

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
MAY 24 1995
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 FISCHER MORTGAGE AND) NO. H-3041 SAC
13 INVESTMENTS CORP. and) STIPULATION AND
14 RONALD EDWARD VOLK,) AGREEMENT IN
15 Respondents.) SETTLEMENT AND ORDER

16 It is hereby stipulated by and between FISCHER MORTGAGE
17 AND INVESTMENTS CORP. (Respondent FISCHER) and its attorney of
18 record, David C. Becker of Becker, Runkle & Adams, RONALD EDWARD
19 VOLK (Respondent VOLK) and his attorney of record, Stephen A.
20 Brandenburger of McMurchie, Foley, Brandenburger, Weil & Lenahan,
21 and the Complainant, acting by and through David B. Seals, Counsel
22 for the Department of Real Estate, as follows for the purpose of
23 settling and disposing of the Accusation filed on August 24, 1994,
24 in this matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondents
27 at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement in Settlement.

5 2. Respondents have received, read and understand the
6 Statement to Respondent, the Discovery Provisions of the APA and
7 the Accusation filed by the Department of Real Estate in this
8 proceeding.

9 3. On September 23, 1994, Respondents FISCHER and VOLK
10 filed a Notice of Defense pursuant to Section 11505 of the
11 Government Code for the purpose of requesting a hearing on the
12 allegations in the Accusation. Respondents hereby freely and
13 voluntarily withdraw said Notice of Defense. Respondents
14 acknowledge that they understand that by withdrawing said Notice
15 of Defense they will thereby waive their right to require the
16 Commissioner to prove the allegations in the Accusation at a
17 contested hearing held in accordance with the provisions of the
18 APA and that they will waive other rights afforded to them in
19 connection with the hearing such as the right to present evidence
20 in defense of the allegations in the Accusation and the right to
21 cross-examine witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby elect not to contest the factual allegations or
24 findings of fact as set forth in Paragraphs II through XV of
25 the Accusation filed in this proceeding and the Real Estate
26 Commissioner shall not be required to provide further evidence of
27 such allegations.

1 5. It is understood by the parties that the Real Estate
2 Commissioner may adopt the Stipulation and Agreement in Settlement
3 as his decision in this matter thereby imposing the penalty and
4 sanctions on Respondent's real estate licenses and license rights
5 as set forth in the below "Order". In the event that the
6 Commissioner in his discretion does not adopt the Stipulation and
7 Agreement in Settlement, it shall be void and of no effect, and
8 Respondents shall retain the right to a hearing and proceeding on
9 the Accusation under all the provisions of the APA and shall not
10 be bound by any admission or waiver made herein.

11 6. The Order or any subsequent Order of the Real Estate
12 Commissioner made pursuant to this Stipulation and Agreement in
13 Settlement shall not constitute an estoppel, merger or bar to any
14 further administrative or civil proceedings by the Department of
15 Real Estate with respect to any matters which were not
16 specifically alleged to be causes for accusation in this
17 proceeding.

18 7. Respondent FISCHER has received, read and
19 understands the "Notice Concerning Costs of Subsequent Audits".
20 Respondent FISCHER understands that by agreeing to this
21 Stipulation and Agreement in Settlement, the findings set forth
22 below in the DETERMINATION OF ISSUES become final, and that the
23 Commissioner may charge Respondent FISCHER for the costs of any
24 audit conducted pursuant to Section 10148 of the Business and
25 Professions Code to determine if the violations have been
26 corrected. The maximum costs of said audit will not exceed
27 \$3,170.64.

1 following limitations, conditions and restrictions imposed
2 under authority of Section 10156.6 of that Code:

3 A. The restricted license issued to Respondent FISCHER may
4 be suspended prior to hearing by Order of the Real
5 Estate Commissioner in the event of Respondent FISCHER's
6 conviction or plea of nolo contendere to a crime which
7 is substantially related to Respondent FISCHER's fitness
8 or capacity as a real estate licensee.

9 B. The restricted license issued to Respondent FISCHER may
10 be suspended prior to hearing by Order of the Real
11 Estate Commissioner on evidence satisfactory to the
12 Commissioner that Respondent has violated provisions of
13 the California Real Estate Law, the Subdivided Lands
14 Law, Regulations of the Real Estate Commissioner or
15 conditions attaching to the restricted license.

16 C. Respondent FISCHER shall not be eligible to apply for
17 the issuance of an unrestricted real estate license
18 nor for the removal of any of the conditions,
19 limitations or restrictions of a restricted license
20 until one (1) year has elapsed from the effective date
21 of this Order.

