

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Laurie A. Zia

* * *

In the Matter of the Accusation of)
CALIFORNIA VALLEY WIDE)
MORTGAGE, INC.,)
HELEN KAY DONALDSON,)
JIMMY HAROLD MORGAN,)
Respondents.)

NO. H-3067 SAC
OAH NO. N-9412150

DECISION

The Proposed Decision dated September 21, 1995, 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 matter.

This Decision shall become effective at 12 o'clock noon
on November 8, 1995.

IT IS SO ORDERED 10/10, 1995.

JIM ANTT, JR.
Real Estate Commissioner

J. Antt Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	No. H-3067
	)	
CALIFORNIA VALLEY WIDE	)	OAH No. N-9412150
MORTGAGE, INC.,	)	
HELEN KAY DONALDSON,	)	
JIMMY HAROLD MORGAN,	)	
	)	
	)	
Respondents.	)	

PROPOSED DECISION

On August 21, 1995, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry A. Alamao, Counsel, represented the complainant.

Respondent Helen Kay Donaldson was present and represented herself.

Respondents Jimmy Harold Morgan and California Valley Wide Mortgage, Inc. did not appear at hearing and were not otherwise represented.

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

FINDINGS OF FACT

I

The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity.

Copies of the Accusation were served by certified mail on the following individuals and/or entities at their addresses of record with the Department of Real Estate ("the Department"), as follows:

- A. Helen Kay Donaldson ("respondent Donaldson"), 451 Parkfair Drive, Suite 10, Sacramento, California 95864.
- B. California Valley Wide Mortgage, Inc. ("respondent Valley Wide"), c/o Helen Kay Donaldson, 151 N. Sunrise Avenue, Suite 705, Roseville, California 95661.
- C. Jimmy Harold Morgan ("respondent Morgan"), 700 Sunrise Avenue, Suite F, Roseville, California 95661.

The envelope containing the Accusation sent to respondent Valley Wide was returned to the Department unclaimed. The Department received a signed Notice of Defense from respondent Donaldson dated December 13, 1994, which listed her mailing address as that set forth in subparagraph A. above. The Department received a signed Notice of Defense from respondent Morgan dated December 15, 1994, which listed his mailing address as that set forth in subparagraph C. above.

Notice of Hearing was sent to respondents by mail on January 13, 1995 at the addresses listed above. The envelope containing the Notice of Hearing sent to respondent Valley Wide was returned to the Department as undeliverable.

Despite proper service of the Accusation and Notice of Hearing on respondents Valley Wide and Morgan, there was no appearance at hearing by or on behalf of either respondent. Complainant established compliance with Government Code sections 11505 and 11509, and this matter proceeded as a default as to respondents Valley Wide and Morgan pursuant to Government Code section 11520.

II

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as follows:

- A. Respondent Valley Wide, as a real estate corporation. The license expired on September 28, 1993.
- B. Respondent Donaldson, as a real estate broker and designated broker-officer of respondent Valley

Wide. The real estate broker license will expire unless renewed on June 11, 1998. The designated broker-officer license expired on September 28, 1993.

- C. Respondent Morgan, as a real estate salesperson in the employ of respondent Valley Wide at all times relevant herein. On August 9, 1993, respondent Morgan's employing broker was changed to Robert Otis Littlejohn, 5277 Highway 49 North, #65, Mariposa, California 95338. The salesperson license expired on August 27, 1994.

III

Whenever any reference is made herein to an act or omission of respondent Valley Wide, such reference shall be deemed to mean that the officers, directors, employees, and agents and real estate licensees employed by or associated with respondent Valley Wide committed such act or omission while engaged in the furtherance of the business or operations of respondent Valley Wide and while acting within the course and scope of their authority and employment.

IV

At all times mentioned herein, respondents Donaldson, Morgan and Valley Wide engaged in the business and acted in the capacity of real estate licensees in the State of California within the meaning of Business and Professions Code section 10131(d), including the operation 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 and loans were arranged, negotiated, processed and consummated on behalf of others, all for or in expectation of compensation.

