

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
JUL 27 1988
DEPARTMENT OF REAL ESTATE
By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-5273 SF
))
 VINCENT EARL BROWN,))
))
 Respondent.))

ORDER DENYING REINSTATEMENT OF LICENSE

On July 10, 1984, a Decision was rendered herein revoking the real estate broker license of respondent, but granting respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to respondent on August 1, 1985, and respondent has operated as a restricted licensee without cause for disciplinary action against him since that time.

On September 23, 1987, respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I have considered respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that he has undergone sufficient rehabilitation to warrant the reinstatement of his real estate broker license, in that less than three years has elapsed since the revocation of respondent's license based on his failure to exercise reasonable control of the activities of the corporations which he was responsible for. Said failure of respondent resulted in a large corporate trust fund shortage and, under the circumstances, insufficient time has elapsed since the revocation to warrant the granting of a plenary real estate broker license to respondent at this time.

NOW, THEREFORE, IT IS ORDERED that respondent's petition for reinstatement of his real estate broker license is denied.

This Order shall be effective at 12 o'clock noon on August 16th, 1988.

DATED: June 29, 1988

JAMES A. EDMONDS, JR.
Real Estate Commissioner

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

COPY

FILED
AUG 29 1984

DEPARTMENT OF REAL ESTATE

By *Mary A. Morelle*
Mary A. Morelle

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

- - -

In the Matter of the Accusation of)
ALLSTATE INVESTMENT CORPORATION,)
UNITED MORTGAGE SERVICE, INC.,)
VINCENT EARL BROWN, and)
HUBERT BECKWITH GRABAU,)
Respondents.)

NO. H-5273 SF

ORDER DENYING RECONSIDERATION

On July 10, 1984, a Decision was rendered in the above-entitled matter. The Decision was to become effective on July 30, 1984, but said effective date was stayed until August 29, 1984 with respect to respondents VINCENT EARL BROWN and UNITED MORTGAGE SERVICE, INC. only.

On July 30, 1984, respondent UNITED MORTGAGE SERVICE, INC. petitioned for reconsideration of the Decision of July 10, 1984.


//////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I have given due consideration to the petition of
respondent UNITED MORTGAGE SERVICE, INC. I find no good cause
to reconsider the Decision of July 10, 1984 and reconsideration
is hereby denied.

IT IS SO ORDERED August 27, 1984.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: 
ROBERT P. MARTINEZ
Chief Deputy Commissioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
JUL 30 1984
DEPARTMENT OF REAL ESTATE

By *Roshni R. Kalidin*
Roshni R. Kalidin

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

- - - -

In the Matter of the Accusation of)	No. H-5273 SF
ALLSTATE INVESTMENT CORPORATION,)	
UNITED MORTGAGE SERVICE, INC.,)	
VINCENT EARL BROWN, and)	
HUBERT BECKWITH GRABAU,)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On July 10, 1984, a Decision was rendered in the above-entitled matter to become effective July 30, 1984.

IT IS HEREBY ORDERED that the effective date of the Decision of July 10, 1984, with respect to respondent UNITED MORTGAGE SERVICE, INC. only, is stayed for a period of 30 days.

The Decision of July 10, 1984, with respect to respondent UNITED MORTGAGE SERVICE, INC. only, shall become effective at 12 o'clock noon on August 29, 1984. With respect to all respondents other than UNITED MORTGAGE SERVICE, INC. and

1 VINCENT EARL BROWN, the effective date of said Decision shall
2 remain July 30, 1984.

3 DATED: July 30, 1984.

4
5 JAMES A. EDMONDS, JR.
6 Real Estate Commissioner

7
8 BY:

Edward V. Chio
9 _____
10 EDWARD V. CHIOLO
11 Deputy Real Estate Commissioner
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

COPY

FILED
JUL 19 1984

DEPARTMENT OF REAL ESTATE

By Mary A. Morelle
Mary A. Morelle

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

- - -

In the Matter of the Accusation of)	
ALLSTATE INVESTMENT CORPORATION,)	NO. H-5273 SF
UNITED MORTGAGE SERVICE, INC.,)	
VINCENT EARL BROWN, and)	
HUBERT BECKWITH GRABAU,)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On July 10, 1984, a Decision was rendered in the above-entitled matter to become effective July 30, 1984.

IT IS HEREBY ORDERED that the effective date of the Decision of July 10, 1984, with respect to respondent VINCENT EARL BROWN only, is stayed for a period of 30 days.

The Decision of July 10, 1984, with respect to respondent VINCENT EARL BROWN only, shall become effective at 12 o'clock noon on August 29, 1984. With respect to all respondents other than VINCENT EARL BROWN, the effective date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

of said Decision shall remain July 30, 1984.

DATED: July 19, 1984

JAMES A. EDMONDS, JR.
Real Estate Commissioner

Edward V. Chio

By:

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Invoice checked in 8-6-84

R/E Form 546
10/21/69

D. Steiner

D. Steiner

REMARKS RELEASED---Per suspension expired

DATE OF RELEASE August 14, 1984

NAME HUBERT BECKWITH GRABAU (REB) (REO)

FILE NO. H-5273 SF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
JUL 10 1984
DEPARTMENT OF REAL ESTATE
By Emily J. J. J.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALLSTATE INVESTMENT)
CORPORATION)
UNITED MORTGAGE SERVICE, INC.)
VINCENT EARL BROWN)
HUBERT BECKWITH GRABAU,)
Respondents.)

No. H-5273 SF

DECISION

The above-entitled matter was heard before Philip V. Sarkisian, Administrative Law Judge of the Office of Administrative Hearings, at San Francisco, California, on November 2, 3 and 4, 1983.

The complainant was represented in the proceeding by Francis M. Lyons, Counsel, Department of Real Estate. Respondents Allstate Investment Corporation, United Mortgage Service, Inc., and Hubert Beckwith Grabau were represented by Keck, Mahin and Cate and Joseph S. Wager, attorneys at law. Respondent Vincent Earl Brown was represented by Chickering

1 and Gregory and John M. Gregory and Monte S. Travis, attorneys
2 at law.

