

FILED  
OCT 17 1988

DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*  
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

-----  
In the Matter of the Accusation of ) No. H-5359 SF  
WAYNE TILTON KENNEDY, )  
Respondent. )

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 30, 1985, 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 May 28, 1985, and  
respondent has operated as a restricted licensee without cause  
for disciplinary action against him since that time.

On July 2, 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 I have considered the petition of respondent  
2 and the evidence and arguments in support thereof. Respondent  
3 has demonstrated to my satisfaction that he meets the  
4 requirements of law for the issuance to him of an unrestricted  
5 real estate broker license and that it would not be against the  
6 public interest to issue said license to him.

7 NOW, THEREFORE, IT IS ORDERED that respondent's  
8 petition for reinstatement is granted and that a real estate  
9 broker license be issued to him if he satisfies the following  
10 conditions within six months from the date of this order:

11 1. Submittal of a completed application and payment  
12 of the fee for a real estate broker license.

13 2. Submittal of evidence of having, since the most  
14 recent issuance of an original or renewal real estate license,  
15 taken and successfully completed the continuing education  
16 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
17 for renewal of a real estate license.

18 This Order shall be effective immediately.

19 DATED: October 6, 1988

20  
21 JAMES A. EDMONDS, JR.  
22 Real Estate Commissioner

COPY

FILED  
JUL 01 1985

DEPARTMENT OF REAL ESTATE

By Mary A. Corallo  
Mary A. Corallo

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
WAYNE TILTON KENNEDY, ) NO. H-5359 SF  
ROBERT ARTHUR IMHOFF, )  
NOB HILL MORTGAGE, INC., )  
Respondents. )

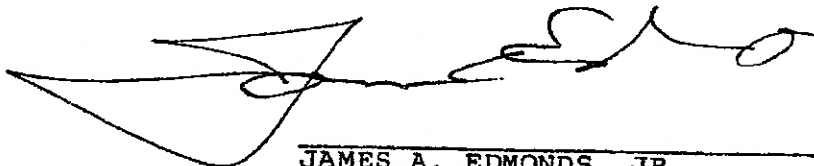
ORDER DENYING RECONSIDERATION

On April 30, 1985, a Decision was rendered in the  
above-entitled matter. The Decision is to become effective on  
June 27, 1985.

On June 6, 1985, respondent ROBERT ARTHUR IMHOFF  
petitioned for reconsideration of the Decision of April 30, 1985.

I have given due consideration to the petition of  
respondent. I find no good cause to reconsider the Decision of  
April 30, 1985 and reconsideration is hereby denied.

IT IS SO ORDERED 6-26, 1985.



JAMES A. EDMONDS, JR.  
Real Estate Commissioner

COPY

FILED  
MAY 28 1985

DEPARTMENT OF REAL ESTATE

By Margaret A. Morello

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

- - -

In the Matter of the Accusation of )  
WAYNE TILTON KENNEDY, )  
ROBERT ARTHUR IMHOFF and )  
NOB HILL MORTGAGE COMPANY, INC., )  
Respondents. )

NO. H-5359 SF

ORDER STAYING EFFECTIVE DATE

On April 30, 1985, a Decision was rendered in the above-entitled matter to become effective May 28, 1985.

IT IS HEREBY ORDERED that the effective date of the Decision of April 30, 1985, with respect to respondent ROBERT ARTHUR IMHOFF only, is stayed for a period of 30 days.

The Decision of April 30, 1985, with respect to respondent ROBERT ARTHUR IMHOFF only, shall become effective at 12 o'clock noon on June 27, 1985. With respect to

/ / / / /

/ / / / /

1 WAYNE TILTON KENNEDY and NOB HILL MORTGAGE COMPANY, INC., the  
2 effective date of said Decision shall remain May 28, 1985.

3 DATED: May 28, 1985

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

7 BY:

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

COPY

FILED  
MAY 07 1985

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Mary A. Merrill  
Mary A. Merrill

-----  
In the Matter of the Accusation of )  
WAYNE TILTON KENNEDY, )  
ROBERT ARTHUR IMHOFF and )  
NOB HILL MORTGAGE COMPANY, INC, )  
Respondent. )

No. H-5359 SF

N 23761

DECISION

The Proposed Decision dated April 8, 1985 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 May 28, 1985.

IT IS SO ORDERED 4-30, 1985.