V

In a document filed with the California Secretary of State on February 10, 1993, respondent Morgan was listed as the Chief Executive Officer and Chief Financial Officer of respondent Valley Wide. The document lists the following individuals as directors of respondent Valley Wide: respondent Morgan, respondent Donaldson, and Judith A. Morgan. Respondent Morgan was the 100 percent shareholder of respondent Valley Wide.

Respondent Valley Wide operated under the dba North Bay Mortgage Company. Department records indicated that the dba North Bay Mortgage Company was cancelled as of September 28, 1993.

VI

As of March 31, 1993, respondent Valley Wide had three bank accounts, as follows:

A. American Savings Bank account no. 60083334581.
Title: California Valley Wide Mortgage, Inc. DBA North Bay Mortgage Co. ("Account #1"). Account #1 was opened February 8, 1993 to handle the collection of credit report fees. The authorized signatories of Account #1 were respondent Donaldson and respondent Morgan, with one signature required.

B. First Interstate Bank account no. 824-3-03363.
Title: North Bay Mortgage Co. ("Account #2"). Account #2 was opened October 1, 1991 to handle the collection of credit report fees prior to the opening of Account #1. On rare occasions, appraisal fees were deposited in Account #2; Account #2 was also used as respondent Valley Wide's general operating account. The authorized signatories of Account #2 were respondent Donaldson and respondent Morgan, with one signature required.

C. First Interstate Bank account no. 824-5-03605.
Title: North Bay Mortgage Co. Payroll Account ("Account #3"). Account #3 was opened on January 8, 1992 to handle the payroll activities of respondent Valley Wide. The authorized signatories of Account #3 were respondent Donaldson and respondent Morgan, with one signature required.

VII

Respondent Morgan owned and operated a property appraisal company known as California Valley Wide Appraisal Service ("CVW Appraisal Service"), a sole proprietorship. The business address of CVW Appraisal Service was the same as the business address of respondent Valley Wide. CVW Appraisal Service is not a business entity licensed by the Department as a real estate broker.

As of March 31, 1993, CVW Appraisal Service had two bank accounts, as follows:

A. First Interstate Bank account no. 824-5-03054.
Title: California Valley Wide Appraisal Service Account ("CVW Appraisal Service General Account"). CVW Appraisal Service General Account was opened in May 1991 and was used to handle CVW Appraisal Service's general activities. Deposits consisted of appraisal checks received from borrowers and checks from respondent Valley Wide's Account #2. The authorized signatories of CVW Appraisal Service General Account were respondent Morgan and Tracy L. Moore, with one signature required.

B. First Interstate Bank account no. 824-8-03870.
Title: Jimmy Morgan DBA California Valley Wide Appraisal Service Payroll Account ("CVW Appraisal Service Payroll Account"). CVW Appraisal Service Payroll Account was opened in May 1992 and was used to handle the payroll activities of CVW Appraisal Service. The authorized signatories of CVW Appraisal Service Payroll Account were respondent Morgan and Tracy L. Moore, with one signature required.

VIII

The evidence at hearing established that CVW Appraisal Service was operated as a separate business entity from respondent Valley Wide. Respondent Valley Wide acted as a loan packager that ordered credit checks on potential borrowers and arranged appraisals on the subject properties. Many of the appraisals arranged by respondent Valley Wide used the services of CVW Appraisal Services; however, other appraisal companies were also used. Likewise, Fee Appraiser Payment Sheets examined by the Department's auditor, Tom Cameron, reveal that respondent Valley Wide was not the only lender/mortgage company for which appraisers of CVW Appraisal Company performed appraisals.