3 This Accusation was consolidated for hearing with
4 Department of Real Estate case number H-5265 SF, an Order to
5 Desist and Refrain issued by the Department of Real Estate to
6 Allstate Investment Corporation, United Mortgage Service, Inc.,
7 and Hubert Beckwith Grabau.

8 Evidence was received, the hearing was closed and the
9 matter submitted for decision on November 4, 1983.

10 On November 18, 1983, Administrative Law Judge
11 Sarkisian submitted a Proposed Decision which I declined to
12 adopt as the Decision in this case. Pursuant to Section 11517(c)
13 of the Government Code of the State of California, each
14 respondent was served with a copy of the Proposed Decision and
15 with a notice that the case would be decided by me upon the
16 record including the transcript of proceedings held on
17 November 2, 3 and 4, 1983, and upon written arguments offered
18 by respondents and complainant.

19 Written argument has been submitted on behalf of
20 Vincent Earl Brown by Attorney John R. Cosgrove, on behalf of
21 United Mortgage Service, Inc., by Attorney Samuel S. Stevens
22 and on behalf of complainant by Counsel Francis M. Lyons.
23 Written argument has not been submitted on behalf of respondents
24 Allstate Investment Corporation or Hubert Beckwith Grabau.

25 I have given careful consideration to the record in
26 this case including the transcript of proceedings of November 2,
27 3 and 4 and to the written arguments submitted. The following

1 shall constitute the Decision of the Real Estate Commissioner
2 in this proceeding:

3 FIRST CAUSE OF ACTION

4 FINDINGS OF FACT

5 I

6 Allstate Investment Corporation (hereafter Respondent
7 Allstate), United Mortgage Service, Inc. (hereafter Respondent
8 UMS), Vincent Earl Brown (hereafter Respondent Brown) and
9 Hubert Beckwith Grabau (hereafter Respondent Grabau) are
10 presently licensed or have license rights under Part 1 of
11 Division 4 of the Business and Professions Code.

12 II

13 From April 1, 1981, through August 31, 1982, Respondent
14 Allstate under the corporate names ALLSTATE EQUITY INVESTMENT
15 CORPORATION OF AMERICA and ALLSTATE EQUITY INVESTMENT CORPORATION
16 was licensed as a real estate broker in the State of California
17 by and through Respondent Brown as its designated broker-officer.
18 Effective September 1, 1982, and at all times hereinafter
19 referred to, Respondent Allstate was licensed as a real estate
20 broker by and through Respondent Grabau as its designated
21 broker-officer.

22 III

23 Effective June 23, 1982, and from that date through
24 August 31, 1982, Respondent UMS was licensed to act as a real
25 estate broker by and through Respondent Brown as its designated
26 broker-officer. Effective September 1, 1982, and at all times
27 hereinafter referred to, Respondent UMS was licensed as a real

1 estate broker by and through Respondent Grabau as its designated
2 broker-officer.

3 IV

4 At all times herein referred prior to September 1,
5 1982, Respondent Brown was the designated broker-officer for
6 Respondents Allstate and UMS.

7 V

8 At all times herein referred to on and after
9 September 1, 1982, Respondent Grabau was the designated broker-
10 officer for Respondents Allstate and UMS.

11 VI

12 The complainant, Edward V. Chiolo, made this
13 Accusation in his official capacity as a Deputy Real Estate
14 Commissioner of the State of California.

15 VII

16 At all times herein referred to, Respondent Allstate
17 acting through its officers, employees and subsidiary corpora-
18 tions including, but not limited to, Respondent UMS, engaged in
19 business as a real estate broker in the State of California
20 within the meaning of subdivisions (d) and (e) of Section 10131
21 of the Business and Professions Code (hereafter the Code) and
22 Section 10131.1 of the Code including the operation of a
23 mortgage loan brokerage business wherein lenders and borrowers
24 were solicited from among members of the public for loans
25 secured directly or collaterally by liens on real property,
26 wherein loans secured directly or collaterally by real property
27 were arranged or sold on behalf of others and wherein loans

1 secured by real property were serviced and payments were
2 collected on behalf of others.

3 VIII

4 At various times herein referred to during and prior
5 to August 1982, Respondents Allstate and UMS in conducting the
6 activities described in Finding VII received funds in trust from
7 and on behalf of lenders and borrowers and deposited those funds
8 into Account Number 17-014-196 at Imperial Bank, West Brokaw
9 Road, San Jose, California (hereafter the Trust Bank Account).

10 IX

11 From July 1982 through November 1982, the Department
12 of Real Estate (hereafter DRE) conducted an examination of the
13 trust account books and records of Respondents Allstate and UMS
14 and the records of the Trust Bank Account. Through this
15 examination DRE determined that on August 31, 1982, the aggregate
16 liability of Respondents Allstate and UMS for trust funds
17 received from or on behalf of the owners of those funds was
18 One Million Twenty-Eight Thousand Eight Hundred Sixty-Five
19 Dollars and Ninety-Three Cents (\$1,028,865.93). Through its
20 examination DRE also determined that as of August 31, 1982, the
21 adjusted balance of funds in the Trust Bank Account was Five
22 Hundred Eighty-Three Thousand One Hundred Fifty-Six Dollars and
23 Fifty-Eight Cents (\$583,156.58).

24 X

25 The examination referred to in Finding IX was based
26 upon books and records furnished to DRE by Respondents Allstate
27 and UMS and by Imperial Bank. The records, particularly those

1 chief executive officer of Respondent Allstate in April 1981.
2 Prior to Respondent Brown's assuming control of Respondent
3 Allstate's business operations, and for several months after he
4 took control, the amounts advanced each month from the Trust
5 Bank Account were relatively small and the Trust Bank Account
6 was promptly replenished from Respondent Allstate's general
7 operating account.

