil proceedings by the Department
5 with respect to any events which were specifically alleged to be
6 causes for accusation in this proceeding.

7 8. Respondents understand that by agreeing to this
8 Stipulation and Agreement, Respondents jointly and severally
9 agree to pay, pursuant to Section 10148 of the California
10 Business and Professions Code (herein "Code"), the cost of the
11 audit which resulted in the determination that Respondents
12 committed the trust fund violation(s) found in paragraph I,
13 below, of the Determination of Issues. The amount of said costs
14 is \$3,304.36.

15 9. Respondents further understand that by agreeing to
16 this Stipulation and Agreement in Settlement, the findings set
17 forth below in the Determination Of Issues become final, and that
18 the Commissioner may charge said Respondents, jointly and
19 severally, for the costs of any audit conducted pursuant to
20 Section 10148 of the Code to determine if the trust fund
21 violation(s) found in paragraph I, below, of the Determination of
22 Issues have been corrected. The maximum costs of said audit shall
23 not exceed \$3,304.36.

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations, admissions and
26 waivers and solely for the purpose of settlement of the pending

27 DRE No. H-2945 SD

EIDON, INC., et al.

1 Accusation without hearing, it is stipulated and agreed that the
2 following Determination of Issues shall be made:

3 I

4 The acts and omissions of Respondents EIDON, WAGNER and
5 TEBBETTS as described in the Accusation are grounds for the
6 suspension or revocation of the licenses and license rights of
7 Respondents EIDON, WAGNER and TEBBETTS under the following
8 provisions of the California Business and Professions Code
9 (herein "the Code") and/or Chapter 6, Title 10, California Code
10 of Regulations (herein "the Regulations"):

11 (a) As to Paragraph VIII and Respondents EIDON and
12 WAGNER under Section 10145 of the Code in conjunction with
13 Section 2831 of the Regulations and Section 10177(d) of the Code;

14 (b) As to Paragraph IX and Respondents EIDON and
15 WAGNER under Section 10145 of the Code in conjunction with
16 Section 2831.1 of the Regulations and Section 10177(d) of the
17 Code;

18 (c) As to Paragraph X and Respondents EIDON and WAGNER
19 under Section 10145 of the Code in conjunction with Section
20 2831.2 of the Regulations and Section 10177(d) of the Code;

21 (d) As to Paragraph XIII and Respondents EIDON and
22 WAGNER under Section 10177(g) of the Code;

23 (e) As to Paragraph XIV and Respondents EIDON and
24 WAGNER under Section 10240 of the Code in conjunction with
25 Section 2840 of the Regulations and Section 10177(d) of the Code;

26 (f) As to Paragraphs XIX and XX and Respondent

27 DRE No. H-2945 SD

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1 TEBBETTS under Section 10130 of the Code in conjunction with
2 Section 10177(d) of the Code;

3 (g) As to Paragraph XXI and Respondents EIDON and
4 WAGNER under Section 10137 of the Code in conjunction with
5 Section 10177(d) of the Code;

6 (h) As to Paragraph XXII and Respondent WAGNER under
7 Section 10177(h) of the Code.

8 ORDER

9 I

10 A. All licenses and licensing rights of Respondent
11 EIDON MORTGAGE COMPANY, INC. under the Real Estate Law are
12 suspended for a period of fifty (50) days from the effective date
13 of the Decision herein; provided, however:

14 1. If Respondent EIDON petitions, twenty-five (25)
15 days of said fifty (50) day suspension (or a portion thereof)
16 shall be stayed upon condition that:

17 (a) Respondent EIDON pays a monetary penalty pursuant
18 to Section 10125.2 of the Code at the rate of \$200.00 for each
19 day of the suspension for a total monetary penalty of \$5,000.00.

20 (b) Said payment shall be in the form of a cashier's
21 check or certified check made payable to the Recovery Account of
22 the Real Estate Fund. Said check must be received by the
23 Department prior to the effective date of the Decision in this
24 matter.