It was the general practice of respondent Valley Wide to require potential borrowers to pay the appraiser directly on the day the appraiser examined the property. The Mortgage Loan Broker Audit Information Worksheet prepared by Cameron reflects at page 5 that appraisal fees are not collected by the broker (i.e., respondent Valley Wide), but are "generally done C.O.D." At hearing, respondent Donaldson admitted that there were occasions when appraisal fees were paid to respondent Valley Wide through escrow and respondent Valley Wide paid the appraisal company; records examined by Cameron showed that respondent Valley Wide wrote at least four checks to CVW Appraisal Service in May and June 1992 for appraisals.

It was not established by clear and convincing evidence that potential borrowers made out appraisal checks to North Bay Mortgage, the dba of respondent Valley Wide, or that checks made out to North Bay Mortgage were deposited into the CVW Appraisal Service General Account.

IX

In the course of acting as mortgage loan brokers, respondents Valley Wide, Donaldson and Morgan accepted or received funds in trust ("trust funds") from or on behalf of lenders or investors, borrowers, and others in connection with the solicitation, negotiation, processing, packaging and consummation of mortgage loans by respondents. Respondents charged and collected fees for credit and appraisal reports. Said fees are trust funds.

X

Paragraph VI of the Accusation herein alleges as follows:

"Respondents deposited and disbursed said credit and appraisal report fees into an account known as California Valley Wide Appraisal Service Account, Account No. 824-5-03054, First Interstate Bank, Roseville, California. Said account was not designated as a trust fund account in respondent VALLEY WIDE's name as trustee at the bank in conformance with Section 2830, Title 10, California Code of Regulations (hereinafter referred to as "Regulations"). Respondent commingled said trust funds with its own money or property."

The allegations as set forth above were not established by the evidence. The bank account mentioned in Paragraph VI of the Accusation was not a bank account for respondent Valley Wide; rather, it was the general operating account for an entirely separate business, CVW Appraisal Service. No credit report fees were ever deposited into the CVW Appraisal Service General Account. Appraisal report fees were deposited into said account to pay for appraisals which were performed by employees of CVW Appraisal Service; as such, they were not trust funds which were accepted or received by respondent Valley Wide.

XI

The evidence did establish that respondents deposited and disbursed credit report fees and, on at least four occasions, appraisal report fees into respondent Valley Wide's Account #2, and respondents deposited and disbursed credit report fees into respondent Valley Wide's Account #1. Neither of these accounts was designated as trust fund accounts in respondent Valley Wide's name as trustee at the bank in conformance with Title 10, California Code of Regulations, section 2830. Respondent Valley Wide commingled said trust funds with its own money or property.

The matters set forth in Finding XI herein were not alleged in the Accusation, and the Accusation was not amended at hearing to conform to proof. Consequently, these matters are not considered as a separate cause for disciplinary action herein.

XII

Paragraph VII of the Accusation herein alleges as follows:

"In connection with the collection or disbursement of said trust funds, Respondents failed to deposit and

maintain said trust funds in bank trust fund accounts in such a manner that as of March 31, 1993, there was a shortage of \$2,051.19 of trust funds in said account." (emphasis supplied).

The allegations as set forth above were not established by the evidence. "Said account," as mentioned in Paragraph VII of the Accusation, is the CVW Appraisal Service General Account; said account was not a bank account which pertained to respondent Valley Wide; it was not required to be a trust account; and there was no "shortage" in said account.

XIII

The evidence did establish that, in connection with the collection and/or disbursement of the trust funds described in Finding IX above, respondent Valley Wide failed to deposit and maintain said trust funds in bank trust fund accounts in such a manner that, as of March 31, 1993, there was a shortage of \$25.20 in Account #1 and a shortage of \$2,025.99 in Account #2, for a total shortage of \$2,051.19 of trust funds in said accounts.

The matters set forth in Finding XIII herein were not alleged in the Accusation, and the Accusation was not amended at hearing to conform to proof. Consequently, these matters are not considered as a separate cause for disciplinary action herein.