JAMES A. EDMONDS, JR.  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation  
of:

WAYNE TILTON KENNEDY,

ROBERT ARTHUR IMHOFF and

NOB HILL MORTGAGE COMPANY, INC.)

Respondents. )

NO. H-5359 SF

OAH NO. N 23761

PROPOSED DECISION

This matter came before Paul J. Doyle, Administrative Law Judge, State of California, Office of Administrative Hearings, on March 19 and 20, 1985, in San Francisco, California.

Vera Winter Lee, Counsel, represented the complainant.

Respondents Robert Arthur Imhoff and Nob Hill Mortgage Company, Inc. were present and were represented by their attorney, Daniel P. McLoughlin of the law firm of Tosta and Browning of 333 Market Street, Suite 2230, San Francisco, California.

Respondent Wayne Tilton Kennedy was present and entered into the Stipulation hereinafter set forth in the following findings.

The matter was submitted and the following decision is hereby proposed and recommended for adoption:

FINDINGS OF FACT

I

Wayne Tilton Kennedy and Robert Arthur Imhoff are presently licensed under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

## II

On August 10, 1979, Nob Hill Mortgage Company, Inc., (hereinafter Nob Hill), a California corporation, was licensed by the Department of Real Estate to act as a real estate broker by and through Wayne Tilton Kennedy (hereinafter Kennedy). This license was canceled June 22, 1982 and expired August 9, 1982.

## III

At all times mentioned herein, respondent Robert Arthur Imhoff (hereinafter Imhoff) was licensed by the Department of Real Estate (hereinafter Department) as a real estate broker.

## IV

At all times mentioned herein, respondent Kennedy was licensed by the Department as a real estate broker individually and, until June 22, 1982, as designated broker-officer for Nob Hill.

## V

Complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, acting in this official capacity and not otherwise, made the accusation against respondents.

## VI

At the times herein mentioned, Nob Hill, either by respondents Kennedy and/or Imhoff, 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 including the operating of a mortgage loan brokerage business. In this business, lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property. Nob Hill processed such loans and serviced the same. Payments were collected thereon on behalf of others, all in expectation of compensation. Respondents engaged as principals in the business of buying or selling to, or exchanging with, the public promissory notes secured directly or collaterally by liens on real property.

## VII

At the times mentioned herein, in connection with their mortgage loan activities, respondents received funds in trust from and on behalf of lenders and borrowers and disbursed those funds.



## VIII

Beginning in the spring of 1983 an investigative audit was conducted by the Department of the records of the respondents as these related to respondent's activities as mortgage loan brokers.

## IX

It was ascertained by said audit that respondents deposited or caused to be deposited trust funds into general business bank accounts maintained by the respondents. But respondents failed to retain these trust funds in a trust fund account maintained in a bank or recognized depository and failed to place said trust funds in a neutral escrow depository or the hands of the principals on whose behalf said funds were received, in violation of Section 10145 of the Business and Professions Code (hereinafter Code). Respondents commingled with their own money and converted part of said trust funds to their own use and benefit, and for purposes not always authorized by their principals.

## X

It was ascertained by said audit that the respondents maintained bank accounts at Crocker National Bank, 250 University Avenue, Palo Alto, California, Account No. [REDACTED]. Another account at Bank of America, 108 Sutter Street, San Francisco, California, Account No. [REDACTED] (hereafter Nob Hill account) and at the same branch of Bank of America, Account No. [REDACTED] (hereafter concentration account). The Nob Hill account was one of several accounts the balance of which was transferred to the concentration account at the end of each business day. The adjusted balance of the Crocker and concentration accounts as of March 31, 1983 was a net negative balance of Ten Thousand One Hundred Six and 46/100 Dollars (\$10,106.46). Earlier the adjusted cash balance on November 5, 1981 was a net negative balance of Two Thousand Two Hundred Eighty-Nine and 37/100 Dollars (\$2,289.37).

## XI

The audit also revealed that respondent's minimum trust liability received from lenders and borrowers as of March 31, 1983, was a minimum of Two Hundred Seventy Six Thousand Forty-Five Dollars (\$276,045). Respondents, as of March 31, 1983, had a minimum trust fund deficiency and shortage of Two Hundred Seventy-Six Thousand Forty-Five Dollars (\$276,045).