22 D. Respondent FISCHER shall pay, pursuant to Section 10148
23 of the Business and Professions Code, the Commissioner's
24 reasonable cost for an audit to determine if Respondent
25 FISCHER has corrected the trust fund violations found
26 herein. In calculating the amount of the Commissioner's
27 reasonable costs, the Commissioner may use the estimated

1 average hourly salary for all persons performing audits
2 of real estate brokers, and shall include an allocation
3 for travel costs, including mileage, time to and from
4 the auditor's place of work, and per diem. The
5 Commissioner's reasonable costs shall in no event exceed
6 \$3,170.64:

- 7 1. Respondent FISCHER shall pay such cost within 45
8 days of receipt of an invoice from the Commissioner
9 detailing the activities performed during the audit
10 and the amount of time spent performing those
11 activities; and,
- 12 2. Notwithstanding the other provisions herein, if
13 Respondent FISCHER fails to pay within 45 days from
14 receipt of the invoice specified above, the
15 Commissioner's reasonable costs for an audit to
16 determine if Respondent FISCHER has corrected the
17 violations found herein, the Commissioner may order
18 the indefinite suspension of Respondent FISCHER's
19 real estate license and license rights. The
20 suspension shall remain in effect until payment is
21 made in full, or until Respondent FISCHER enters
22 into an agreement satisfactory to the Commissioner
23 to provide for such payment. The Commissioner may
24 impose further reasonable disciplinary terms and
25 conditions upon Respondent FISCHER's real estate
26 license and license rights as part of any such
27 agreement.

1 2. All licenses and licensing rights of Respondent RONALD EDWARD
2 VOLK under the Real Estate Law are suspended for a period of
3 thirty (30) days from the effective date of this Order;
4 provided, however, that:

5 A. Fifteen (15) days of said suspension shall be stayed
6 for two (2) years upon the following terms and
7 conditions:

8 (1) Respondent VOLK shall obey all laws, rules and
9 regulations governing the rights, duties and
10 responsibilities of a real estate licensee in
11 the State of California; and,

12 (2) That no final subsequent determination be
13 made, after hearing or upon stipulation, that
14 cause for disciplinary action occurred within
15 two (2) years from the effective date of this
16 Order as to Respondent VOLK. Should such a
17 determination be made, the Commissioner may,
18 in his discretion, vacate and set aside the
19 stay order and reimpose all or a portion of
20 the stayed suspension. Should no such
21 determination be made, the stay imposed herein
22 shall become permanent.

23 B. The remaining fifteen (15) days of said 30-day
24 suspension shall be stayed upon the condition that
25 Respondent VOLK petitions pursuant to Section 10175.2
26 of the Business and Professions Code and pays a
27 monetary penalty pursuant to Section 10175.2 of the


1 Business and Professions Code at a rate of \$200.00 for
2 each day of the suspension for a total monetary penalty
3 of \$3,000.00:

- 4 (1) Said payment shall be in the form of a
5 cashier's check or certified check made
6 payable to the Recovery Account of the Real
7 Estate Fund. Said check must be delivered to
8 the Department prior to the effective date of
9 the Order in this matter.
- 10 (2) No further cause for disciplinary action
11 against the Real Estate licenses of Respondent
12 VOLK occurs within two (2) years from the
13 effective date of the Order in this matter.
- 14 (3) If Respondent VOLK fails to pay the monetary
15 penalty in accordance with the terms and
16 conditions of the Order, the Commissioner may,
17 without a hearing, order the immediate
18 execution of all or any part of the stayed
19 suspension as to Respondent VOLK, in which
20 event, Respondent VOLK shall not be entitled
21 to any repayment nor credit, prorated or
22 otherwise, for the money paid to the
23 Department under the terms of this Order.
- 24 (4) If Respondent VOLK pays the monetary penalty
25 and if no further cause for disciplinary
26 action against the real estate licenses of
27 Respondent VOLK occurs within two (2) years

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from the effective date of the Order, the stay hereby granted shall become permanent as to Respondent VOLK.


DATED: 5/5/95


DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

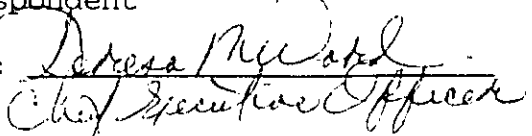
I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 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.

DATED: 5/5/95


RONALD EDWARD VOLK
Respondent

DATED: 5/5/95

FISCHER MORTGAGE AND INVESTMENTS CORP.
Respondent

By: 
Teresa McDaniel
Chief Executive Officer
FISCHER MORTGAGE AND INVESTMENTS CORP.,
and RONALD EDWARD VOLK

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

DATED: May 5, 1995 *Stephen A. Brandenburger*
STEPHEN A. BRANDENBURGER
Attorney for Respondent VOLK

DATED: 5/5/95 *R. May* for
DAVID C. BECKER
Attorney for Respondent FISCHER

* * *

The foregoing Stipulation and Agreement in Settlement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on June 13, 1995.

IT IS SO ORDERED May 15, 1995.

JOHN R. LIBERATOR
Interim Commissioner

By: *Betty R. Ludeman*
Betty R. Ludeman
Assistant Commissioner
Enforcement

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

FISCHER MORTGAGE AND
INVESTMENTS CORP., and
RONALD EDWARD VOLK,

Case No. H-3041 SAC
OAH No. N-9409020

Respondent

FIRST AMENDED
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 May 9, 1995 and May 10, 1995, 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: October 20, 1994

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of
FISCHER MORTGAGE AND INVESTMENTS
CORP.,
RONALD EDWARD VOLK

Case No. H-3041 SAC
OAH No. N-9409020

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, California 95814

on Monday -- October 11, 1994, 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: September 9, 1994

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS Counsel

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

5 Telephone: (916) 227-0789

FILED
AUG 24 1994
DEPARTMENT OF REAL ESTATE

By Laurie A. Zier

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

11 * * *

12 In the Matter of the Accusation of)
13 FISCHER MORTGAGE AND) NO. H-3041 SAC
14 INVESTMENTS CORP., and)
15 RONALD EDWARD VOLK,) ACCUSATION
16 Respondents.)