At hearing, respondent Donaldson admitted that there was a shortage of trust funds in respondent Valley Wide's accounts in the amount of \$2,051.19 as of March 31, 1993; respondent Donaldson repaid the entire amount out of her personal funds, because she felt the shortage was her responsibility as the designated broker-officer of respondent Valley Wide.

XIV

In connection with the credit and appraisal report fees described in Finding IX above, and other trust funds collected in the course of the activities described in Finding IV above, respondent Valley Wide failed to maintain a separate record for each beneficiary or transaction, accounting therein for all said trust funds received, deposited and disbursed in conformance with Title 10, California Code of Regulations, section 2831.1.

XV

On October 1, 1990, the corporate powers, rights and privileges of respondent Valley Wide were suspended by the Secretary of State of California pursuant to Revenue and Taxation Code section 23302. This suspension continued to be in effect as of September 16, 1994.

According to respondent Donaldson, she believed respondent Morgan had dealt with the problem and taken all steps necessary to reinstate respondent Valley Wide in 1990 when the problem was discovered. However, when respondent Donaldson and respondent Morgan contacted the Franchise Tax Board in October 1994, they learned that respondent Morgan had failed to complete a Reinstatement Form, i.e., that he had failed to request reinstatement.

XVI

Within the three-year period immediately preceding the filing of the Accusation, in conducting the mortgage loan brokerage business described in Finding IV above, respondent Valley Wide permitted the employment of unlicensed persons for performing acts for which a real estate license is required. Respondent Donaldson admitted in her letter to the Department dated October 11, 1994 and at hearing that she knew individuals who she characterized as "trainees" were in fact acting in the capacity of real estate licensees when they were not licensed by the Department.

XVII

Within the three-year period immediately preceding the filing of the Accusation, in conducting the mortgage loan brokerage business described in Finding IV above, respondent Valley Wide failed to provide the "Borrower Disclosure" statement as required by Business and Professions Code section 10240, in conformance with Business and Professions Code section 10241, on at least three occasions.

XVIII

Within the three-year period immediately preceding the filing of the Accusation, in conducting the mortgage loan brokerage business described in Finding IV above, respondent Valley Wide failed to disclose in writing to prospective borrowers and/or loan applicants that fees for appraisals would be paid to a company or business owned and controlled by respondent Morgan, who was an officer and director, as well as the sole shareholder, of respondent Valley Wide.

Respondent Donaldson stated both at hearing and in her letter to the Department dated September 29, 1994 that she was unaware of any requirement that such disclosure be made but, if there was such a requirement, the failure to comply was an oversight. According to respondent Donaldson, prospective borrowers and/or loan applicants were frequently informed orally that they could obtain an appraisal more quickly if they used CVW Appraisal Service because it was owned by respondent Morgan.

There was no effort made to conceal the ownership status of CVW Appraisal Service.

Title 10, California Code of Regulations, section 2785 sets forth a code of ethics and professional conduct for real estate licensees. Section 2785(a) pertains to "Unlawful Conduct in Sale, Lease and Exchange Transactions," and proscribes various acts and omissions for licensees when performing acts within the meaning of Business and Professions Code section 10131(a). Section 2785(a)(19) makes the following conduct a cause for disciplinary action under Business and Professions Code sections 10176 or 10177:

"(19) Failing to disclose to a principal for whom the licensee is acting as an agent any significant interest the licensee has in a particular entity when the licensee recommends the use of the services or products of such entity."

Section 2785(b) sets forth "Unlawful Conduct When Soliciting, Negotiating or Arranging a Loan Secured by Real Property or the Sale of a Promissory Note Secured by Real Property" and pertains to licensees (such as respondents herein) when performing acts within the meaning of Business and Professions Code section 10131(d). Section 2785(b) states in pertinent part as follows:

"(b) Unlawful Conduct When Soliciting, Negotiating or Arranging a Loan Secured by Real Property or the Sale of a Promissory Note Secured by Real Property. Licensees when performing acts within the meaning of subdivision (d) or (e) of Section 10131 of the Business and Professions Code shall not violate any of the applicable provisions of subdivision (a), or act in a manner which would subject the licensee to adverse action, penalty or discipline under Sections 10176 and 10177 of the Business and Professions Code...." (emphasis added)