## XII

Respondents' minimum trust liabilities for trust funds received by respondents from lenders and borrowers as of November 5, 1981 was approximately Forty-Four Thousand Three

Hundred Twenty-Five and 99/100 Dollars (\$44,325.99). And as of November 5, 1981, respondents had a minimum trust fund shortage of approximately Forty-Four Thousand Three Hundred Twenty-Five and 99/100 Dollars (\$44,325.99).

### XIII

Respondents disbursed custodial trust funds without the prior written consent of every principal who then was an owner of trust funds. The disbursement of these funds reduced the balance of trust funds in respondents' possession to an amount less than the existing aggregate trust liability of respondents to all owners of said funds.

### XIV

Respondent Kennedy, as designated broker-officer for the corporation, and respondent Imhoff as officer and de facto broker-officer of the corporation failed to exercise reasonable supervision and control over Nob Hill's activities for which a real estate license was required, as those activities are found on Paragraphs VI through XIII above.

### XV

#### Prior Disciplinary Action

Effective May 19, 1982, in Case No. H-5160 SF, the Real Estate Commissioner suspended respondent Imhoff's license for 60 days but stayed execution of the entire suspension. This respondent was placed on probation for one year upon condition that he obey all laws and regulations governing his activities as a real estate broker. This discipline was as a result of his violations of Regulation 2832.1 of Title 10 of the California Administrative Code and 10145 and 10177(d) of the Code.

### XVI

The following supplemental facts were also established:

1. Nob Hill became a corporate entity in 1978. Up to November of 1981 its president and chief moving force was respondent Kennedy. Up until this latter date respondent Imhoff, while serving as an officer, only minimally participated in the corporate functions. It was Imhoff who initially instructed Kennedy in many of the facets of the mortgage loan brokerage business.

2. Commencing approximately November 1, 1981 Kennedy and Imhoff had a parting of the ways due to their differing investment philosophies. They mutually agreed to divide

their considerable assets. Although this agreement, reduced to a writing was not signed by either party it was, over the ensuing years, essentially executed by both of the parties.

3. Under that agreement Imhoff was to take over the control and management of Nob Hill - which he did. After November of 1981 Kennedy had little, if anything, to do with this corporate business.

4. After Nob Hill's license was cancelled on June 22, 1982 it was never renewed by respondent Imhoff; a fact which Imhoff admittedly knew but which he never attempted to correct.

5. So also while this corporation dealt with millions of dollars in trust funds over the years it never had a legally-recognized trust depository nor a depository even designated as a trust. While respondent Kennedy "assumed" a trust depository existed at the time he left the corporation, respondent Imhoff knew there was no such account.

6. Respondent Imhoff, however, was apprehensive about opening a trust account since he believed that, by doing so, he would subject himself to needless liability created by some investments that were in default or, as he maintains, were nearing default.

7. Additionally Imhoff maintains the corporation's finances were not solvent at the time of his take-over and that, in general, there was considerable chaos in the records of Nob Hill. The evidence, however, supports neither contention.

8. During the period when Imhoff was in control of the corporate business its financial condition grew increasingly worse - as evidenced by some of the previous findings. Funds were lent to borrowers although not fully received from the lenders; interest payments were made to lenders from other investment accounts when the borrowers had defaulted in their payments; funds were indiscriminately transferred between six of the subsidiary bank accounts comprising the "concentration account" to remove overages or refurbish deficits - one form of commingling. Another form of commingling was that of mixing business funds with trust funds and Imhoff's personal funds with trust funds; unauthorized disbursements were made which caused a cash balance of less than the aggregate trust liability and Imhoff failed to deposit trust funds (loan payoffs) to the proper account and/or delayed returning these loan payoffs to the lenders on the occasional excuse of awaiting additional instructions from the particular lender(s).

9. The foregoing is but a sampling of the manner in which the Imhoff-controlled corporation did business. But it was primarily based on the recommendation of the auditor that a Desist and Refrain Order was issued by the Department dated August 2, 1983. Such issuance was recommended by reason of said auditor's experience with this corporation and, in particular, by reason of a mounting minimum trust fund shortage, the failure to have a trust account and the failure of Nob Hill to have a license.

10. At one time respondent Imhoff siphoned off some of the more solid accounts of Nob Hill to transfer the same to his other corporation known as Numenor, Inc. doing business as Landmark Realty. He did so openly and for the purpose of having Numenor service those accounts. Such a move, however, left Nob Hill with the remnants of several unstable accounts and to an extent where Nob Hill is no longer operational.