8 While Respondent Brown perceived "advancing" to be an
9 imprudent business practice soon after taking over as chief
10 executive officer of Respondent Allstate, he did not order the
11 practice stopped because of the operational difficulties that
12 discontinuance would have entailed. This was due to the fact
13 that for some time Respondent Allstate had been operating on
14 two unintegrated computer programs, one for the processing of
15 payments received from borrowers and the other for processing
16 of disbursements to its investor clients. Due to the lack of
17 integration or correlation, monthly disbursements to investors
18 were made according to the terms of the promissory notes being
19 serviced by Respondent Allstate regardless of whether the
20 borrower on the note had made his regular payment on the note.
21 Because of the lack of correlation between the two computer
22 systems, Respondent Allstate's employees had to resort to manual
23 reconciliation to determine the amount of the monthly payment
24 from the general account necessary to replenish the trust
25 account for the advances that had been automatically disbursed.
26 The discontinuance of "advancing" was further
27 complicated by the fact that many of the loans being serviced by

1 Respondent Allstate were fractionalized loans, i.e., loans in
2 which anywhere from two to ten investors were beneficiaries of
3 undivided beneficial interests in a promissory note from a
4 single borrower secured by a single parcel of real property.

5 In mid 1981 Respondent Allstate was servicing
6 approximately 3,000 loans with an aggregate principal balance
7 of approximately Fifty-Five Million Dollars (\$55,000,000).
8 Respondent Brown and his management team decided that it would
9 be too disruptive to discontinue advancing until an integrated
10 computer system could be installed to replace the two systems
11 that did not "talk to each other". As a result of this
12 decision, advancing did not cease until June 1, 1982, the date
13 on which an integrated computer system was placed into operation.

14 By the end of 1981, borrower delinquencies had
15 increased dramatically. As a result, Respondent Allstate's
16 advances approached the level of One Hundred Thousand Dollars
17 (\$100,000) per month. By this time Respondent Brown had every
18 reason to believe that Respondent Allstate would soon be unable
19 to fully reimburse the Trust Bank Account for advances made to
20 investors. He knew or should have known that the "advancing"
21 that he had first looked upon as an imprudent business practice
22 was now putting investors' funds at serious risk. Respondent
23 Brown nevertheless did not order the immediate discontinuance
24 of "advancing". Instead he persisted in the decision to
25 continue advancing until the integrated computer system was on
26 line while at the same time seeking new sources of operating
27 capital.

XII

1
2 There is no evidence that the acts and omissions done
3 or omitted to be done on behalf of Respondent Allstate or
4 Respondent UMS by Respondent Brown or any of the other corporate
5 officers or employees were fraudulent, dishonest or done with
6 the intent of taking advantage of borrowers or lenders for whom
7 the corporations were servicing accounts. The evidence indicates
8 that the acts and omissions described above were well-intentioned
9 but highly imprudent business decisions. Respondent Brown has
10 been a real estate licensee in California for approximately
11 24 years without prior disciplinary action. He is very well
12 regarded by those with whom he was associated in conducting the
13 business activities of Respondent Allstate and has been
14 significantly involved for many years in professional, civic and
15 charitable activities in the Soquel area. Respondent Brown
16 nonetheless bears primary responsibility under Section 10159.2
17 of the Business and Professions Code for Respondent Allstate's
18 and Respondent UMS' violations of Section 10145 of the Code and
19 of Section 2832.1, Title 10, California Administrative Code.

20 SECOND CAUSE OF ACTION

21 FINDINGS OF FACT

22 I

23 Findings I through XI in the First Cause of Action
24 are incorporated herein as though set forth in full.

25 II

26 In May 1982, Respondent Grabau and his brother, John
27 Grabau, acquired a controlling interest in Respondent Allstate.

1 Respondent Brown then ceased to be chief executive officer of
2 Respondent Allstate, but continued as designated broker for the
3 corporation and became designated broker for Respondent UMS on
4 June 23, 1982, on the first issuance of a real estate broker
5 license to it.

6 III

7 In August 1982 Respondent Allstate was insolvent and
8 on the brink of bankruptcy. Business operations were at a
9 virtual standstill. Borrower delinquencies on promissory notes
10 being serviced by Respondent UMS were at an all time high.
11 Business creditors of Respondent Allstate were pressing for
12 payment of overdue accounts. Under a Management Consulting
13 Agreement, Respondent Grabau and other shareholders of
14 Respondent Allstate gave management and control of the business
15 affairs of Respondent Allstate and Respondent UMS to Leffler
16 Industries, Inc., an Oregon corporation (LI West) on or about
17 August 22, 1982. Effective September 1, 1982, Respondent
18 Grabau became the designated broker-officer for Respondents
19 Allstate and UMS.

20 IV

21 LI West with the knowledge and consent of Respondent
22 Grabau embarked upon a policy designed to recoup funds
23 previously advanced by Respondent Allstate to investors. This
24 recoupment was to be effected by withholding payments received
25 for investors' accounts from borrowers who were not delinquent
26 and was to be accomplished without the prior consent of an
27 investor for whose account the payment had been received.

1 LI West anticipated that funds obtained through the recoupment
2 of advances would represent a major source of income to
3 Respondents Allstate and UMS to meet their current financial
4 obligations.

5 V

6 On or about October 7, 1982, management of Respondent
7 Allstate with the knowledge and consent of Respondent Grabau
8 caused a transfer of One Hundred Eighty-Two Thousand Three
9 Hundred Seventy Dollars and Fifty-Seven Cents (\$182,370.57) from
10 the Trust Bank Account to the general operating account of
11 Respondent Allstate. Of this amount transferred out of the
12 trust account to the general operating account, Thirty-Eight
13 Thousand Six Hundred Eighty-Five Dollars (\$38,685) was trans-
14 ferred without the consent of the owners of the funds. The
15 Thirty-Eight Thousand Six Hundred Eighty-Five Dollars (\$38,685)
16 in trust funds was held by Respondent Allstate for a period of
17 longer than 60 days without the written consent of the owners of
18 the funds.

19 VI

20 The transfer of funds referred to in Finding V was
21 purportedly done by management of Respondent Allstate on advice
22 of legal counsel, but management of Respondent Allstate was at
23 all times aware that DRE regarded the recoupment policy as a
24 violation of Section 10145 of the Code unless done with the
25 consent of the owner of the funds in question.

26 /////

27 /////

VII

1
2 With the exception of the Thirty-Eight Thousand Six
3 Hundred Eighty-Five Dollars (\$38,685) referred to in Finding VI,
4 there is no evidence of a misapplication of trust funds during
5 the period that Respondent Grabau was the designated broker-
6 officer for Respondents Allstate and UMS. The evidence, while
7 not conclusive, indicates that the trust account shortage was
8 in fact reduced after Respondent Grabau became designated
9 broker-officer for Respondents Allstate and UMS though the
10 evidence is inconclusive on whether the trust account shortage
11 increased or decreased from the time that Respondent Grabau
12 became chief executive officer to the date of the hearing of
13 this case.