Section 2785(b) subjects mortgage loan brokers to all of the requirements of section 2785(a); consequently, section 2785(a) is applicable to respondents. Respondent Valley Wide violated section 2785(a)(19) by reason of the conduct set forth in Finding XVIII herein. The acts and omissions of respondents constituted the making of a substantial misrepresentation, or conduct constituting dishonest dealing, within the meaning of Business and Professions Code section 10176(a) and (i).

XIX

In November 1992, respondent Donaldson went to Denver, Colorado at the request of her brother, to assist him with a business venture. Respondent Donaldson expected to be in Denver for only a few weeks; instead, respondent Donaldson remained in Denver until December 1993, a period of 13 months. During that time, respondent Donaldson "came home occasionally." However, respondent Donaldson "relied on [respondent] Morgan to run the company properly. We had a working relationship of several years, and I felt I could rely on him to [do] so."

During the time respondent Donaldson was residing in Denver, respondent Donaldson failed to review, initial, and date all documents prepared or signed by real estate licensees employed by respondent Valley Wide, which documents may have had a material effect upon the rights or obligations of parties to the transactions.

XX

Within the three-year period immediately preceding the filing of the Accusation, respondent Donaldson failed to exercise reasonable supervision over the mortgage loan broker activities of respondent Valley Wide. In particular, respondent Donaldson permitted and/or caused the conduct described in Findings XIV, XV, XVI, XVII, XVIII and XIX.

XXI

Within the three-year period immediately preceding the filing of the Accusation, respondents Valley Wide and Donaldson permitted respondent Morgan to run the mortgage loan brokerage business described in Finding IV. Respondent Morgan, who is licensed as a real estate salesperson and not as a real estate broker, acted as a real estate broker in conducting said business. Respondent Morgan did or caused all of the acts described in Findings XIV, XV, XVI, XVII and XVIII, in that respondent Morgan actually ran the mortgage loan brokerage business of respondent Valley Wide; directed employees of respondent Valley Wide; and deposited and/or withdrew monies or caused such deposits and/or withdrawals to be made. Respondent Morgan demonstrated a lack of competence in performing the duties of a real estate salesperson in connection with his activities on behalf of respondent Valley Wide. In addition, while not considered as a separate cause for disciplinary action, it is considered as a factor in aggravation that the shortage of trust funds set forth in Finding XIII occurred at a time when respondent Morgan was running the mortgage loan brokerage business.

XXII

Respondent Valley Wide ceased operation as a mortgage loan brokerage business in August 1993. Respondent Donaldson is currently employed as a loan officer and mortgage broker at Sterling Financial in Sacramento. Respondent Donaldson's daughter is a broker licensed by the Department and is the owner of Sterling Financial. Respondent Donaldson's daughter is aware of the charges in the Accusation herein.

Respondent Donaldson has worked in the real estate field for 35 years, and she wishes to remain employed as a real estate licensee.

Respondent Donaldson, by her conduct, has demonstrated that she is either unable or unwilling to comply with the duties and requirements of a real estate broker. While respondent Donaldson expressed remorse for her failure to exercise reasonable supervision over the mortgage loan broker activities of respondent Valley Wide, her apparent lack of understanding of her fiduciary duties with regard to trust funds is disturbing. Under all of the circumstances, it would be contrary to the public interest to permit respondent Donaldson to remain licensed as a real estate broker and/or as a designated broker-officer of a real estate corporation. It would not be contrary to the public interest, however, for respondent Donaldson to be granted a restricted real estate salesperson license, wherein her activities would be supervised by a licensed broker.

XXIII

There was no evidence offered by respondent Valley Wide or respondent Morgan in mitigation, rehabilitation or extenuation.

