

FILED
JAN 03 1992

DEPARTMENT OF REAL ESTATE

By Lyda Montiel
Lyda Montiel

1 Department of Real Estate
2 185 Berry Street, Room 3400
3 San Francisco, CA 94107-1770

4 Telephone: (415) 904-5917
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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

) No. H-6485 SF

12)
13 DEAN D. PAOLILLO,)
14 APPROVED FINANCIAL CORP., and)
15 KATHLEEN ANN UMBERGER,)

) STIPULATION & AGREEMENT
) IN SETTLEMENT & ORDER

16 Respondents.)
17)

18 The California Department of Real Estate (Department)
19 filed an Accusation against Dean D. Paolillo, (Paolillo); Approved
20 Financial Corp. (Approved) and Kathleen Ann Umberger (Umberger) on
21 April 18, 1991. On September 10, 1991 a hearing was held where
22 written and oral evidence was submitted. On September 23, 1991,
23 the Administrative Law Judge issued a Proposed Decision
24 determining among other things, that the corporate real estate
25 broker license of Approved should be revoked; on October 23, 1991,
26 the Chief Deputy Commissioner notified Respondents that the
27 Proposed Decision of the Administrative Law Judge was not adopted
as the Decision of the Real Estate Commissioner. On October 24,

1 1991 the transcript of the September 10, 1991 hearing was ordered
2 by the Department. As a result of extended discussions between
3 Paolillo's Counsel, Gregory J. Antone, Umberger's Counsel, Gagen,
4 McCoy, McMahon & Armstrong, by Stephen W. Thomas and the
5 Department's Counsel, John Van Driel, concerning a mutually
6 agreeable resolution of the proceeding prior to review of the
7 transcript and evidence, Paolillo, Umberger, and the Department
8 have agreed upon the following disposition of the matter.

9 IT IS HEREBY STIPULATED by and between Dean D. Paolillo,
10 his attorney of record Gregory J. Antone, Kathleen Ann Umberger,
11 her attorney of record Stephen W. Thomas, and the California
12 Department of Real Estate, acting by and through John Van Driel,
13 Counsel for the Department, as follows for the purpose of settling
14 and disposing of the Accusation filed by the Department on April
15 18, 1991 in this matter.

16 1. It is understood by the parties that the Real Estate
17 Commissioner (Commissioner) may adopt the Stipulation in
18 Settlement as his decision in this matter thereby imposing the
19 penalty and sanctions on Respondents' real estate licenses and
20 license rights as set forth in the below "Decision and Order". In
21 the event the Commissioner in his discretion does not adopt the
22 Stipulation in Settlement, the Stipulation shall be void and of no
23 effect; the Commissioner will review the transcript and the
24 evidence in the case and will issue his Decision after Rejection
25 as his decision in the case.

26 By reason of the foregoing and solely for the purpose of
27 settlement of the April 18, 1991 Accusation without further

1 administrative proceedings, it is stipulated and agreed that the
2 findings of fact and determinations of issues, which are set out
3 in the Proposed Decision dated September 23, 1991, and which were
4 rejected by the Chief Deputy Commissioner on October 21, 1991, are
5 hereby amended to read as follows:

6 FINDINGS OF FACT

7 I

8 Edward V. Chiolo made the Accusation in his official
9 capacity as a Deputy Real Estate Commissioner of the State of
10 California.

11 II

12 Dean D. Paolillo, Approved Financial Corp. and Kathleen
13 Ann Umberger are presently licensed and/or have license rights
14 under the Real Estate Law (Part 1 of Division 4 of the Business
15 and Professions Code) (Code).

16 III

17 Paolillo was licensed as a restricted real estate
18 salesperson by the Department on May 21, 1984 under the broker
19 license of Eason. Paolillo terminated his employment with Eason
20 on September 17, 1984. He renewed his employment as a salesperson
21 on February 20, 1985 under the broker license of Sousa. Sousa's
22 license expired February 28, 1987, thereby terminating Paolillo's
23 employment with Sousa as a salesperson. He renewed his employment
24 again on May 21, 1988 when he renewed his restricted sales license
25 under the broker license of Umberger. Between February 28, 1987
26 and May 21, 1988 Paolillo was licensed as a real estate

27 / / / / / /

1 salesperson but was not authorized to act as such because he was
2 not licensed under the license of a real estate broker.

3 IV

4 At all times material Umberger was licensed as a real
5 estate broker by the Department in her individual capacity. Her
6 individual license will expire in March 1993 unless renewed.
7 Beginning on or about February 16, 1988 Umberger was licensed as
8 the designated officer of Approved, a California corporation. The
9 license as designated officer of Approved was cancelled as of
10 March 1, 1989 at Umberger's request.

11 V

12 Approved was licensed by the Department as a real estate
13 corporation beginning in July 1984. Beginning on February 16,
14 1988 Approved was licensed by and through Umberger as designated
15 officer. Approved's corporate license was cancelled on March 1,
16 1989. During the time Approved was licensed as a real estate
17 corporation, Paolillo acted as its president and directed and
18 controlled its operations.