11. In the handling of the investment funds as above found there was no real monetary loss to the public. Most investors were paid their interest due in a timely manner, many investors realized substantial interest-income on their investments and some were quite pleased with the method in which Nob Hill handled their accounts. Imhoff, despite his knowledge of the legal deficiencies as above found, felt morally justified in handling the funds as he did - this, in order to try to protect all of the investments. And, in view of the millions of dollars transacted, respondent Imhoff considers the current estimated trust fund shortage, of some \$50,000, to be "a drop in the bucket".

12. Mr. Imhoff is not a sharp, conniving financier. To the contrary he is mild-mannered and well-intentioned even though he realizes that for some years he has not complied with some of the more basic laws governing the type of activity in which he and Nob Hill engaged. And despite the fact that he was warned about these activities by a representative of the Department.

13. The prior discipline of Mr. Imhoff (Finding XV), while finding he did not intend to defraud anyone or engage in any dishonest conduct, nevertheless involved trust fund shortages (of less than \$10,000) in his capacity as a real estate broker.

14. Respondent Imhoff's offer to the Department to simply renew his broker's license which is scheduled to expire on April 12, 1985 was not accepted by the Department.

15. Respondent Kennedy entered into a Stipulation with the Department, through Mr. Kennedy's attorney, wherein certain allegations of the Accusation were admitted and others would not be required to be proved -- if the Order, as hereinafter set forth, concerning Kennedy were accepted by the Real Estate Commissioner.

16. Although respondent Imhoff felt morally justified in his conduct, he was not legally justified; and he expressed no regrets nor misgivings concerning the lack of this latter justification.

#### DETERMINATION OF ISSUES

A.

Unless otherwise mentioned all section references hereafter refer to the California Business and Professions Code.

B.

Respondents violated Sections 10130 and 10145 and such violations constitute grounds to impose disciplinary action under Sections 10176(e), 10176(i), 10177(d) and 10177(h).

C.

Respondents violated Regulations 2830 and 2832.1 of Title 10 of the California Administrative Code which constitutes grounds to impose discipline under Section 10177(d).

D.

Although the possibility of revoking the license of respondent Imhoff and providing him with an opportunity to apply for a restricted license, after some prolonged period of suspension, was considered nevertheless in view of this respondent's continuous and intentional violations of law, the public purpose would not now be served by the issuance of such a restricted license. It was also considered that a revocation is not, necessarily, forever.

#### ORDER

Concerning Respondent, Wayne Tilton Kennedy:

1. All licenses and license rights of respondent Kennedy under Part 1 of Division 4 of the Business and Professions Code are revoked.
2. Restricted real estate broker licenses as an individual and as designated officer of Dolores Heights Properties,

Inc. shall be issued to respondent Kennedy pursuant to Section 10156.5 of the Business and Professions Code if he makes application therefor and pays to the Department of Real Estate the appropriate fee for said licenses within ninety (90) days from the effective date of this decision.

3. Upon issuance of the above restricted licenses said licenses shall be suspended for sixty (60) days, provided however, that the entire 60 days of said suspension will be stayed for a period of one year from the issuance dates of said licenses, on the condition that respondent Kennedy obey all laws and regulations governing his activities as a real estate licensee. If respondent Kennedy during said year does not comply with this term and condition, the Real Estate Commissioner may, after notice and opportunity for hearing is afforded to respondent Kennedy, reimpose all or any portion of the stayed suspension. If no cause for disciplinary action is incurred by respondent Kennedy within said one year period, then this stay shall become permanent.

4. The restricted licenses issued to respondent Kennedy shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations imposed under authority of Section 10156.6 of said Code:

- a) the restricted licenses may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent Kennedy's conviction or plea of nolo contendere to a crime which bears a significant relation to respondent Kennedy's fitness or capacity as a real estate licensee;
- b) the restricted licenses may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent Kennedy has violated the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted licenses.
- c) if respondent Kennedy fails, within six months from the effective date of the decision, to present evidence satisfactory to the Real Estate Commissioner of having successfully completed the continuing education requirements specified in Section 10170.5 of the Business and Professions Code within the four year period immediately preceding the date on which respondent Kennedy

presents such evidence to the Department, the Real Estate Commissioner may order the suspension of the restricted licenses until respondent Kennedy presents evidence of having satisfied the requirements of Section 10170.5; the Commissioner shall afford respondent Kennedy the opportunity for a hearing, pursuant to the Administrative Procedure Act, to present such evidence;

- d) respondent Kennedy shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions of a restricted license until one year has elapsed from the date of issuance of the restricted license to respondent.