14 THIRD CAUSE OF ACTION

15 FINDINGS OF FACT

16 I

17 Findings I through XI of the First Cause of Action
18 are incorporated herein as though set forth in full.

19 II

20 Respondent Allstate failed to file with DRE by
21 December 31, 1982, in accordance with Section 10232.2 of the
22 Code, the report of a review, performed by a licensed California
23 independent public accountant, of Respondent Allstate's trust
24 fund financial statements for the company's fiscal year ending
25 in June 1982.

26 /////

27 /////

1 violations of Section 10145 of the Code and Section 2832.1,
2 Title 10, California Administrative Code.

3 II

4 The acts and omissions of Respondent Brown are subject
5 to disciplinary action under subdivision (h) of Section 10177
6 of the Business and Professions Code.

7 III

8 No cause for disciplinary action has been established
9 under subdivision (i) of Section 10176 of the Business and
10 Professions Code.

11 SECOND CAUSE OF ACTION

12 I

13 The acts and omissions of Respondents Allstate, UMS
14 and Grabau are subject to disciplinary action under subdivision
15 (d) of Section 10177 of the Business and Professions Code for
16 the respondents' violation of Sections 10145 and 10231.1 of
17 the Code.

18 II

19 The acts and omissions of Respondents Allstate, UMS,
20 and Grabau are subject to disciplinary action under subdivision
21 (e) of Section 10176 of the Business and Professions Code.

22 III

23 The acts and omissions of Respondent Grabau are subject
24 to disciplinary action under the provisions of subdivision (h)
25 of Section 10177 of the Business and Professions Code.

26 /////

27 /////

1 IV

2 No cause for disciplinary action exists under
3 subdivision (i) of Section 10176 of the Business and Professions
4 Code.

5 THIRD CAUSE OF ACTION

6 I

7 The acts and omissions of Respondents Allstate and
8 Grabau are subject to disciplinary action under subdivision (d)
9 of Section 10177 of the Business and Professions Code for the
10 failure of respondents to comply with Section 10232.2 of the
11 Code.

12 II

13 The acts and omissions of Respondent Grabau are subject
14 to disciplinary action under subdivision (h) of Section 10177
15 of the Business and Professions Code.

16 ORDER

17 1. All licenses and license rights of Respondent
18 Allstate under Part 1 of Division 4 of the Business and
19 Professions Code are revoked.

20 2.A. All licenses and license rights of Respondents
21 UMS and Brown under Part 1 of Division 4 of the Business and
22 Professions Code are revoked.

23 B. A restricted real estate broker license shall be
24 issued to either Respondent Brown or Respondent UMS pursuant to
25 Section 10156.5 of the Business and Professions Code upon
26 receipt by the Department of Real Estate of an application and
27 the appropriate fee for the license within 90 days from the

1 effective date of this Decision.

2 C. The restricted license issued to either respondent
3 shall be subject to all of the provisions of Section 10156.7 of
4 the Business and Professions Code and to the following
5 limitations, conditions and restrictions imposed under authority
6 of Section 10156.6 of said Code:

7 (1) The restricted license may be suspended prior to
8 hearing by order of the Real Estate Commissioner
9 in the event of respondent's conviction or plea
10 of nolo contendere to a crime which bears a
11 significant relation to respondent's fitness as
12 a real estate licensee.

13 (2) The restricted license may be suspended prior to
14 hearing by order of the Real Estate Commissioner
15 on receipt of evidence satisfactory to the
16 Commissioner that respondent has violated
17 provisions of the California Real Estate Law,
18 the Subdivided Lands Law, regulations of the Real
19 Estate Commissioner or conditions attaching to the
20 restricted license.

21 3. All licenses and license rights of Respondent
22 Grabau under Part 1 of Division 4 of the Business and Professions
23 Code are suspended for 90 days provided however that 75 days of
24 the suspension shall be stayed on the condition that no further
25 cause for disciplinary action against a real estate license of
26 Respondent Grabau shall occur within two years from the
27 effective date of this Decision.


1 If it is determined pursuant to the Administrative
2 Procedure Act that further cause for disciplinary action against
3 a real estate license of Respondent Grabau has occurred within
4 two years from the effective date of this Decision, the stay of
5 suspension hereby granted, or such portion thereof as the
6 Real Estate Commissioner shall deem to be appropriate, shall be
7 vacated.

8 If no further cause for disciplinary action against a
9 real estate license of Respondent Grabau shall occur within two
10 years from the effective date of this Decision, the stay hereby
11 granted shall become permanent.

12 This Decision shall become effective at 12 o'clock
13 noon on July 30, 1984.

14 IT IS SO ORDERED July 10TH, 1984.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: 
ROBERT P. MARTINEZ
Chief Deputy Commissioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
FEB 15 1984

DEPARTMENT OF REAL ESTATE

By *Roshni R. Kalidin*
Roshni R. Kalidin

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALLSTATE INVESTMENT CORPORATION,)
UNITED MORTGAGE SERVICE, INC.,)
VINCENT EARL BROWN and)
HUBERT BECKWITH GRABAU,)
Respondents.)

NO. H-5273 SF
N 20587

NOTICE

TO: ALLSTATE INVESTMENT CORPORATION, UNITED MORTGAGE SERVICE,
INC., and HUBERT BECKWITH GRABAU, Respondents
and
JOSEPH S. WAGER and KECK, MAHIN & CATE, their Counsel
VINCENT EARL BROWN, Respondent
and
JOHN M. GREGORY, MONTE'S. TRAVIS and CHICKERING & GREGORY,
his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated November 18, 1983, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated November 18, 1983, is attached
for your information.

In accordance with Section 11517(c) of the Government

1 Code of the State of California, the disposition of this case
2 will be determined by me after consideration of the record herein
3 including the transcript of the proceedings held on November 2,
4 3 and 4, 1983, and any written argument hereafter submitted on
5 behalf of respondents and complainant.