19 VI

20 From February 16, 1988, through March 1, 1989, as the
21 designated officer of Approved, Umberger was responsible for the
22 supervision and control of the activities conducted on behalf of
23 Approved by its officers and employees as necessary to secure full
24 compliance with the provisions of the Real Estate Law.

25 VII

26 In December 1988, an investigative audit was made by the
27 Department on the books and records of Approved.

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The following facts were ascertained by the audit.

1. For the period of at least March 1, 1988 through September 30, 1988 Approved maintained a commercial checking account #534-080-538 with Security Pacific Bank. Paolillo was the sole signatory on the account. The account was not designated as a real estate trust account on the bank signature card. Approved's checking account was used by Paolillo and Approved as a depository for all trust funds received by the company.

2. Approved at all times mentioned herein, acted as a mortgage loan broker on behalf of borrowers and lenders wherein borrowers and lenders were solicited for loans secured directly or indirectly by real property and loans were arranged and negotiated on behalf of others, for or in expectation of compensation and Paolillo acted as a real estate agent of Approved.

3. The checking account liability for trust funds received and deposited into the Approved checking account as of September 30, 1988 was \$816.50.

4. The adjusted bank balance of the checking account as of September 30, 1988 was \$297.39, causing a trust fund shortage of \$519.11.

5. Respondents failed to maintain columnar records for the trust funds received and thereafter disbursed by respondents, in the form required by Section 2831 of Title 10 of the California Code of Regulations (Regulations) and failed to maintain separate beneficiary records required by Section 2831.1 of the Regulations.

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VIII

In the course of his association with Approved, Paolillo was engaged in the mortgage loan brokerage business for and in the name of Approved. Between February 28, 1987 and May 21, 1988 Paolillo's restricted real estate salesperson license was not appropriately registered with the Department as being under the active supervision of any licensed real estate broker. During this period Paolillo was not eligible to provide services for which a license is required. During this period Paolillo performed services for borrowers and lenders in connection with several loan transactions, for or in expectation of compensation, including the Muniz and the Wilewski loans.

IX

Paolillo was issued a real estate broker license on or about January 10, 1980. On or about May 14, 1984 Paolillo's broker license was revoked, with the right to a restricted sales license, for violations of Code Sections 10145, 10176(a), 10176(i), 10177(d), 10177(f) and 10177(j). Pursuant to the order in the Commissioner's Decision in that disciplinary action, Paolillo applied for and was granted a restricted salesperson license. He worked as a salesperson under Sousa's broker's license during 1985-1987. Sousa was also the designated officer for Approved. Paolillo operated through Approved.

Umberger was licensed as a salesperson in 1981 and as a broker in 1985. Since 1985 she has maintained her own mortgage loan brokerage, specializing in commercial properties, until

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1 recently when she changed her emphasis to about 1/2 commercial and
2 1/2 residential properties.

3 Umberger leased office space from Paolillo in 1987. In
4 December 1987 Paolillo requested her to act as broker for the
5 corporation he had been acting under, Approved Financial. She
6 agreed to act as Approved's designated officer after she became
7 convinced that Approved's trust account was being monitored by a
8 CPA, that Paolillo was no longer involved in the type of
9 transactions that resulted in the Department's 1984 disciplinary
10 action against him, and that Paolillo's office practices appeared
11 to be appropriate and in compliance with the Real Estate Law. In
12 January 1988 she agreed to act as the corporation's designated
13 officer. Paolillo was to be a salesperson under the corporate
14 license. He was also the President and sole Director of the
15 corporation. Umberger did not agree to Paolillo acting as a
16 salesperson under her individual license. Umberger and Paolillo
17 executed Department forms in January 1988 to effectuate the above
18 arrangement but submitted forms which provided that Paolillo was
19 to be licensed under Umberger individually and not under the
20 corporation.

21 Umberger began supervising Paolillo in January 1988.
22 She reviewed and initialed each loan application and reviewed each
23 closed transaction. Although Paolillo was licensed under Umberger
24 individually, he was acting as an agent of Approved.

25 Paolillo was the only signatory on Approved's checking
26 account. Paolillo and Umberger were aware in January 1988 that a
27 trust account was required to be in the name of the broker, in

1 this case, Approved. They believed the trust account could be in
2 the name of the corporation and that Paolillo as president of the
3 company could act as the signatory on the account. Umberger had
4 never maintained a trust account.

5 The checking account was used to handle client trust
6 funds in the form of borrowers' payments for appraisal fees and
7 credit reports. All such trust funds were then disbursed to the
8 appraisers and the credit reporting companies.

9 The trust fund shortage arose when Paolillo agreed with
10 a borrower or borrowers not to charge for appraisal and credit
11 reports. He failed to inform Approved's office assistant who
12 mistakenly mailed trust fund checks to the credit reporting
13 company and the appraiser.

14 As soon as respondents discovered the shortage they
15 immediately made up the trust fund shortage and shortly thereafter
16 closed the account.