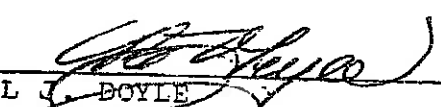
Concerning Respondent, Robert Arthur Imhoff:

The licenses previously issued to respondent, Robert Arthur Imhoff, by the Department to act as a real estate broker in the State of California, together with all rights and interests therein, are hereby revoked.

Concerning Respondent, Nob Hill Mortgage Company, Inc.:

This corporation is no longer a viable one. Additionally, said Corporation has not been licensed since expiration on August 9, 1982. Nor does this corporation currently have any right of renewal of its former license.

DATED: APRIL 8, 1985

  
PAUL J. BOYLE  
Administrative Law Judge

ADD:re...

1 VERA WINTER LEE, Counsel  
DEPARTMENT OF REAL ESTATE  
2 185 Berry Street, Room 5816  
San Francisco, CA 94107  
3 (415) 557-3220  
4  
5  
6  
7

FILED  
OCT 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-5359 SF
12 WAYNE TILTON KENNEDY,	)	
13 ROBERT ARTHUR IMHOFF and	)	<u>ACCUSATION</u>
14 NOB HILL MORTGAGE COMPANY, INC.,	)	
15 Respondents.	)	
16	)	

17 The complainant, EDWARD V. CHIOLO, a Deputy Real  
18 Estate Commissioner of the State of California, for cause of  
19 accusation against WAYNE TILTON KENNEDY, ROBERT ARTHUR IMHOFF,  
20 and NOB HILL MORTGAGE COMPANY, INC., is informed and alleges  
21 as follows:

22 I

23 That WAYNE TILTON KENNEDY, ROBERT ARTHUR IMHOFF and  
24 NOB HILL MORTGAGE COMPANY, INC., are presently licensed and or  
25 have licenses rights under the Real Estate Law (Part 1 of  
26 Division 4 of the Business and Professions 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 on August 10, 1978, NOB HILL MORTGAGE COMPANY, INC., (hereafter Nob Hill), a California corporation, was licensed by the Department of Real Estate to act as a real estate broker by and through WAYNE TILTON KENNEDY (hereafter Kennedy); that said license was canceled June 22, 1982 and expired August 9, 1982; and that Nob Hill now has the right to late renewal of its corporate license.

III

That at all times mentioned herein, respondent ROBERT ARTHUR IMHOFF (hereafter Imhoff) was licensed by the Department of Real Estate (hereafter Department) as a real estate broker.

IV

That at all times mentioned herein, respondent Kennedy was licensed by the Department as a real estate broker individually and, until June 22, 1982, as designated broker-offer for Nob Hill.

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, Nob Hill, by and through respondents Kennedy and Imhoff, engaged in the business of, acted in the capacity of, advertised, or assumed

1 to act as a real estate broker in the State of California within  
2 the meaning of Sections 10131(d), 10131(e), or 10131.1 of the  
3 Business and Professions Code (hereafter the Code) including  
4 the operating of a mortgage loan brokerage business with the  
5 public, wherein lenders and borrowers were solicited for loans  
6 secured directly or collaterally by liens on real property, and  
7 were arranged, negotiated, processed, and consummated on behalf  
8 of others; and wherein such loans were serviced and payments were  
9 collected thereon on behalf of others, all for or in expectation  
10 of compensation; and wherein, the respondents engaged as  
11 principals in the business of buying from selling to, or  
12 exchanging with the public promissory notes secured directly or  
13 collaterally by liens on real property.

14 VII

15 That at all times mentioned herein, in connection  
16 with their mortgage loan activities, respondents accepted or  
17 received funds in trust (hereafter trust funds) from and on  
18 behalf of lenders and borrowers and at times thereafter made  
19 disbursements of such funds.

20 VIII

21 That during the month of April, 1983 and thereafter,  
22 an investigative audit was made by the Department of the records  
23 and bank records of the respondents as said records related to  
24 their activities as mortgage loan brokers.