6 Written argument of respondents to be considered by me
7 must be submitted within 15 days after receipt of the transcript
8 of the proceedings of November 2, 3 and 4, 1983, at the San
9 Francisco office of the Department of Real Estate unless an
10 extension of the time is granted for good cause shown.

11 Written argument of complainant to be considered by me
12 must be submitted within 15 days after receipt of the argument
13 of respondents at the San Francisco office of the Department of
14 Real Estate unless an extension of the time is granted for good
15 cause shown.

16 DATED: 2-9-84

17
18 
19 JAMES A. EDMONDS, JR.
20 Real Estate Commissioner
21
22
23
24
25
26
27

FILED
DEC 20 1983

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By *Roshni R. Kalidin*
Roshni R. Kalidin

In the Matter of the Accusation of)
ALLSTATE INVESTMENT CORPORATION,)
UNITED MORTGAGE SERVICE, INC.,)
VINCENT EARL BROWN, and)
HUBERT BECKWITH GRABAU,)
Respondents.)

NO. H-5273 SF

N 20587

PROPOSED DECISION

This matter came on regularly for hearing before Philip V. Sarkisian, administrative law judge of the Office of Administrative Hearings, State of California, at San Francisco, California, on November 2, 3 and 4, 1983. The complainant was represented by Francis M. Lyons, counsel, Department of Real Estate. Respondents Allstate Investment Corporation, United Mortgage Service, Inc., and Hubert Beckwith Grabau were represented by Joseph S. Wager and Keck, Mahin & Cate, attorneys at law. Respondent Vincent Earl Brown was represented by John M. Gregory, Monte S. Travis, and Chickering & Gregory, attorneys at law.

This case was consolidated for hearing with case No. H-5265 SF, involving an order to desist and refrain from specified activities directed to Allstate Investment Corporation, United Mortgage Service, Inc., and Hubert Beckwith Grabau. Oral and documentary evidence was introduced and, following oral arguments by the parties, the matter was deemed submitted.

The following decision is proposed, certified, and recommended for adoption:

FINDINGS OF FACT

FIRST CAUSE FOR DISCIPLINE

I

Allstate Investment Corporation, United Mortgage Service, Inc., Vincent Earl Brown, and Hubert Beckwith Grabau

are presently licensed or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

II

As of April 1, 1981, Allstate Equity Investment Corporation of America was a California corporation and was licensed to act as a real estate broker by and through Vincent Earl Brown (hereinafter respondent Brown) as designated broker-officer. Effective April 5, 1982, Allstate Equity Investment Corporation of America changed its corporate name to Allstate Investment Corporation, a California corporation licensed to act as a real estate broker by and through respondent Brown as designated broker-officer. Effective June 23, 1982, United Mortgage Service, Inc., a California corporation, was licensed to act as a real estate broker by and through respondent Brown as designated broker-officer. Effective September 1, 1982, Allstate Investment Corporation and United Mortgage Service, Inc. (hereinafter the Corporations) were, and presently are, licensed by the Department of Real Estate to act as real estate brokers by and through Hubert Beckwith Grabau (hereinafter respondent Grabau) as designated broker-officer.

III

At all times herein mentioned, respondent Brown was licensed by the Department as a real estate broker, both individually and from April 1, 1981 through and including August 31, 1982, as designated broker-officer for one or both of the Corporations.

IV

At all times mentioned, respondent Grabau was licensed by the Department as a real estate broker, both individually and from September 1, 1982 to the present as designated broker-officer for the Corporations.

V

The complainant, Edward V. Chiolo, a deputy real estate commissioner of the State of California, acting in his official capacity as such and not otherwise, made the accusation against respondents.

VI

At all times herein mentioned, Allstate Investment Corporation, by and through respondent Brown and respondent Grabau, and at times by and through subsidiary corporations including but not limited to United Mortgage Service, Inc.,

subject to the management and control by the officers, directors, employees or agents of Allstate Investment Corporation, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of sections 10131(d), 10131(e), or 10131.1 of the Business and Professions Code (hereinafter the Code) 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, wherein loans were arranged, negotiated, processed, and consummated on behalf of others, and wherein such loans were serviced and payments were collected thereon on behalf of others, all for or in expectation of compensation; and wherein, on occasion, the Corporations engaged as a principal in the business of buying from, selling to, or exchanging with the public promissory notes secured directly or collaterally by liens on real property.

VII

At all times herein mentioned, in connection with the aforesaid mortgage loan activities, the Corporations and respondent Brown or respondent Grabau accepted or received funds in trust (hereinafter trust funds) from or on behalf of lenders and borrowers and at times thereafter made disbursements of such funds.

VIII

During the month of August, 1982, and thereafter, an investigative audit was made by the Department of the records and bank records of the Corporations and of respondent Brown as said records related to the Corporations and respondent Brown's activities as a mortgage loan broker.

IX

It was ascertained by said audit that the Corporations and respondent Brown maintained a trust bank account at Imperial Bank, West Brokaw Road, San Jose, California, account No. 17-014-196 (hereinafter the "trust account"), and that the adjusted cash balance of said trust account as of August 31, 1982, was five hundred eighty-five thousand one hundred fifty-six and 58/100 dollars (\$585,156.58).

X

It was further ascertained by said audit that the Corporations' and respondent Brown's trust liability for trust funds received by the Corporations and respondent Brown from

lenders and borrowers as of August 31, 1982, amounted to approximately one million twenty-eight thousand eight hundred sixty-five and 93/100 dollars (\$1,028,865.93). The Corporations and respondent Brown, as of August 31, 1982, had a trust fund deficiency and shortage of approximately four hundred forty-three thousand seven hundred nine and 35/100 dollars (\$443,709.35). The audit was based upon records furnished to the Department by the respondents and the actual amount of the deficiency may be somewhat less than the figure stated. In any event, the shortage was no less than \$350,000.00.

XI

A. The trust fund shortage was caused by the respondents' practice of "advancing"; that is, the practice of making regular monthly payments to investors even on loans for which the borrowers' payments have not been received. The Corporations had made advances prior to respondent Brown's becoming the designated broker in April, 1981, and his investment group's acquisition of the business at that time. During the early months of respondent Brown's tenure at Allstate, the amounts advanced each month were relatively small and were promptly made up by transfers from the operating cash. Respondent Brown recognized the danger of the policy of advancing and early in his tenure he decided to cease the practice.