17 When Umberger was notified of the trust fund shortage
18 she terminated her association with Paolillo and Approved.

19 The Department audited the checking account because
20 Paolillo had petitioned to have his broker's license reinstated.
21 Paolillo was aware that his petition would result in the audit.

22 The checking account checks obtained by Paolillo
23 identified the account as a trust account. The bank signature
24 card did not identify the account as a trust account.

25 X

26 Although Sousa's broker license expired February 28,
27 1987, Paolillo was in fact under the supervision of Sousa through

1 December 1987. Paolillo was unaware that Sousa's license had
2 expired in early 1987. Approved paid Sousa a monthly fee during
3 1987 for acting as its designated officer. Paolillo was in fact
4 under the supervision of Umberger from January 1988 to March 1,
5 1989. The mix up occurred because the principals believed that
6 Paolillo was acting as a salesperson under the corporate license.
7 The Department's records indicate that Sousa was the designated
8 officer for Approved until February 16, 1988. Sousa and Paolillo
9 believed that that status authorized Sousa to supervise Paolillo
10 and for Paolillo to act as a salesperson. When Umberger became
11 the designated officer in 1988 she and Paolillo believed the
12 Department forms they submitted to the Department had effectuated
13 the same arrangement. The documentary evidence together with the
14 testimony in this proceeding fully supports respondents'
15 contention that they in good faith believed that Paolillo was
16 acting under Approved's corporate license. The salesperson change
17 application form submitted to the Department in January
18 inadvertently listed Umberger as Paolillo's new employer rather
19 than Approved. Umberger signed as vice-president. She was vice-
20 president of Approved. This is another indication that she
21 intended Paolillo to be under the corporate license. The
22 Department's processing of the application was delayed because
23 Umberger neglected to return a Department form certifying she
24 would exercise close supervision over Paolillo.

25 XI

26 Paolillo no longer maintains a trust account. He has
27 been in the employment of the same San Mateo broker since March

1 1989. His borrower clients pay appraisers and credit companies
2 directly.

3 Paolillo's broker exercises close supervision over his
4 activities as a real estate licensee. The broker believes that
5 Paolillo handles himself appropriately in all his real estate
6 transactions. The broker considers Paolillo to be honest and
7 trustworthy.

8 In addition to the audit described in Finding VII, the
9 Department audited Approved on two occasions and found no
10 violations.

11 XII

12 Evidence established that Umberger (1) exercised close
13 supervision over Paolillo from January 1988 to March 1, 1989; (2)
14 Umberger acted in good faith at all times, and (3) Umberger
15 violated Section 10145 of the Code and Section 2830 of the
16 Regulations by not maintaining a properly designated trust account
17 for Approved while she was its' designated officer.

18 Umberger's reputation as a mortgage loan broker is
19 outstanding. She is regarded by her peers in the industry as
20 honest, truthful and extremely competent.

21 XIII

22 It was not established that Umberger failed to exercise
23 reasonable supervision and control of the activities of Paolillo.
24 However, she was responsible for all activities of the corporate
25 licensee whether conducted by a licensed salesperson or broker or
26 any other employee. For this reason she was responsible for

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1 violations of Code Section 10145 and Regulation Sections 2830,
2 2831 and 2831.1.

3 DETERMINATION OF ISSUES

4 I

5 Approved violated Sections 10145(a) of the Code and
6 Sections 2830, 2831 and 2831.1, of the Regulations, constituting
7 cause for discipline under Section 10177(d) of the Code. Umberger
8 is responsible for such violations under Sections 10159.2(a) and
9 10177(d) and (h) of the Code.

10 Paolillo, as a salesperson, cannot be disciplined for
11 violating Code Section 10145(a) and Regulation Sections 2830,
12 2831, or 2831.1, as such sections place responsibility for
13 specified conduct upon brokers, not salespersons.

14 Paolillo violated Sections 10130 and 10137 of the Code,
15 constituting cause for discipline under Section 10177(d) of the
16 Code.

17 Evidence did not establish a violation of other Code
18 sections and Regulations alleged in the Accusation.

19 II

20 Paolillo's violation of Section 10137 of the Code was
21 inadvertent.

22 ORDER

23 1. The license and license rights of Approved Financial
Corp. is revoked.

24 2. All licenses and licensing rights of respondent Dean
D. Paolillo under the Real Estate Law are revoked; provided,
however, a restricted real estate salesperson license shall be
issued to respondent pursuant to Section 10156.5 of the Code if
respondent 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

1 restricted license issued to respondent shall be subject to all of
2 the provisions of Section 10156.7 of the Code and to the following
3 limitations, conditions and restrictions imposed under authority
4 of Section 10156.6 of the Code:

- 4 A. The restricted license issued to respondent may be
5 suspended prior to hearing by Order of the Real
6 Estate Commissioner in the event of respondent's
7 conviction or plea of nolo contendere to a crime
8 which is substantially related to respondent's
9 fitness or capacity as a real estate licensee.
- 10 B. The restricted license issued to respondent may be
11 suspended prior to hearing by Order of the Real
12 Estate Commissioner on evidence satisfactory to the
13 Commissioner that respondent has violated provisions
14 of the California Real Estate Law, the Subdivided
15 Lands Law, Regulations of the Real Estate
16 Commissioner or conditions attaching to the
17 restricted license.
- 18 C. Respondent shall not be an authorized signer on any
19 real estate broker trust account used for the
20 receipt or disbursement of trust funds received in
21 any transaction for which a real estate license is
22 required for as long as his salesperson license is
23 in a "restricted" status.
- 24 D. Respondent shall not make application to the
25 Department for a real estate broker license at any
26 time within five (5) years from the effective date
27 of this Decision.
- 28 E. Respondent shall not be eligible to apply for the
29 issuance of an unrestricted real estate license nor
30 for the removal of any of the conditions,
31 limitations or restrictions of a restricted license
32 until one (1) year has elapsed from the effective
33 date of this Decision.
- 34 F. Respondent shall submit with any application for
35 license under an employing broker, or any
36 application for transfer to a new employing broker,
37 a statement signed by the prospective employing real
38 estate broker on a form approved by the Department
39 of Real Estate which shall certify:
- 40 (1) That the employing broker has read the Decision
41 of the Commissioner which granted the right to
42 a restricted license; and
- 43 (2) That the employing broker will exercise close
44 supervision over the performance by the

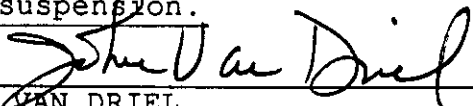
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restricted licensee relating to activities for which a real estate license is required.

G. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Commissioner that respondent 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 fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

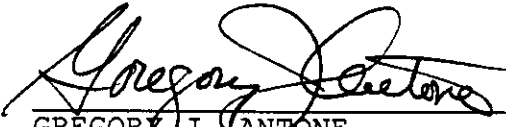
3. Respondent Kathleen Ann Umberger's real estate broker license is suspended for 15 days, provided, however, the suspension is stayed and respondent is placed on probation for six months on condition no further cause for discipline occurs during the probationary period. Upon successful completion of probation the license will be fully restored. If respondent violates probation, the Commissioner, after notice and opportunity for hearing, may reimpose the order of suspension.

DATED: 12-11-91

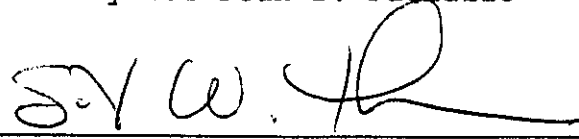

JOHN VAN DRIEL,
Counsel for Complainant

APPROVED AS TO FORM:

DATED: November 20, 1991


GREGORY J. CANTONE
Attorney for Dean D. Paolillo

DATED: 11/26/91


STEPHEN W. THOMAS
att'y for Kathleen Ann Umberger

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* * *

I have read the Stipulation In Settlement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

DATED: 20 Nov 1991

Dean D. Paolillo
DEAN D. PAOLILLO
Respondent

DATED: 12/9/91
per J. M. Thomas
we
12/11/91

Kathleen Ann Umberger
KATHLEEN ANN UMBERGER
Respondent

* * *

DECISION AND ORDER

The foregoing Stipulation and Agreement in Settlement is hereby adopted by the Commissioner as the Decision and Order of the Department and shall become effective immediately.

IT IS SO ORDERED January 2, 1992

CLARK WALLACE
Real Estate Commissioner

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

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FILED
OCT 23 1991
DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*
Lynda Montiel

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-6485 SF
DEAN D. PAOLILLO,)	
APPROVED FINANCIAL CORP., and)	OAH N-38570
KATHLEEN ANN UMBERGER,)	
Respondents.)	

NOTICE

TO: DEAN D. PAOLILLO, Respondent, and GREGORY J. ANTONE, his
Counsel
APPROVED FINANCIAL CORP., Respondent
KATHLEEN ANN UMBERGER, Respondent, and STEPHEN W. THOMAS,
her Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated September 23, 1991, of the Administrative Law Judge
is not adopted as the Decision of the Real Estate Commissioner.
A copy of the Proposed Decision dated September 23, 1991, is
attached for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein

1 including the transcript of the proceedings held on September 10,
2 1991, and any written argument hereafter submitted on behalf of
3 respondents and complainant.

4 Written argument of respondents to be considered by me
5 must be submitted within 15 days after receipt of the transcript
6 of the proceedings of September 10, 1991, at the San Francisco
7 office of the Department of Real Estate unless an extension of
8 the time is granted for good cause shown.

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

14 DATED: October 21, 1991

15 CLARK WALLACE
16 Real Estate Commissioner

17 By:

18 John R. Liberator
19 JOHN R. LIBERATOR
20 Chief Deputy Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
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DEAN D. PAOLILLO,) Case No. H-6485 SF
APPROVED FINANCIAL CORP., and)
KATHLEEN ANN UMBERGER,) OAH No. N-38570
)
)
Respondents.)
)
_____)

PROPOSED DECISION

Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 10, 1991, in San Francisco, California.