25 (c) If Respondent EIDON fails to pay the monetary
26 penalty in accordance with the terms and conditions of the

1 Decision, the Commissioner may, without a hearing, vacate and set
2 aside the stay order, and order the immediate execution of all or
3 any part of the stayed suspension.

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

14 (e) If Respondent EIDON pays the monetary penalty and
15 if no further cause for disciplinary action against the real
16 estate license of Respondent occurs within two (2) years from the
17 effective date of the Decision herein, then the stay hereby
18 granted shall become permanent.

19 2. Twenty five (25) days of said fifty (50) day
20 suspension shall be stayed upon condition that:

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

25 (b) Should such a determination be made, the
26 Commissioner may, in his or her discretion, vacate and set

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

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

11 B. Respondent EIDON shall, within 45 days of
12 receiving an invoice therefor from the Commissioner, pay (jointly
13 and severally with Respondent WAGNER) the Commissioner's costs in
14 the amount of \$3,304.36 of the audit conducted pursuant to
15 Section 10148 of the Business and Professions Code that resulted
16 in the determination that Respondent EIDON committed the
17 violations described in Paragraph I of the Determination of
18 Issues, above. If Respondent EIDON fails to pay such cost within
19 the 45 days, the Commissioner may in his or her discretion
20 indefinitely suspend all license and licensing rights of
21 Respondent under the Real Estate Law until payment is made in
22 full or until Respondent enters into an agreement satisfactory to
23 the Commissioner to provide for payment. Upon payment in full,
24 any indefinite suspension provided in this paragraph shall be
25 stayed.

26 C. Respondent EIDON shall pay (jointly and severally

1 with Respondent WAGNER) the Commissioner's costs, not to exceed
2 \$3,304.36, of any audit conducted pursuant to Section 10148 of
3 the Business and Professions Code to determine if Respondent has
4 corrected the violations described in Paragraph I of the
5 Determination of Issues, above. In calculating the amount of the
6 Commissioner's reasonable cost, the Commissioner may use the
7 estimated average hourly salary for all persons performing audits
8 of real estate brokers, and shall include an allocation for
9 travel time to and from the auditor's place of work. Respondent
10 EIDON shall pay such cost within 45 days of receiving an invoice
11 therefor from the Commissioner detailing the activities performed
12 during the audit and the amount of time spent performing those
13 activities. If Respondent fails to pay such cost within the 45
14 days, the Commissioner may in his or her discretion indefinitely
15 suspend all license and licensing rights of Respondent EIDON
16 under the Real Estate Law until payment is made in full or until
17 Respondent EIDON enters into an agreement satisfactory to the
18 Commissioner to provide for payment. Upon payment in full, the
19 indefinite suspension provided in this paragraph shall be stayed.

20 II

21 A. All licenses and licensing rights of Respondent
22 WAGNER under the Real Estate Law are indefinitely suspended until
23 such time as Respondent WAGNER provides proof satisfactory to the
24 Commissioner that Respondent WAGNER has, within one hundred
25 twenty (120) days prior to the effective date of the Decision
26 herein or any date after said effective date, taken and

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EIDON, INC., et al.

1 successfully completed the trust fund accounting and handling
2 course specified in paragraph (3), subdivision (a) of Section
3 10170.5 of the Business and Professions Code. Upon satisfaction
4 of this condition, the indefinite suspension provided in this
5 paragraph shall be stayed.

6 B. All licenses and licensing rights of Respondent
7 WAGNER under the Real Estate Law are suspended for a period of
8 fifty (50) days from the effective date of the Decision herein;
9 provided, however:

10 1. If Respondent WAGNER petitions, twenty five (25)
11 days of said fifty (50) day suspension (or a portion thereof)
12 shall be stayed upon condition that:

13 (a) Respondent WAGNER pays a monetary penalty pursuant
14 to Section 10125.2 of the Code at the rate of \$200.00 for each
15 day of the suspension for a total monetary penalty of \$5,000.00.