17 The Complainant, Peter J. Saverien, a Deputy Real Estate
18 Commissioner of the State of California for cause of Accusation
19 against FISCHER MORTGAGE AND INVESTMENTS CORP. and RONALD EDWARD
20 VOLK, is informed and alleges as follows:

21 I

22 The Complainant, Peter J. Saverien, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

25 II

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

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- (a) FISCHER MORTGAGE AND INVESTMENTS CORP. (hereinafter "Respondent FISCHER"), as a corporate real estate broker, through RONALD EDWARD VOLK (hereinafter "Respondent VOLK") as designated officer.
- (b) Respondent VOLK as a real estate broker and as the designated officer for Respondent FISCHER and Volk Financial Services, Inc.

III

At all times herein mentioned, as the designated officer of Respondent FISCHER, Respondent VOLK was responsible for the supervision and control of the activities conducted on behalf of Respondent FISCHER by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

IV

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent FISCHER, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent FISCHER committed such act or omissions while engaged in furtherance of the business or operation of Respondent FISCHER and while acting within the course and scope of their corporate authority and employment.

V

That at all times herein mentioned, Respondent FISCHER and Respondent VOLK, and both of them, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real

1 estate brokers in the State of California within the meaning of
2 Section 10131 of the Code for or in expectation of compensation.

3 VI

4 That at all times herein mentioned, Respondent FISCHER
5 and Respondent VOLK accepted or received funds in trust
6 (hereinafter trust funds) from and on behalf of their principals
7 placing them in trust accounts and at times thereafter made
8 disbursements of such funds.

9 VII

10 An investigative audit was made by the Department of the
11 records and bank records of Respondent FISCHER for the period from
12 November 1, 1992 to October 30, 1993, as said records related to
13 their activities as a real estate broker.

14 VIII

15 Respondent FISCHER maintained three trust accounts into
16 which trust funds were placed.

17 IX

18 Respondent FISCHER failed to notify the Department of
19 Real Estate that Respondent FISCHER met the threshold criteria
20 provided for in Section 10232 of the Code, for the period from
21 November 1, 1992 to September 30, 1993, in conformance with
22 Section 10232.2 of the Code and Sections 2846.5 and 2849 of the
23 Regulations.

24 X

25 Respondent FISCHER failed to notify the Department of
26 the employment of real estate salesperson Judy Rice in violation
27 of Section 2710 of the Regulations.

XI

1
2 Respondent FISCHER failed to maintain separate records
3 for one trust fund account in compliance with Section 2831.1 of
4 the Regulations.

XII

5
6 Dana Daugherty was a signatory on one of Respondent
7 FISCHER's trust fund accounts when she was not a licensed real
8 estate salesperson or broker and was not in the employ of
9 Respondent FISCHER in violation of Section 2834 of the
10 Regulations.

XIII

11
12 Respondent FISCHER failed to deposit trust funds (in the
13 form of credit and appraisal fees collected from prospective
14 borrowers) into a trust account or otherwise distribute such funds
15 within one business day following receipt of said funds in
16 compliance with Section 2832 of the Regulations.

XIV

17
18 Respondent FISCHER collected money from applicants for
19 loans to cover expenses for credit reports and appraisals before
20 Respondent FISCHER had incurred such expenses. A total of
21 \$2,830.50 of such fees were collected from applicants but not
22 disbursed for credit report or appraisal fees and not returned to
23 the applicants. The portion of the moneys collected for such fees
24 and not used for the specified purpose are an advance fee within
25 the meaning of Business and Professions Code Section 10026.
26 Respondents did not have any Commissioner approved advanced fee
27 materials or agreements, as required by Section 10146 of the Code.

XV

1
2 Respondent VOLK failed to exercise reasonable
3 supervision and control over the acts of Respondent FISCHER in
4 such a manner as to allow the acts described in Paragraphs IX
5 through XIV to occur.

6 XVI

7 The acts and/or omissions of Respondents described above
8 are grounds for the revocation or suspension of Respondents'
9 licenses under the following sections of the Business and
10 Professions Code and the Regulations:

- 11 (a) As to Respondents FISCHER MORTGAGE AND INVESTMENTS CORP. and
12 RONALD EDWARD VOLK, and each of them under Section 10177(d)
13 in conjunction with Section 10146, 10232 and 10232.2 of the
14 Code, and Sections 2710, 2831.1, 2832, 2834, 2846.5 and 2849
15 of the Regulations; and,
16 (b) As to Respondent RONALD EDWARD VOLK only, under Section
17 10177(g) and/or 10177(h) of the Code.

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

25
26 
PETER J. SAVERIEN
Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 15th day of August, 1994.