John Van Driel, Staff Attorney, represented the Department of Real Estate.

Gregory J. Antone, Attorney at Law, 2855 Campus Drive, Suite 225, San Mateo, California 94403-2511, represented respondent Dean D. Paolillo.

Stephen W. Thomas, Attorney at Law, Gagen, McCoy, McMahon & Armstrong, 279 Front Street, Danville, California 94526, represented respondent Kathleen Ann Umberger.

FINDINGS OF FACT

I

Edward V. Chiolo made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Dean D. Paolillo, Approved Financial Corp. and Kathleen Ann Umberger are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

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Paolillo was licensed as a restricted real estate salesperson by the Department on May 21, 1984 under the broker license of Eason. Paolillo terminated his employment with Eason on September 17, 1984. He renewed his employment as a salesperson on February 20, 1985 under the broker license of Sousa. Sousa's license expired February 28, 1987, thereby terminating Paolillo's employment with Sousa as a salesperson. He renewed his employment again on May 21, 1988 when he renewed his restricted sales license under the broker license of Umberger. Between February 28, 1987 and May 21, 1988 Paolillo was licensed as a real estate salesperson but was not authorized to act as such because he was not licensed under the license of a real estate broker.

IV

At all times material Umberger was licensed as a real estate broker by the Department in her individual capacity. Her individual license will expire in March 1993 unless renewed. Beginning on or about February 16, 1988 Umberger was licensed as the designated officer of Approved, a California corporation. The license as designated officer of Approved was canceled as of March 1, 1989 at Umberger's request.

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Approved was licensed by the Department as a real estate corporation beginning in July 1984. Beginning on February 16, 1988 Approved was licensed by and through Umberger as designated officer. Approved's corporate license was canceled on March 1, 1989. During the time Approved was licensed as a real estate corporation, Paolillo acted as its president and directed and controlled its operations.

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From February 16, 1988, through March 1, 1989, as the designated officer of Approved, Umberger was responsible for the supervision and control of the activities conducted on behalf of Approved by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

VII

In December 1988, an investigative audit was made by the Department on the books and records of Approved.

The following facts were ascertained by the audit.

1. For the period of at least March 1, 1988 through September 30, 1988 Approved maintained a commercial checking account #534-080-538 with Security Pacific Bank. Paolillo was the sole signatory on the account. The account was not desig-

nated as a real estate trust account on the bank signature card. Approved's checking account was used by Paolillo and Approved as a depository for all trust funds received by the company.

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3. The checking account liability for trust funds received and deposited into the Approved checking account as of September 30, 1988 was \$816.50.

4. The adjusted bank balance of the checking account as of September 30, 1988 was \$297.39, causing a trust fund shortage of \$519.11.

5. Respondents failed to maintain columnar records for the trust funds received and thereafter disbursed by respondents, in the form required by section 2831 of Title 10 of the California Code of Regulations and failed to maintain separate beneficiary records required by section 2831.1 of the Regulations.

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In the course of his association with Approved, Paolillo was engaged in the mortgage loan brokerage business for and in the name of Approved. Between February 28, 1987 and May 21, 1988 Paolillo's restricted real estate salesperson license was not appropriately registered with the Department as being under the active supervision of any licensed real estate broker. During this period Paolillo was not eligible to provide services for which a license is required. During this period Paolillo performed services for borrowers and lenders in connection with several loan transactions, for or in expectation of compensation, including the Muniz and the Wilewski loans.

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Umberger began supervising Paolillo in January 1988. She reviewed and initialed each loan application and reviewed each closed transaction.

Paolillo was the only signatory on Approved' trust account. Paolillo and Umberger were aware in January 1988 that a trust account was required to be in the name of the broker. However, because a corporate licensee was involved they believed the trust account could be in the name of the corporation and that Paolillo as president of the company could act as the signatory on the account. Umberger had never maintained a trust account.

The trust account was used solely to deposit borrowers' payments for appraisal fees and credit reports. All such trust funds were then disbursed to the appraisers and the credit reporting companies.

The trust shortage arose when Paolillo agreed with a borrower or borrowers not to charge for appraisal and credit reports. He failed to inform Approved's office assistant who mistakenly issued trust fund checks to the credit reporting company and the appraiser.

As soon as respondents discovered the shortage they immediately made up the fund shortage and shortly thereafter closed the account.

When Umberger was notified of the trust fund shortage she terminated her association with Paolillo and Approved.

The Department audited the trust account because Paolillo had petitioned to have his broker's license reinstated. Paolillo was aware that his petition would result in the audit.

The trust fund checks were clearly identified on their face as trust fund checks. The bank signature card did not identify the account as a trust account. This was purely a bank error; the account was in fact a trust account into which trust funds were deposited and from which such funds were disbursed.