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

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

26 (d) No final subsequent determination be made, after

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

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

15 2. Twenty five (25) days of said fifty (50) day
16 suspension shall be stayed upon condition that:

17 (a) No final subsequent determination be made, after
18 hearing or upon stipulation, that cause for disciplinary action
19 against Respondent occurred within two (2) years of the
20 effective date of the Decision herein.

21 (b) Should such a determination be made, the
22 Commissioner may, in his or her discretion, vacate and set
23 aside the stay order, and order the execution of all or any
24 part of the stayed suspension, in which event the Respondent
25 shall not be entitled to any repayment nor credit, prorated or
26 otherwise, for money paid to the Department under the terms of

1 this Decision.

2 (c) If no order vacating the stay is issued, and if
3 no further cause for disciplinary action against the real
4 estate license of Respondent occurs within two (2) years from
5 the effective date of the Decision, then the stay hereby
6 granted shall become permanent.

7 C. Respondent WAGNER shall, within 45 days of
8 receiving an invoice therefor from the Commissioner, pay (jointly
9 and severally with Respondent EIDON) the Commissioner's costs in
10 the amount of \$3,304.36 of the audit conducted pursuant to
11 Section 10148 of the Business and Professions Code that resulted
12 in the determination that Respondent EIDON committed the
13 violations described in Paragraph I of the Determination of
14 Issues, above. If Respondent WAGNER fails to pay such cost within
15 the 45 days, the Commissioner may in his or her discretion
16 indefinitely suspend all license and licensing rights of
17 Respondent under the Real Estate Law until payment is made in
18 full or until Respondent WAGNER enters into an agreement
19 satisfactory to the Commissioner to provide for payment. Upon
20 payment in full, any indefinite suspension provided in this
21 paragraph shall be stayed.

22 D. Respondent WAGNER shall pay (jointly and
23 severally with Respondent EIDON) the Commissioner's costs, not
24 to exceed \$3,304.36, of any audit conducted pursuant to Section
25 10148 of the Business and Professions Code to determine if
26 Respondent EIDON has corrected the violations described in

27 DRE No. H-2945 SD

EIDON, INC., et al.

1 Paragraph I of the Determination of Issues, above. In
2 calculating the amount of the Commissioner's reasonable cost,
3 the Commissioner may use the estimated average hourly salary
4 for all persons performing audits of real estate brokers, and
5 shall include an allocation for travel time to and from the
6 auditor's place of work. Respondent shall pay such cost within
7 45 days of receiving an invoice therefor from the Commissioner
8 detailing the activities performed during the audit and the
9 amount of time spent performing those activities. If
10 Respondent WAGNER fails to pay such cost within the 45 days,
11 the Commissioner may in his or her discretion indefinitely
12 suspend all license and licensing rights of Respondent under
13 the Real Estate Law until payment is made in full or until
14 Respondent enters into an agreement satisfactory to the
15 Commissioner to provide for payment. Upon payment in full, the
16 indefinite suspension provided in this paragraph shall be
17 stayed.

18 III

19 All licenses and licensing rights of Respondent
20 TEBBETTS under the Real Estate Law are suspended for a period of
21 fifty (50) days from the effective date of the Decision herein;
22 provided, however:

23 ///

24 ///

25 1. If Respondent WAGNER petitions, twenty five (25)
26 days of said fifty (50) day suspension (or a portion thereof)

shall be stayed upon condition that:

(a) Respondent TEBBETTS pays a monetary penalty pursuant to Section 10125.2 of the Code at the rate of \$200.00 for each day of the suspension for a total monetary penalty of \$5,000.00.