B. Respondent Brown and his management team had inherited an antiquated computer batch service in use by Allstate in April of 1981. This batch service operated on two completely separate programs which were incapable of "talking" to each other, one for the processing of borrower payments, and the other for payments to investors. Because the two programs were not integrated, payments automatically went out to all Allstate investors at the end of each month regardless of whether or not their individual borrowers had made timely payments during that month. Thereafter, reconciliation had to be done by hand, and a compensating payment was made from the general account into the servicing trust account to make up for any deficiency in borrower payments.

Allstate in mid-1981 was servicing a portfolio of approximately 3,000 loans with an aggregate principal balance of approximately \$55,000,000. A large proportion of these loans were "fractionated," i.e., owned by more than one, and sometimes as many as ten, separate investors. Management decided that the sheer number of the individual calculations and postings required each month to properly service this portfolio effectively ruled out a manual system as a solution to the problem. Aside from

the factor of human error inherent in a manual system, there was genuine doubt among Brown and his management team as to whether a manual system was possible to implement at all given the limitations of available staff. Going to a manual system did not seem to represent a viable or reasonable long-term solution to the problem.

Brown therefore decided, as early as June of 1981, that the Company should switch to a single, integrated computer software program that would be capable of accurate monthly reconciliation of borrower payments to investor payments. For a variety of reasons, largely beyond the control of the Company, and respondent Brown, such an integrated system did not become operational until June of 1982, when the policy of advancing effectively ceased.

During the interim, advances continued to climb to near catastrophic levels. By the end of 1981, monthly advances were approaching \$100,000. The Company and respondent Brown made efforts to locate sources of financing to cover the advances and provide working capital.

During the first five months of 1981 alone, the Company transferred approximately \$350,000 from operating funds and borrowed funds into the trust account to cover advances. Respondent Brown himself, in May, 1982, loaned the Company \$75,000 in addition to his initial investment in the Company.

XII

By virtue of the facts set forth above, the Corporations and respondent Brown are guilty of a violation of Business and Professions Code section 10145 in that the Corporations and respondent Brown failed to place the trust funds either into a neutral escrow depository, into the hands of a principal on whose behalf such funds were received, or into a trust fund account at a bank or other financial institution and to retain them in such account until disbursed in accordance with instructions from the principals in the transaction.

XIII

The Corporations and respondent Brown disbursed or allowed the disbursement of trust funds from the trust fund account without the prior written consent of every principal who then was an owner of funds in said account. The disbursement of said funds reduced the balance of funds in the account to an amount less than the existing aggregate trust fund liability of the Corporations and respondent Brown to all owners of said funds, in violation of section 2832.1 of Title 10 of the California Administrative Code (hereinafter the Regulations).

XIV

There is no evidence to indicate that respondent Brown engaged in any conduct constituting fraud or dishonest dealing, however he failed to exercise reasonable supervision and control over the activities of the Corporations for which a real estate license is required.

XV

Respondent Brown has been licensed as a real estate broker since approximately 1972. He is significantly involved in professional, civic, and charitable activities in the Soquel area. There is no evidence of any other disciplinary action against him. Future violations are highly unlikely.

SECOND CAUSE FOR DISCIPLINE

I

The facts set forth in the First Cause for Discipline are incorporated herein as though set forth in full.

II

A. In August of 1982, Allstate was insolvent and on the brink of bankruptcy. Business operations were almost at a standstill, the delinquency rate on loans was at an all-time high, creditors were pressing for payment of amounts due, and the business faced a financial crisis. Effective September 1, 1982, respondent Grabau agreed to serve as designated broker-officer for the new management group which took over operation of the business.

B. As part of an overall plan by new management to stabilize the operation of the business, it was decided to pursue a policy of recouping advances previously made to investors on nonperforming loans. The Company had arranged additional financing as part of its overall plan. Recoupment of advances was the major source of funds available to the Company to meet its obligations.

Acting on advice of its legal counsel, the Company, on or about October 7, 1982, applied \$38,685.00 in current loan payments received for investors on their notes against advances made to the same investors on other notes they held on which payments had not been received. The procedure for recoupment had been discussed with the Department at various meetings. The respondents were aware that the Department objected to the recoupment policy as to those investors who did not expressly consent thereto.

C. The \$38,685.00 referred to above was transferred from the trust account to operating accounts of the Company. These were trust funds payable to investors according to the terms of promissory notes secured by trust deeds. The money was held for a period longer than sixty days without the written consent of the owners of the funds, a violation of Business and Professions Code section 10231.1.

D. Throughout this period of time, a substantial trust fund shortage resulting from the advancing policy continued to exist. The amounts due to the Company from investors who received advances were and are assets of the Company, but they are in the nature of receivables and are not immediate cash funds available to balance the trust account for the purposes or the requirements of Business and Professions Code section 10145. It is noteworthy that except as to the \$38,685.00 referred to above, respondent Grabau was not the designated broker-officer during the creation of the trust account deficiency. On the contrary, the deficiency has been reduced during his tenure. There is no evidence of any other misconduct on his part and any future violations appear highly unlikely.

THIRD CAUSE FOR DISCIPLINE

I

All facts set forth in the First and Second Causes for Discipline are incorporated herein as though set forth in full.

II

Allstate Investment Corporation and respondent Grabau failed to file with the Department by December 31, 1982, the report of a review, by a licensed California independent public accountant, of trust fund financial statements for the Corporations' fiscal year ending in June, 1982, in violation of section 10232.2 of the Code.

ADDITIONAL FINDINGS

I

Notwithstanding the poor quality of many of the loans, the decline in the value of the security for loans caused by the economic problems of the times, and the antiquated computer system used by the Company as described above, management should have taken steps to notify those investors whose loans were in default of that fact rather than pursuing the policy of advancing funds. It is clear that the Company continued to arrange new

loans at the same time as it was making advances on defaulted loans. Indeed, before the present management group imposed servicing fees, commissions on new loans were the main source of revenue for the Company.