25 IX

26 That it was ascertained by said audit that respondents  
27 deposited or caused to be deposited trust funds into general

1 business bank accounts maintained by the respondents; that the  
2 respondents failed to retain said trust funds in a trust fund  
3 account maintained in a bank or recognized depository and failed  
4 to place said trust funds in a neutral escrow depository or  
5 the hands of the principals on whose behalf said funds were  
6 received, in violation of Section 10145 of the Code; that the  
7 respondents commingled with their own money and converted all  
8 or part of said trust funds to their own use and benefit, and  
9 to uses and purposes not authorized by their principals.

10 X

11 That it was ascertained by said audit that the  
12 respondents maintained bank accounts at Crocker National Bank,  
13 250 University Avenue, Palo Alto, California, Account No. [REDACTED]  
14 (hereafter Crocker account) and at Bank of America, 108 Sutter  
15 Street, San Francisco, California, Account No. [REDACTED]  
16 (hereafter Nob Hill account) and at the same branch of Bank of  
17 America, Account No. [REDACTED] (hereafter concentration account),  
18 the Nob Hill account being one of several accounts the balance  
19 of which is transferred to the concentration account at the  
20 end of each business day; and that the adjusted balance of  
21 the Crocker and concentration accounts as of March 31, 1983  
22 was a net negative balance of Ten Thousand One Hundred Six  
23 and 46/100 Dollars (\$10,106.46); and that the adjusted cash  
24 balance on November 5, 1981 was a net negative balance of  
25 Two Thousand Two Hundred Eighty-Nine and 37/100 Dollars (\$2,289.37).  
26 / / / / /  
27 / / / / /

XI

That it was further ascertained by said audit that the respondent's minimum trust liability received from lenders and borrowers as of March 31, 1983, was a minimum of Two Hundred Seventy Six Thousand Forty-Five Dollars (\$276,045); that the respondents, as of March 31, 1983, had a minimum trust fund deficiency and shortage of Two Hundred Seventy Thousand Forty-Five Dollars (\$270,045).

XII

That it was further ascertained by said audit that the respondents' minimum trust liabilities for trust funds received by respondents from lenders and borrowers as of November 5, 1981 was approximately Forty Four Thousand Three Hundred Twenty Five and 99/100 Dollars (\$40,325.99); that the respondents, as of November 5, 1981, had a minimum trust fund deficiency and shortage of approximately Forty Four Thousand Three Hundred Twenty Five and 99/100 Dollars (\$44,325.99).

XIII

That the respondents failed to place the trust funds either into a neutral escrow depository, into the hands of the principals 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 respondents converted or appropriated all or part of the trust funds to their own use and benefit, and to uses and purposes not authorized

1 by their principals.

2 XIV

3 That the respondents disbursed or allowed the dis-  
4 bursements of trust funds without the prior written consent of  
5 every principal who then was an owner of trust funds in their  
6 custody; that the disbursement of said funds reduced the balance  
7 of trust funds in their possession to an amount less than the  
8 existing aggregate trust liability of the respondents to all  
9 owners of said funds, in violation of Section 2832.1 of Title 10  
10 of the California Administrative Code (hereafter the Regulations).

11 XV

12 That respondent Kennedy, as designated broker-officer  
13 for the corporation, and respondent Imhoff as officer and  
14 de facto broker-officer of the corporation failed to exercise  
15 reasonable supervision and control over Nob Hill's activities  
16 for which a real estate license is required, as those activities  
17 are alleged in Paragraphs VI through XIV above.

18 XVI

19 That by reason of the facts alleged above, the  
20 respondents violated Sections 10130 and 10145 of the Code and  
21 said acts and omissions constitute grounds for disciplinary  
22 action under the provisions of Sections 10176(e) and (i) and  
23 10177(h) of the Code; that by reason of the facts alleged above  
24 the respondents have violated Regulations 2830 and 2832.1 and  
25 said acts and omissions constitute grounds for discipline under  
26 the provisions of Section 10177(d) of the Code.

27 / / / / /

1  
2  
3  
4  
5  
6  
7  
3  
9  
0  
1  
2  
3

the Real Estate Commissioner suspended respondent Imhoff's license for 60 days provided execution of the entire suspension by stayed and respondent be placed on probation for a period of one year upon condition that he obey all laws and regulations governing his activities as a real estate broker; that said stayed suspension was as a result of his violations of Sections 2832.1 of the Regulations and 10145 and 10177(d) of the Code.

\* \* \* \* \*

18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Edward T. Chiswick

EDWARD V. CHIOLO  
Deputy Real Estate Commissioner

25  
26  
27