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

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

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

(e) If Respondent TEBBETTS pays the monetary penalty

1 and if no further cause for disciplinary action against the real
2 estate license of Respondent TEBBETTS occurs within two (2) years
3 from the effective date of the Decision herein, then the stay
4 hereby granted shall become permanent.

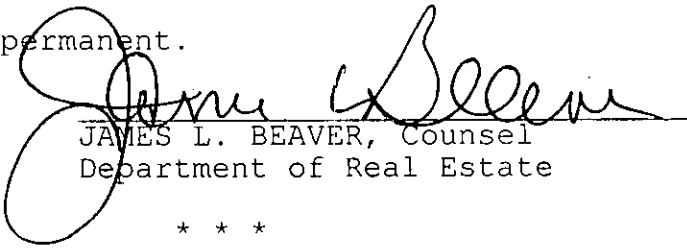
5 2. Twenty five (25) days of said fifty (50) day
6 suspension shall be stayed upon condition that:

7 (a) No final subsequent determination be made, after
8 hearing or upon stipulation, that cause for disciplinary action
9 against Respondent occurred within two (2) years of the
10 effective date of the Decision herein.

11 (b) Should such a determination be made, the
12 Commissioner may, in his or her discretion, vacate and set
13 aside the stay order, and order the execution of all or any
14 part of the stayed suspension, in which event the Respondent
15 shall not be entitled to any repayment nor credit, prorated or
16 otherwise, for money paid to the Department under the terms of
17 this Decision.

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

23 May 18, 2004
24 DATED


JAMES L. BEAVER, Counsel
Department of Real Estate

25 * * *

26 I have read the Stipulation and Agreement and discussed

27 DRE No. H-2945 SD

EIDON, INC., et al.

1 it with my attorney and its terms are understood by me and are
2 agreeable and acceptable to me. I understand that I am waiving
3 rights given to me by the California Administrative Procedure Act
4 (including but not limited to Sections 1506, 1508, 1509, and
5 11513 of the Government Code), and I willingly, intelligently,
6 and voluntarily waive those rights, including the right of
7 requiring the Commissioner to prove the allegations in the
8 Accusation at a hearing at which I would have the right to cross-
9 examine witnesses against me and to present evidence in defense
10 and mitigation of the charges.

11 _____ EIDON, INC.
12 DATED Respondent

13 By _____
14 RICHARD MYRON WAGNER
Designated Officer - Broker

15 _____
16 DATED RICHARD MYRON WAGNER
Respondent

17 5/10/04
18 DATED HAROLD CHARLES TEBBETTS
Respondent

19 ///

20 * * *

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

23 5/10/04
24 DATED JOEL L. INCORVAIA
Attorney for Respondents

25 * * *

26 The foregoing Stipulation and Agreement is hereby

27 DRE No. H-2945 SD

EIDON, INC., et al.

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

3 _____
4 DATED

JAMES L. BEAVER, Counsel
Department of Real Estate

5 * * *

6 I have read the Stipulation and Agreement and discussed
7 it with my attorney and its terms are understood by me and are
8 agreeable and acceptable to me. I understand that I am waiving
9 rights given to me by the California Administrative Procedure Act
10 (including but not limited to Sections 1506, 1508, 1509, and
11 11513 of the Government Code), and I willingly, intelligently,
12 and voluntarily waive those rights, including the right of
13 requiring the Commissioner to prove the allegations in the
14 Accusation at a hearing at which I would have the right to cross-
15 examine witnesses against me and to present evidence in defense
16 and mitigation of the charges.

17 5-7-04
18 DATED

EIDON, INC.
Respondent

19 By [Signature]
RICHARD MYRON WAGNER
Designated Officer - Broker

20 5-7-04
21 DATED

22 [Signature]
RICHARD MYRON WAGNER
Respondent

23 _____
24 DATED

HAROLD CHARLES TEBBETTS
Respondent

25 ///

26
27 DRE No. H-2945 SD

EIDON, INC., et al.