II

With respect to the recoupment policy, although it is a violation of the real estate law, as specified above, the evidence did not establish any actual harm to investors directly affected. Were the Company to enter a receivership, or a chapter proceeding under the Bankruptcy Act, recoupment even without consent of investors would probably be allowed. The evidence indicates that unless the many thousands of dollars advanced to investors whose loans were in default are recovered in some manner, other investors whose payments are actually received on time may suffer.

DETERMINATION OF ISSUES

1. FIRST CAUSE FOR DISCIPLINE

A. The respondent companies and respondent Vincent Earl Brown are subject to discipline pursuant to the provisions of Business and Professions Code section 10177, subdivisions (d) and (h).

B. No cause for discipline exists pursuant to Business and Professions Code section 10176, subdivision (i).

2. SECOND CAUSE FOR DISCIPLINE

Grounds for discipline were established against the respondent companies and respondent Grabau pursuant to Business and Professions Code section 10176, subdivision (e), and section 10177, subdivisions (d) and (h).

3. THIRD CAUSE FOR DISCIPLINE

Grounds for discipline were established against the respondent companies and respondent Grabau pursuant to Business and Professions Code section 10177, subdivisions (d) and (h).

ORDER

*not
adep-
test* Respondents' licenses are suspended for sixty (60) days, provided execution of the entire suspension is stayed and respondents are placed on probation for a period of one (1) year upon condition that they obey all laws and regulations governing

not adopted

their activities as real estate brokers. If respondents do not comply with the terms and conditions of probation, the real estate commissioner may, after notice and an opportunity for a hearing is afforded respondents, terminate probation and reimpose all or any portion of the stayed suspension. If they do comply with the terms of probation, at the expiration of one year from the effective date of this decision, the stay shall become permanent.

DATED: November 18, 1983

Philip V. Sarkisian

PHILIP V. SARKISIAN
Administrative Law Judge

PVS:lhj

1 STEPHEN W. THOMAS, Counsel
2 DEPARTMENT OF REAL ESTATE
3 185 Berry Street, Room 5816
4 San Francisco, CA 94107

5 (415) 557-3220

FILED
JAN 31 1983

DEPARTMENT OF REAL ESTATE

By Roshni R. Kalidin
Roshni R. Kalidin

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 - - -

11	In the Matter of the Accusation of)	No. H-5273 SF
)	
12	ALLSTATE INVESTMENT CORPORATION,)	
	UNITED MORTGAGE SERVICES, INC.,)	
13	VINCENT EARL BROWN, and)	<u>ACCUSATION</u>
	HUBERT BECKWITH GRABAU,)	
14)	
	Respondents.)	
15)	

16
17 The complainant, EDWARD V. CHIOLO, a Deputy Real Estate
18 Commissioner of the State of California, for cause of accusation
19 against ALLSTATE INVESTMENT CORPORATION, UNITED MORTGAGE SERVICES,
20 INC., VINCENT EARL BROWN, and HUBERT BECKWITH GRABAU, is informed
21 and alleges as follows:

22 FIRST CAUSE OF ACTION

23 I

24 That ALLSTATE INVESTMENT CORPORATION, UNITED MORTGAGE
25 SERVICES, INC., VINCENT EARL BROWN, and HUBERT BECKWITH GRABAU
26 are presently licensed and/or have license rights under the Real
27 Estate Law (Part 1 of Division 4 of the Business and Professions

1 Code).

2 II

3 That as of April 1, 1981, ALLSTATE EQUITY INVESTMENT
4 CORPORATION OF AMERICA was a California corporation and was
5 licensed to act as a real estate broker by and through VINCENT
6 EARL BROWN (hereinafter respondent Brown) as designated broker-
7 officer; that effective April 5, 1982, ALLSTATE EQUITY INVESTMENT
8 CORPORATION OF AMERICA changed corporate name to ALLSTATE
9 INVESTMENT CORPORATION, a California corporation licensed to
10 act as a real estate broker by and through respondent Brown
11 as designated broker-officer; that effective June 23, 1982,
12 UNITED MORTGAGE SERVICES, INC., a California corporation, was
13 licensed to act as a real estate broker by and through respondent
14 Brown as designated broker-officer; that effective September 1,
15 1982, ALLSTATE INVESTMENT CORPORATION and UNITED MORTGAGE
16 SERVICES, INC. (hereinafter the Corporations) were, and presently
17 are, licensed by the Department of Real Estate to act as real
18 estate brokers by and through HUBERT BECKWITH GRABAU (hereinafter
19 respondent Grabau) as designated broker-officer.

20 III

21 That at all times herein mentioned, respondent Brown
22 was licensed by the Department as a real estate broker, both
23 individually and from April 1, 1981 through and including
24 August 31, 1982, as designated broker-officer for one or both
25 of the Corporations.

26 / / / / /

27 / / / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IV

That at all times mentioned, respondent Grabau was licensed by the Department as a real estate broker, both individually and from September 1, 1982 to the present as designated broker-officer for the Corporations.

V

That the complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, acting in his official capacity as such and not otherwise, makes this accusation against respondents.

VI

That at all times herein mentioned, ALLSTATE INVESTMENT CORPORATION, by and through respondent Brown and respondent Grabau, and at times by and through subsidiary corporations including but not limited to UNITED MORTGAGE SERVICES, INC., subject to the management and/or control by the officers, directors, employees or agents of ALLSTATE INVESTMENT CORPORATION, engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Sections 10131(d), 10131(e), or 10131.1 of the Business and Professions Code (hereinafter the Code) 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, wherein loans were arranged, negotiated, processed, and consummated on behalf of others; and wherein such loans were serviced and payments were collected thereon

1 on behalf of others, all for or in expectation of compensation;
2 and wherein, on occasion, the Corporations engaged as a principal
3 in the business of buying from, selling to, or exchanging with
4 the public promissory notes secured directly or collaterally
5 by liens on real property.

6 VII

7 That at all times herein mentioned, in connection with
8 the aforesaid mortgage loan activities, the Corporations and
9 respondent Brown or respondent Grabau accepted or received funds
10 in trust (hereinafter trust funds) from or on behalf of lenders
11 and borrowers and at times thereafter made disbursements of
12 such funds.