X

Although Sousa's broker license expired February 28, 1987, Paolillo was in fact under the supervision of Sousa through December 1987. Paolillo was unaware that Sousa's license had expired in early 1987. Approved paid Sousa a monthly fee during 1987 for acting as its designated officer. Paolillo was in fact under the supervision of Umberger from January 1988 to March 1, 1989. The mix up occurred because the principals believed that Paolillo was acting as a salesperson under the corporate license. The Department's records indicate that Sousa was the designated officer for Approved until February 16, 1988. Sousa and Paolillo believed that that status authorized Sousa to supervise Paolillo and for Paolillo to act as a salesperson. When Umberger became the designated officer in 1988 she and Paolillo believed the Department forms they submitted to the Department had effectuated the same arrangement. The documentary evidence together with the testimony in this proceeding fully supports respondents' contention that they in good faith believed that Paolillo was acting under Approved's corporate license. The salesperson change application form submitted to the Department in January inadvertently listed Umberger as Paolillo's new employer rather than Approved. Umberger signed as vice-president. She was vice-president of Approved. This is another indication that she intended Paolillo to be under the corporate license. The Department's processing of the application was delayed because Umberger neglected to return a Department form certifying she would exercise close supervision over Paolillo.

XI

Paolillo no longer maintains a trust account. He has been in the employment of the same San Mateo broker since March 1989. His borrower clients pay appraisers and credit companies directly.

Paolillo's broker exercises close supervision over his activities as a real estate licensee. The broker believes that Paolillo handles himself appropriately in all his real estate transactions. The broker considers Paolillo to be honest and trustworthy.

In addition to the audit described in Finding VII, the Department audited Approved on two occasions and found no violations.

XII

Evidence established that Umberger (1) exercised close supervision over Paolillo from January 1988 to March 1, 1989; (2)

the trust shortage occurred as the result of a clerical error; (3) Umberger acted prudently and honestly at all times, and (4) Umberger violated section 2830 by not being the signatory on the trust account.

Umberger's reputation as a mortgage loan broker is outstanding. She is regarded by her peers in the industry as honest, truthful and extremely competent.

XIII

It was not established that Umberger failed to exercise reasonable supervision and control of the activities of Paolillo. However, she was responsible for all activities of the corporate licensee whether conducted by a licensed salesperson or broker or any other employee. For this reason she was responsible for the 10145, and the 2831 and 2831.1, violations.

DETERMINATION OF ISSUES

I

Approved violated section 10145(a) of the Business and Professions Code and Regulations 2831 and 2831.1, constituting cause for discipline under section 10177(d). Umberger is responsible for such violations under sections 10159.2(a) and 10177(d).

Paolillo, as a salesperson, cannot be disciplined for violating 10145(a), 2830, 2831, or 2831.1, as such sections place responsibility for specified conduct upon brokers, not salespersons.

Evidence did not establish a violation of section 10176(e) of the Code.

Section 2830 requires that trust accounts be in the name of the broker. The Department construes that provision as requiring the account in this case to be in Umberger's name. But the section states "in the name of the broker," not in the name of the individual or designated officer. In this case the broker was Approved Financial and the account was in the name of Approved Financial. Umberger was unaware of the Department's construction of 2830, that she had to be the signatory on the trust account. Any violation of that section was unintentional and inadvertent. Any broker, upon reading that section, might reasonably believe that the corporate licensee is authorized to be the signatory on the trust account.

Paolillo violated sections 10130 and 10137 of the Code, constituting cause for discipline under section 10177(d).

Evidence did not establish a violation of other Code sections and Regulations alleged in the Accusation.

II

Although Umberger may be technically responsible for the trust fund shortage as the broker of record, the shortage occurred as a result of a clerical error and perhaps Paolillo's failure to adequately inform the office assistant that certain payments should not be made from the trust account.

Paolillo's 10137 violation was inadvertent.

ORDER

1. The license and license rights of Approved Financial is revoked.

2. All licenses and licensing rights of respondent Dean Paolillo under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent 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 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:

- A. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- B. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent 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.
- C. Respondent 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 one year has elapsed from the effective date of this Decision.
- D. Respondent shall submit with any application for license under an employing broker, or any

not adopted

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:

- (1) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
- (2) 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.

E. Respondent shall, within six months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

3. Respondent Kathleen Umberger's real estate broker license is suspended for 15 days, provided, however, the suspension is stayed and respondent is placed on probation for six months on condition no further cause for discipline occurs during the probationary period. Upon successful completion of probation the license will be fully restored. If respondent violates probation, the Commissioner, after notice and opportunity for hearing, may reimpose the order of suspension.

DATED:

September 23, 1991.


ROBERT R. COFFMAN
Administrative Law Judge

RRC:wc

not adopted

Flag/SAC. LIC.

COPY

FILED
AUG 06 1991

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-6485 SF
)	
DEAN D. PAOLILLO,)	
APPROVED FINANCIAL CORP., and)	
KATHLEEN ANN UMBERGER,)	
)	
Respondents.)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: DEAN D. PAOLILLO

On June 3, 1988, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of May 12, 1984, in Case No. H-5331 SF. This Order granted the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business and Professions Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code.

//////

1 On April 18, 1991, in Case No. H-6485 SF, an Accusation
2 by a Deputy Real Estate Commissioner of the State of California
3 was filed charging Respondent with violation of Sections 10130,
4 10137 and 10177(d) of the Business and Professions Code
5 of the State of California.