DETERMINATION OF ISSUES

I

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Valley Wide's license and license rights for violation of Business and Professions Code section 10145 and Title 10, California Code of Regulations, section 2831.1 in conjunction with Business and Professions Code section 10177(d) by reason of Findings IV, IX and XIV.

II

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Valley Wide's license and license rights for violation of Business and Professions Code section 10177(f) and Title 10, California Code of Regulations, section 2742 in conjunction with Business and Professions Code section 10177(d) by reason of Findings IV and XV.

III

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Valley Wide's license and license rights for violation of Business and Professions Code sections 10130 and 10137 by reason of Findings IV and XVI.

IV

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Valley Wide's license and license rights for violation of Business and Professions Code section 10240 in conjunction with Business and Professions Code section 10177(d) by reason of Findings IV and XVII.

V

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Valley Wide's license and license rights for violation of Business and Professions Code section 10176(a) and (i) by reason of Findings IV and XVIII.

VI

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Donaldson's licenses and license rights for violation of Business and Professions Code section 10177(h) and Title 10, California Code of Regulations, section 2725 in conjunction with Business and Professions Code section 10177(d) by reason of Findings XIX and XX.

VII

Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent Morgan's license and license rights for violation of Business and Professions Code section 10130 in conjunction with Business and Professions Code

section 10177(d), and Business and Professions Code sections 10176(a) and (i) and 10177(g) by reason of Findings XIX and XXI.

VIII

No cause for discipline of respondent Valley Wide's license and license rights was established pursuant to Business and Professions Code section 10145 and/or Title 10, California Code of Regulations, section 2830 in conjunction with Business and Professions Code section 10177(d), and/or Business and Professions Code section 10176(e) by reason of Findings V, VI, VII, VIII and X.

IX

No cause for discipline of respondent Valley Wide's license and license rights was established pursuant to Business and Professions Code section 10145 in conjunction with Business and Professions Code section 10177(d) by reason of Findings V, VI, VII, VIII and XII.

X

No cause for discipline of respondent Morgan's license and license rights was established pursuant to Business and Professions Code section 10145(c) in conjunction with Business and Professions Code section 10177(d) by reason of Findings V, VI, VII, VIII and XII.

XI

The matters set forth in Findings XXII and XXIII are considered in making the Order below.

ORDER

I

All licenses and license rights of respondent California Valley Wide Mortgage, Inc. under the Real Estate Law are revoked pursuant to Determination of Issues I, II, III, IV and V, separately and collectively.

II

All licenses and license rights of respondent Jimmy Harold Morgan under the Real Estate Law are revoked pursuant to Determination of Issues VII.

III

All licenses and licensing rights of respondent Helen Kay Donaldson under the Real Estate Law are revoked pursuant to Determination of Issues VI; provided, however, a restricted real estate salesperson license shall be issued to respondent Donaldson pursuant to section 10156.5 of the Business and Professions Code if respondent Donaldson 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 respondent Donaldson 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 license issued to respondent Donaldson may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Donaldson's conviction or plea of nolo contendere to a crime which is substantially related to respondent Donaldson's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent Donaldson may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Donaldson 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.
3. Respondent Donaldson 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 four (4) years have elapsed from the effective date of this Decision.
4. Respondent Donaldson shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent Donaldson shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Donaldson has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent Donaldson fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent Donaldson presents such evidence. The Commissioner shall afford respondent Donaldson the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Respondent Donaldson shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent Donaldson fails to satisfy this condition, the Commissioner may order suspension of respondent Donaldson's license until respondent Donaldson passes the examination.

Dated: September 21, 1995

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

FILED
JAN 13 1995

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

CALIFORNIA VALLEY WIDE MORTGAGE, INC.,
HELEN KAY DONALDSON,
JIMMY HAROLD MORGAN,

Case No. H-3067 SAC

OAH No. N-9412150

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 -- August 21, 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.