1 adopted by me as my Decision in this matter and shall become
2 effective at 12 o'clock noon on July 29, 2004.

3 IT IS SO ORDERED May 26, 2004.

4 JOHN R. LIBERATOR
5 Acting Real Estate Commissioner

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

FILED

MAR - 9 2004

DEPARTMENT OF REAL ESTATE

By Spurlock

In the Matter of the Accusation of

EIDON INC.,
RICHARD MYRON WAGNER, AND
HAROLD CHARLES TEBBETTS,

Case No. H-2945 SD

OAH No. L-2004030058

Respondents

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, SUITE 6022, SAN DIEGO, CA 92101** on **FRIDAY, MAY 14, 2004**, 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.

DEPARTMENT OF REAL ESTATE

Dated: MARCH 9, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (12)

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
JAN 20 2004

DEPARTMENT OF REAL ESTATE

Laurie A. Zin

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	
12 EIDON INC.,)	No. H-2945 SD
13 RICHARD MYRON WAGNER, and)	<u>ACCUSATION</u>
14 HAROLD CHARLES TEBBETTS,)	
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 EIDON INC. dba Eidon Asset Management, Eidon Realty
19 Advisors and The Mortgage Company (hereinafter "Respondent
20 EIDON"), RICHARD MYRON WAGNER, (hereinafter "Respondent WAGNER")
21 and HAROLD CHARLES TEBBETTS (hereinafter "Respondent TEBBETTS")
22 is informed and alleges as follows:

23 FIRST CAUSE OF ACCUSATION

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 II

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

5 EIDON INC. - as a real estate broker corporation.

6 RICHARD MYRON WAGNER - as a real estate broker and as
7 designated broker-officer of Respondent EIDON.

8 HAROLD CHARLES TEBBETTS - as a real estate broker.

9 III

10 Whenever reference is made in an allegation in this
11 Accusation to an act or omission of "Respondents", such
12 allegation shall be deemed to mean the act or omission of
13 Respondent EIDON and Respondent WAGNER, acting individually,
14 jointly, and severally.

15 IV

16 At all times herein mentioned, Respondents engaged in
17 the business of, acted in the capacity of, advertised or assumed
18 to act as a real estate broker in the State of California within
19 the meaning of Section 10131(d) of the Code, including the
20 operation and conduct of a mortgage loan brokerage business with
21 the public wherein lenders and borrowers were solicited for
22 loans secured directly or collaterally by liens on real property
23 or a business opportunity, and wherein such loans were arranged,
24 negotiated, processed, and consummated on behalf of others for
25 compensation or in expectation of a compensation.

26 ///

27 ///

V

Beginning on or about July 2, 2002, the Department conducted an audit of Respondents' mortgage loan brokerage activities for the time period May 1, 2000 to June 30, 2002 as set forth in Audit No. SD 020007 dated August 9, 2002. During the course of the mortgage loan brokerage activities described in Paragraph IV above, Respondents received and disbursed funds held in trust on behalf of another or others.

VI

Beginning on or before May 1, 2000 through on or about June 30, 2002, Respondents maintained the following trust fund accounts:

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
Eidon Inc dba The Mortgage Co Trust Account Account No. 161883011983 (hereinafter "Trust Account")	US Bank San Diego, California
Eidon Inc dba The Mtg. Co dba Eidon Rlty DbA The Equip Leasing Co Trust Account	US Bank San Diego, California

VII

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to deposit and maintain said trust funds in the Trust Account in such manner that as of June 30, 2002, there was a shortage of \$3,407.61 of trust funds.

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VIII

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to maintain adequate columnar records of all trust funds received and disbursed in the manner required by Section 2831 of the Title 10, California Code of Regulations (hereinafter "Regulations").

IX

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed adequately maintain a separate record for each beneficiary or transaction accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

X

In connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondents failed to adequately maintain and perform a reconciliation with the records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations at least once per month, in conformance with Section 2831.2 of the Regulations.