6 NOW, THEREFORE, IT IS ORDERED under authority of
7 Section 10156.7 of the Business and Professions Code of the State
8 of California that the restricted real estate salesperson license
9 heretofore issued to Respondent and the exercise of any
10 privileges thereunder is hereby suspended pending final
11 determination made after the hearing on the aforesaid Accusation.

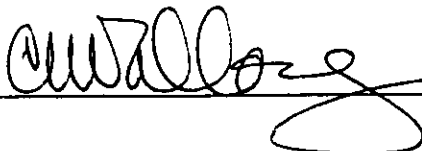
12 IT IS FURTHER ORDERED that all license certificates and
13 identification cards issued by the Department of Real Estate
14 which are in the possession of Respondent be immediately
15 surrendered by personal delivery or by mailing in the enclosed,
16 self-addressed, envelope to:

17 DEPARTMENT OF REAL ESTATE
18 ATTN: Flag Section
19 P. O. Box 187000
Sacramento, CA 95818-7000

20 This Order shall be effective immediately.

21 DATED: July 31, 1991

22
23 CLARK WALLACE
24 Real Estate Commissioner

25 
26
27

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

In the Matter of the Accusation of

DEAN D. PAOLILLO,
APPROVED FINANCIAL CORP., and
KATHLEEN ANN UMBERGER,

}

By Victoria Dillon
Victoria Dillon

Case No. H-6485 SF

OAH No. N 38570

Respondent s

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
OFFICE OF ADMINISTRATIVE HEARINGS, State Building
455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

(1/2 day hearing)

on the 10th day of September, 1991, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by 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: July 3, 1991

By John Van Driel
JOHN VAN DRIEL, Counsel
JD

1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, California 94107-1770

5 (415) 904-5917

FILED
APR 18 1991
DEPARTMENT OF REAL ESTATE

Laurie A. Zyan

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 DEAN D. PAOLILLO,)
13 APPROVED FINANCIAL CORP., and)
14 KATHLEEN ANN UMBERGER,)
15 Respondents.)

NO. H-6485 SF
ACCUSATION

16 The Complainant, EDWARD V. CHILOLO, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Accusation against DEAN D. PAOLILLO, APPROVED FINANCIAL CORP.,
19 and KATHLEEN ANN UMBERGER (Respondents) is informed and alleges
20 as follows:

21 PRELIMINARY ALLEGATIONS

22 1

23 The Complainant, EDWARD V. CHILOLO, a Deputy Real
24 Estate Commissioner of the State of California, makes this
25 Accusation in his official capacity.

26 ////////////////

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DEAN D. PAOLILLO, (PAOLILLO), APPROVED FINANCIAL CORP. (APPROVED) and KATHLEEN ANN UMBERGER (UMBERGER) are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

3

Paolillo was licensed as a restricted real estate salesperson by the Department of Real Estate of the State of California (Department) on May 21, 1984 under the broker license of Eason. Paolillo terminated his employment with Eason on September 17, 1984. He renewed his employment on February 20, 1985 under the broker license of Sousa. He terminated his employment with Sousa on February 28, 1987. He renewed his employment again on May 21, 1988 when he renewed his restricted sales license under the broker license of UMBERGER. Between February 28, 1987 and May 21, 1988 Paolillo was licensed as a real estate salesperson but was not authorized to act as such because he was not licensed under the license of a real estate broker.

4

At all times mentioned herein, UMBERGER was licensed as a real estate broker by the Department in her individual capacity. Beginning on or about February 16, 1988 UMBERGER was licensed as the designated officer of Approved, a California corporation. Said individual license will expire on March 7, 1993. Said license as designated officer of Approved will

1 expire on July 5, 1992.

2 5

3 Approved was licensed by the Department as a real
4 estate corporation beginning in July 1984. Beginning on
5 February 16, 1988 Approved was licensed by and through Umberger
6 as designated officer. Approved's corporate license will expire
7 on July 5, 1992.

8 6

9 Beginning February 16, 1988, as the designated
10 officer of Approved, Umberger was responsible for the
11 supervision and control of the activities conducted on behalf of
12 Approved by its officers and employees as necessary to secure
13 full compliance with the provisions of the Real Estate Law.

14 7

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

23 FIRST CAUSE OF ACCUSATION

24 8

25 In December 1988, an investigative audit was made by
26 the Department on the books and records of Approved.

27 The following facts were ascertained by the audit.

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1. For the period of at least March 1, 1988 through September 30, 1988 Approved maintained a commercial checking account #534-080-538 with Security Pacific National Bank. Paolillo was the sole signatory on the account. The account was not designated as a real estate trust account. Approved's checking account was used by Paolillo and Approved as a depository for all trust funds received by the company.

2. Respondents, at all times mentioned herein, acted as mortgage loan brokers in behalf of borrowers and lenders wherein borrowers and lenders were solicited for loans secured directly or indirectly by real property and loans were arranged and negotiated on behalf of others, for or in expectation of compensation.