DEPARTMENT OF REAL ESTATE

Dated: January 13, 1995

By

Susan Y. Bennett
SUSAN Y. BENNETT

Counsel

1 SUSAN Y. BENNETT, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
DEC - 7 1994
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13 CALIFORNIA VALLEY WIDE) NO. H-3067 SAC
14 MORTGAGE, INC.,)
15 HELEN KAY DONALDSON,) ACCUSATION
16 JIMMY HAROLD MORGAN,)
Respondents.)

17 The Complainant, Charles W. Koenig, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against CALIFORNIA VALLEY WIDE MORTGAGE, INC. (hereinafter
20 referred to as Respondent VALLEY WIDE), HELEN KAY DONALDSON
21 (hereinafter referred to as Respondent DONALDSON), and JIMMY
22 HAROLD MORGAN (hereinafter referred to as Respondent MORGAN), is
23 informed and alleges as follows:

24 I

25 The Complainant, Charles W. Koenig, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation in
27 his official capacity.

II

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

- (a) Respondent VALLEY WIDE, as a real estate corporation.
- (b) Respondent DONALDSON, as a real estate broker and designated broker-officer of Respondent VALLEY WIDE from September 29, 1989 through September 28, 1993.
- (c) Respondent MORGAN, as a real estate salesperson in the employ of Respondent VALLEY WIDE.

III

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

IV

At all times mentioned herein, Respondents engaged in the business and acted in the capacity of real estate licensees in the State of California within the meaning of Section 10131(d) of the Code, including the operation of a mortgage loan brokerage business with the public wherein lenders and borrowers were

1 solicited for loans secured directly or collaterally by liens on
2 real property and loans were arranged, negotiated, processed and
3 consummated on behalf of others, all for or in expectation of
4 compensation.

5 V

6 At all times herein mentioned, in the course of acting
7 as mortgage loan brokers, Respondents accepted or received funds
8 in trust (hereinafter referred to as "trust funds") from or on
9 behalf of lenders or investors, borrowers, and others in
10 connection with the solicitation, negotiation, processing,
11 packaging and consummation of mortgage loans by Respondents as
12 alleged herein. Respondents charged and collected fees for credit
13 and appraisal reports. Said fees are trust funds.

14 VI

15 Respondents deposited and disbursed said credit and
16 appraisal report fees into an account known as California Valley
17 Wide Appraisal Service Account, Account No. 824-5-03054, First
18 Interstate Bank, Roseville, California. Said account was not
19 designated as a trust fund account in Respondent VALLEY WIDE's
20 name as trustee at the bank in conformance with Section 2830,
21 Title 10, California Code of Regulations (hereinafter referred to
22 as "Regulations"). Respondent commingled said trust funds with
23 its own money or property.

24 VII

25 In connection with the collection or disbursement of
26 said trust funds, Respondents failed to deposit and maintain said
27 trust funds in bank trust fund accounts in such a manner that as

1 of March 31, 1993, there was a shortage of \$2,051.19 of trust
2 funds in said account.

3 VIII

4 In connection with the credit and appraisal report fees
5 described in Paragraph V, above, and other trust funds collected
6 in the course of the activities described in Paragraph IV, above,
7 Respondents failed to maintain a separate record for each
8 beneficiary or transaction, accounting therein for all said trust
9 funds received, deposited and disbursed in conformance with
10 Section 2831.1 of the Regulations.

11 IX

12 Within the three-year period immediately preceding the
13 filing of this Accusation, in conducting the mortgage loan
14 brokerage business described in Paragraph IV, above, Respondent
15 VALLEY WIDE permitted or caused the following:

- 16 (a) Failed to disclose to prospective borrowers and/or
17 loan applicants that fees for appraisals would be
18 paid to a company or business owned or controlled
19 by Respondent MORGAN.
- 20 (b) Permitted the employment of unlicensed persons for
21 performing acts for which a real estate license is
22 required, including, but not limited to Vance
23 Tapero.
- 24 (c) Failed to provide the "Borrower Disclosure"
25 statement as required by Section 10240 of the Code,
26 in conformance with Section 10241 of the Code.