XI

Within the three-year period immediately preceding the filing of this Accusation, in connection with the mortgage loan brokerage activities described in Paragraph IV above, Respondent engaged in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of

1 advance fees within the meaning of Sections 10026 and 10131.2
2 (advance fees) of the Code.

3 XII

4 In connection with the collection and handling of said
5 advance fees, Respondent failed to cause the advance fee
6 contracts and all materials used to obtaining said advance fee
7 agreement to be submitted to the Department of Real Estate prior
8 to use as required by Section 10085 of the Code and Section 2970
9 of the Regulations.

10 XIII

11 In connection with the mortgage loan brokerage
12 activities described in Paragraph IV above, Respondents failed
13 to disclose to borrowers the material fact that Respondents
14 received a secret or undisclosed amount of compensation in the
15 form of overcharges to borrowers for credit reports fees and
16 loan approval fees.

17 XIV

18 Within the three-year period immediately preceding the
19 filing of this Accusation, Respondents in connection with the
20 mortgage loan brokerage activities described in Paragraph IV
21 above, failed to present to said borrowers, before said
22 borrowers became obligated to complete the loan, a statement
23 signed by the borrower and the broker with the contents set
24 forth in Section 10241 of the Code, in violation of Section
25 10240(a) of the Code and Section 2840 of the Regulations.

26 ///

27 ///

1 XV

2 In connection with the mortgage loan brokerage
3 activities described in Paragraph IV above, Respondents failed
4 to disclose in Mortgage Loan Disclosure Statements all of the
5 information required by Section 10236.4 of the Code.

6 XVI

7 The facts alleged above in this First Cause of
8 Accusation are grounds for the suspension or revocation of the
9 licenses and license rights of Respondents EIDON and WAGNER
10 under the following sections of the Code and Regulations:

11 (1) As to Paragraph VII, under Section 10177(d) of
12 the Code in conjunction with Section 10145 of the Code;

13 (2) As to Paragraph VIII above, under Section
14 10177(d) of the Code in conjunction with Section 2831 of the
15 Regulations;

16 (3) As to Paragraph IX, under Section 10177(d) of the
17 Code in conjunction with Section 2831.1 of the Regulations;

18 (4) As to Paragraph X, under Section 10177(d) of the
19 Code in conjunction with Section 2831.2 of the Regulations;

20 (5) As to Paragraph XII, under Section 10177(d) of
21 the Code in conjunction with Section 10085 of the Code and
22 Section 2970 of the Regulations;

23 (6) As to Paragraph XIII, under Section 10176(a),
24 10176(g), and 10176(i) or 10177(j) of the Code;

25 (7) As to Paragraph XIV, under Section 10177(d) of
26 the Code in conjunction with Section 10240(a) of the Code and
27 Section 2840 of the Regulations; and

1 (8) As to Paragraph XV, under Section 10177(d) of the
2 Code in conjunction with Section 10236.4 of the Code.

3 In the alternative the, the acts and/or omissions of
4 Respondent WAGNER described above, constitute failure on the
5 part of Respondent WAGNER, as designated broker-officer for
6 Respondent EIDON, to exercise reasonable supervision and control
7 over the licensed activities of Respondent EIDON required by
8 Section 10159.2 of the Code, and is cause for the suspension or
9 revocation of Respondent WAGNER's license and/or license rights
10 under Section 10177(h) of the Code.

11 SECOND CAUSE OF ACCUSATION

12 XVII

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 IV of the First Cause of
16 Accusation with the same force and effect as if herein fully set
17 forth.

18 XVIII

19 On or about April 20, 2000 through on or about
20 April 18, 2002, Respondent TEBBETTS real estate salesperson
21 license was expired.