3. The liability of Respondents for trust funds received by them and deposited into the Approved checking account as of September 30, 1988 was \$816.50.

4. The adjusted bank balance of the Approved checking account as of September 30, 1988 was \$297.39, causing a trust fund shortage of \$519.11.

5. Respondents failed to maintain columnar records and separate beneficiary ledgers for the trust funds received and thereafter disbursed by Respondents, as required by Sections 2831 and 2831.1 of Title 10 of the California Code of Regulations (Regulations).

9

The acts and/or omissions of Approved alleged in Paragraphs 2 through 8, violate Section 10145 of the Code and

1 Sections 2830, 2831 and 2831.1 of the Regulations, and
2 constitute grounds for disciplinary action under the provisions
3 of Section 10177(d) of the Code. Said acts and omissions are
4 also grounds for discipline under the provisions of Sections
5 10176(e) of the Code.

6 SECOND CAUSE OF ACCUSATION

7 10

8 There is hereby incorporated in this second, separate
9 and distinct cause of Accusation, all of the allegations
10 contained in Paragraphs 1 through 8 of the First Cause of
11 Accusation with the same force and effect as if herein fully set
12 forth.

13 11

14 In the twelve-month period from October 1, 1987 through
15 September 30, 1988, Respondents negotiated more than 20 loans
16 secured by liens on real property in an aggregate amount of more
17 than \$2,000,000 on behalf of borrowers, however, Respondents
18 failed or omitted to file with the Department the reports
19 required by Sections 10232.2 and 10232.25 of the Code.

20 12

21 The acts and/or omissions of Approved alleged in
22 Paragraph 11 violate Sections 10232, 10232.2, and 10232.25 of
23 the Code and constitute grounds for discipline under Section
24 10177(d) of the Code.

25 // // // // //

26 // // // //

27 // //

1 THIRD CAUSE OF ACCUSATION

2 13

3 There is hereby incorporated in this third, separate
4 and distinct cause of Accusation, all of the allegations
5 contained in Paragraphs 1 through 8 of the First Cause of
6 Accusation with the same force and effect as if herein fully set
7 forth.

8 14

9 In the course of his association with Approved, and at
10 all times mentioned herein, Paolillo was engaged in the mortgage
11 loan brokerage business for and in the name of Approved.
12 Between February 28, 1987 and May 21, 1988 Paolillo's restricted
13 real estate salesperson license was not under the active
14 supervision of any licensed real estate broker. During this
15 period of time, Paolillo was not eligible to provide services
16 for which a license is required, for compensation. During this
17 period of time, Paolillo performed services for borrowers and
18 lenders in connection with the following loan transactions, for
19 or in expectation of compensation and without broker
20 supervision:

21 <u>Date</u>	<u>Borrower</u>
22 March 1987	Hyde
23 June 1987	Newinger
24 March 1988	Parker
25 March 1988	Wilewski
26 May 18, 1988	Muniz
27 / / / / /	

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The acts and/or omissions of Paolillo as alleged in Paragraph 14 violate Section 10130 of the Code and are grounds for discipline under the provisions of Sections 10177(d) and 10137 of the Code. In the alternative, if Paolillo's acts as set out above were, in fact, supervised by a licensed real estate broker, Paolillo's failure to file a Notice of Change of Broker with the Department was a violation of Section 2752 of the Regulation and is grounds for discipline under Section 10177(d) of the Code.

The acts and/or omissions of Approved alleged in Paragraph 14 are grounds for discipline under the provisions of Section 10137 of the Code.

FOURTH CAUSE OF ACCUSATION

There is hereby incorporated in this fourth, separate and distinct cause of Accusation, all of the allegations contained in the First through Third Causes of Accusation with the same force and effect as if herein fully set forth.

From approximately February 1988 through the present, Umberger, by reason of her position as Designated Officer of Approved, should have known of the facts alleged in the First through Third Causes of Accusation. Her failure to exercise reasonable supervision and control of the activities of Approved and Paolillo resulted in whole or in part in the violations of

1 the Real Estate Law set forth in the First and Second Causes of
2 Accusation.

3 19

4 The acts and omissions of Umberger alleged in
5 Paragraph 18 violated Section 10159.2(a) of the Code and are
6 grounds for disciplinary action under the provisions of Section
7 10177(d) of the Code. Said acts and omissions are grounds for
8 discipline under the provisions of Section 10177(g) and/or (h)
9 of the Code.

10 PRIOR DISCIPLINARY ACTION

11 20

12 Paolillo was issued a real estate broker license on or
13 about January 10, 1980. On or about May 14, 1984 Paolillo's
14 broker license was revoked with the right to a restricted sales
15 license in Accusation case #H-5331 SF for violations of Code
16 Sections 10145, 10176(a), 10176(i), 10177(d), 10177(f) and
17 10177(j).

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

25 *Edward V. Chiolo*

26 EDWARD V. CHIOLO
27 Deputy Real Estate Commissioner

Dated at San Francisco, California
this 26th day of MARCH, 19 91.