13 VIII

14 That during the month of August, 1982, and thereafter,
15 an investigative audit was made by the Department of the records
16 and bank records of the Corporations and of respondent Brown as
17 said records related to the Corporations and respondent Brown's
18 activities as a mortgage loan broker.

19 IX

20 That it was ascertained by said audit that the
21 Corporations and respondent Brown maintained a trust bank
22 account at Imperial Bank, West Brokaw Road, San Jose, California,
23 Account No. 17-014-196 (hereinafter the "trust account"), and
24 that the adjusted cash balance of said trust account as of
25 August 31, 1982 was FIVE HUNDRED EIGHTY-FIVE THOUSAND ONE
26 HUNDRED FIFTY-SIX and 58/100 DOLLARS (\$585,156.58).

27 / / / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

X

That it was further ascertained by said audit that the Corporations' and respondent Brown's minimum trust liability for trust funds received by the Corporations and respondent Brown from lenders and borrowers as of August 31, 1982 amounted to approximately ONE MILLION TWENTY-EIGHT THOUSAND EIGHT HUNDRED SIXTY-FIVE and 93/100 DOLLARS (\$1,028,865.93); that the Corporations and respondent Brown, as of August 31, 1982, had a minimum trust fund deficiency and shortage of approximately FOUR HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED NINE and 35/100 DOLLARS (\$443,709.35).

XI

That the Corporations and respondent Brown failed to place the trust funds either into a neutral escrow depository, into the hands of a principal on whose behalf such funds were received, or into a trust fund account at a bank or other financial institution and to retain them in such account until disbursed in accordance with instructions from the principals in the transaction, in violation of Section 10145 of the Code; that the Corporations and respondent Brown converted or appropriated all or part of the trust funds to their own use and benefit, and to uses and purposes not authorized by their principals.

XII

That the Corporations and respondent Brown disbursed or allowed the disbursement of trust funds from the trust fund account without the prior written consent of every principal who

1 then was an owner of funds in said account; that the disburse-
2 ment of said funds reduced the balance of funds in the account
3 to an amount less than the existing aggregate trust fund liability
4 of the Corporations and respondent Brown to all owners of said
5 funds, in violation of Section 2832.1 of Title 10 of the
6 California Administrative Code (hereinafter the Regulations).

7 XIII

8 That respondent Brown, as designated broker-officer
9 for the Corporations, failed to exercise reasonable supervision
10 and control over the activities of the Corporations for which
11 a real estate license is required, as those activities are
12 alleged in Paragraphs VI, VII, XI and XII above.

13 XIV

14 That by reason of the facts as hereinabove alleged,
15 the Corporations and respondent Brown violated Section 10145
16 of the Code and Regulations 2832.1 and said acts and omissions
17 constitute grounds for disciplinary action under the provisions
18 of Sections 10176(i), 10177(d) and (h) of the Code.

19 SECOND CAUSE OF ACTION

20 There is hereby incorporated into this second, separate
21 and distinct cause of action all of the allegations contained in
22 Paragraphs I through VII of the First Cause of Action with the
23 same force and effect as if more fully set forth herein.

24 I

25 That during the month of November, 1982, and thereafter,
26 an investigative audit was made by the Department of the records
27 and bank records of the Corporations and respondent Grabau as

1 said records related to the Corporations' and respondent Grabau's
2 activities as a mortgage loan broker.

3 II

4 That it was ascertained by said audit that on or about
5 October 7, 1982, the Corporations and respondent Grabau disbursed
6 or caused to be disbursed from the trust account and deposited
7 or caused to be deposited into the general bank account main-
8 tained by the Corporations and respondent Grabau, the sum of
9 approximately THIRTY EIGHT THOUSAND SIX HUNDRED EIGHTY-FIVE
10 DOLLARS (\$38,685) in trust funds; that the Corporations and
11 respondent Grabau failed to retain said trust funds in the
12 trust account until disbursed in accordance with instructions
13 from their principals, and failed to place said trust funds in
14 a neutral escrow depository or the hands of the principals on
15 whose behalf such funds were received, in violation of
16 Section 10145 of the Code; that the Corporations and respondent
17 Grabau commingled and converted all or part of said trust funds
18 to their own use and benefit, and to uses and purposes not
19 authorized by their principals.

20 III

21 That it was further ascertained by said audit that
22 during the months of September and October, 1982, the Corpora-
23 tions and respondent Grabau collected and thereafter retained
24 trust funds payable according to the terms of promissory notes
25 secured directly or collaterally by liens on real property in
26 the approximate amount of THIRTY EIGHT THOUSAND SIX HUNDRED
27 EIGHTY FIVE DOLLARS (\$38,685) for a period longer than sixty

1 days without the written consent of the owners of the trust funds,
2 in violation of Section 10231.1 of the Code.

3 IV

4 That respondent Grabau, as designated broker-officer
5 for the Corporations, failed to exercise reasonable supervision
6 and control over the activities of the Corporations for which
7 a real estate license is required, as those activities are
8 alleged in Paragraphs II and III above.

9 V

10 That by reason of the facts as hereinabove alleged,
11 the Corporations and respondent Grabau violated Sections 10145
12 and 10231.1 of the Code, and said acts and omissions constitute
13 grounds for disciplinary action under the provisions of Sections
14 10176(e), (i), 10177(d) and (h) of the Code.

15 THIRD CAUSE OF ACTION

16 There is hereby incorporated into this third, separate
17 and distinct cause of action all of the allegations contained
18 in Paragraphs I through VII of the First Cause of Action with
19 the same force and effect as if more fully set forth herein.

20 I

21 That ALLSTATE INVESTMENT CORPORATION and respondent
22 Grabau failed to file with the Department by December 31, 1982,
23 the report of a review, by a licensed California independent
24 public accountant, of trust fund financial statements' for the
25 Corporations' fiscal year ending in June, 1982, in violation
26 of Section 10232.2 of the Code.

27 / / / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

That by reason of the facts as hereinabove alleged, the Corporations and respondent Grabau violated Section 10232.2 of the Code, and said acts and omissions constitute grounds for disciplinary action under the provisions of Sections 10177(d) and (h) 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 under the Real Estate Law (Part 1 of Division 4 of the Code) and for such other and further relief as may be proper under other applicable provisions of law.

Edward V. Chioło

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California
this 31st day of January, 1983.