22 XIX

23 Beginning on or after April 20, 2000 and continuing
24 through on or about April 18, 2002, at a time when Respondent
25 TEBBETTS' real estate salesperson license was expired as
26 described in Paragraph XVIII above, Respondent TEBBETTS while in
27 the employ of Respondent EIDON, engaged in the business of,

1 acted in the capacity of, advertised, or assumed to act as a
2 real estate salesperson, including the operation and conduct of
3 a mortgage loan brokerage business with the public wherein
4 lenders and borrowers were solicited for loans secured directly
5 or collaterally by liens on real property, and wherein such
6 loans were arranged, negotiated, processed, and consummated on
7 behalf of others for compensation or in expectation of
8 compensation within the meaning of Sections 10131(d) and 10132
9 of the Code.

10 XX

11 The real estate mortgage loan activities conducted by
12 Respondent TEBBETTS as described in Paragraph XIX above, include
13 but are not limited to the following transactions:

<u>DATE</u>	<u>BORROWER(S)</u>	<u>PROPERTY</u>
05/23/02	Tracey R. Gaines	7010 Everglades Ave. San Diego, California
05/16/02	Troy A. & Rebecca R. Hartmann	3242 Elliott Street San Diego, California
08/14/01	Minot J. Ferson	5671 Waring Road San Diego, California

21 XXI.

22 Beginning on or after April 20, 2000 and continuing
23 through on or before April 18, 2002, in connection with the
24 mortgage loan brokerage activities described in Paragraphs XIX
25 and XX above, Respondent EIDON employed and compensated,
26 directly or indirectly Respondent TEBBETTS to perform acts

27 ///

1 requiring a real estate license at a time when Respondent
2 TEBBETTS real estate salesperson license was expired.

3 XXII

4 At various times beginning on or after April 20, 2000
5 and continuing through on or before April 18, 2002, Respondent
6 WAGNER, as designated broker-officer for Respondent EIDON,
7 failed to exercise reasonable supervision and control over the
8 licensed activities of Respondent EIDON required by Section
9 10159.2 of the Code in that Respondent WAGNER permitted
10 Respondent TEBBETTS, a real estate salesperson with an expired
11 real estate license, to conduct the mortgage loan brokerage
12 activities described in Paragraphs XIX and XX above. Respondent
13 WAGNER failed to exercise reasonable supervision over the
14 activities of Respondent EIDON's salespersons by failing to
15 establish adequate policies, rules, procedures and systems to
16 review, oversee, inspect and manage said activities.

17 XXIII

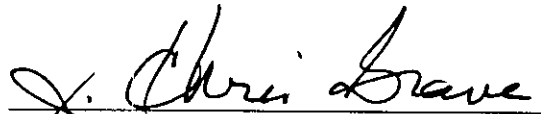
18 The acts and/or omissions of Respondents EIDON, WAGNER
19 and TEBBETTS described in this Second Cause of Accusation are
20 grounds for the suspension or revocation of the licenses and/or
21 license rights of Respondents EIDON, WAGNER and TEBBETTS under
22 the following sections of the Code and Regulations:

23 (1) As to Paragraphs XIX and XX, under Section
24 10177(d) of the Code in conjunction with Section 10130 of the
25 Code, as to Respondent TEBBETTS;

26 (2) As to Paragraph XXI, under Section 10137 of the
27 Code, as to Respondent EIDON and Respondent WAGNER;

1 (3) As to Paragraph XXII, under Section 10177(h) of
2 the Code and Section 10177(d) of the Code in conjunction with
3 Section 2725 of the Regulations, as to Respondent WAGNER. In
4 the alternative, the acts and/or omissions of Respondent WAGNER
5 described in Paragraph XXII are grounds for the suspension or
6 revocation of Respondent WAGNER's license and/or license rights
7 under Section 10177(g) of the Code.

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

15
16 
17 J. CHRIS GRAVES
Deputy Real Estate Commissioner

18 Dated at San Diego, California,
19 this 13th day of January, 2004.