27 ///

1 X

2 On or about October 1, 1990, the corporate powers,
3 rights, and privileges of Respondent VALLEY WIDE were suspended by
4 the Secretary of State of the State of California pursuant to
5 Section 23302 of the California Revenue and Taxation Code. This
6 suspension continued to be in effect as of September 16, 1994.

7 XI

8 Within the three-year period immediately preceding the
9 filing of this Accusation, Respondent DONALDSON failed to exercise
10 reasonable supervision over the mortgage loan broker activities of
11 Respondent VALLEY WIDE. In particular, Respondent DONALDSON
12 permitted and/or caused the conduct described in Paragraphs VI,
13 VII, VIII, IX and X to occur, and in addition, Respondent
14 DONALDSON failed to review, initial, and date all documents
15 prepared or signed by real estate licensees employed by VALLEY
16 WIDE which documents may have a material effect upon the rights or
17 obligations of parties to the transactions.

18 XII

19 Within the three-year period immediately preceding the
20 filing of this Accusation, Respondents VALLEY WIDE and DONALDSON
21 permitted Respondent MORGAN to run the mortgage loan brokerage
22 business described in Paragraph IV. Respondent MORGAN, who is
23 licensed as a real estate salesperson, acted as a real estate
24 broker in conducting said business. Respondent MORGAN did or
25 caused all of the acts, misrepresentations, concealment,
26 misappropriation of money, described in Paragraphs VI, VII, VIII,
27 IX and X above, in that Respondent MORGAN actually ran the

1 mortgage loan brokerage business of VALLEY WIDE, directed
2 employees of VALLEY WIDE, deposited and/or withdrew monies or
3 caused such deposits and/or withdrawals to be made.

4 XIII

5 The acts and/or omissions of Respondent VALLEY WIDE
6 and Respondent DONALDSON are grounds for the suspension or
7 revocation of Respondent VALLEY WIDE's license and license rights
8 as follows:

- 9 (a) As to Paragraph VI, under Section 10145 of the Code
10 and Section 2830 of the Regulations in conjunction
11 with Section 10177(d) of the Code, and Section
12 10176(e) of the Code.
- 13 (b) As to Paragraph VII, under Section 10145 in
14 conjunction with Section 10177(d) of the Code.
- 15 (c) As to Paragraph VIII, under Section 10145 of the
16 Code and Section 2831.1 of the Regulations in
17 conjunction with Section 10177(d) of the Code.
- 18 (d) As to Paragraph IX(a), under Sections 10176(a) and
19 (i) of the Code.
- 20 (e) As to Paragraph IX(b), under Sections 10130 and
21 10137 of the Code.
- 22 (f) As to Paragraph IX(c), under Section 10240 in
23 conjunction with Section 10177(d) of the Code.
- 24 (g) As to Paragraph X, under Section 10177(f) of the
25 Code and Section 2742 of the Regulations in
26 conjunction with Section 10177(d) of the Code.

27 ///

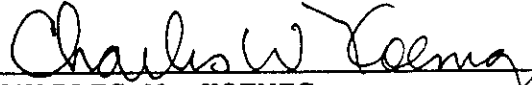
XIV

The acts and/or omissions of Respondent DONALDSON as described in Paragraph XI are grounds for the suspension or revocation of Respondent DONALDSON's license and license rights pursuant to Section 10177(h) of the Code and Section 2725 of the Regulations in conjunction with Section 10177(d) of the Code.

XV

The acts and/or omissions of Respondent MORGAN as described in Paragraph XII are grounds for the suspension or revocation of Respondent MORGAN's license and license rights pursuant to Sections 10130 and 10145(c) of the Code in conjunction with Section 10177(d) of the Code, and Sections 10176(a) and (i), and 10177(g) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents VALLEY WIDE, DONALDSON and MORGAN 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 the provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 1st day of December, 1994.