

COPY

*Flag
Sac*

FILED
MAY 04 1993
R2

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

By *Victoria Dillon*
Victoria Dillon

In the Matter of the Accusation of)
FIRST UNION INVESTMENT CORP.,)
JOHN LEONARD WORTHING and)
JAMES RUDOLPH CASTELLANOS,)
Respondent (s).)

No. H-6622 SF
OAH N 40546

DECISION

The Proposed Decision dated March 29, 1993
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 24, 19 93.

IT IS SO ORDERED April 20, 19 93.

CLARK WALLACE
Real Estate Commissioner

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

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
of:)	
)	Case No.: H-6622 SF
FIRST UNION INVESTMENT CORP.)	
JOHN LEONARD WORTHING and)	OAH No.: N 40546
JAMES RUDOLPH CASTELLANOS,)	
)	
Respondents.)	
<hr/>		

PROPOSED DECISION

This matter was heard before Jonathan Lew, Administrative Law Judge, State of California, Office of Administrative Hearings on February 19, 1993, in San Francisco, California.

The Department of Real Estate was represented by John Van Driel, Counsel.

Respondent John Leonard Worthing was present and represented by Ronald P. Albert, Attorney at Law, Griffinger, Freed, One Market Plaza #2400, San Francisco, California.

Respondent James Rudolph Castellanos was present and represented himself and First Union Investment Corporation.

The matter was held open for submission of written closing arguments. The Department's closing brief was received on February 23, 1993, and marked as Exhibit 18 for identification. Respondent James Rudolph Castellanos' brief was received on March 3, 1993, and marked as Exhibit D for identification. The matter was thereafter submitted.

FINDINGS OF FACT

I

Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California Department of Real Estate (Department) made and issued the Accusation in his official capacity, and not otherwise.

II

First Union Investment Corporation (First Union), John Leonard Worthing (Worthing) and James Rudolph Castellanos (Castellanos), are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

At all times relevant herein, First Union was a real estate corporation licensed by the Department and acting by and through its designated officer, who was Worthing through December 6, 1988, and Castellanos between December 6, 1988 and May 28, 1992. First Union's real estate corporation license expired on May 28, 1992.

Worthing is licensed by the Department as a real estate broker in his individual capacity. His license was due to expire April 19, 1992, and was thereafter renewed through April 19, 1996. Worthing's license as designated officer of First Union expired on December 6, 1988.

Castellanos was licensed as a real estate broker in his individual capacity, which license expired on November 28, 1992. His license as designated officer of First Union expired on May 28, 1992.

III

At hearing the Department elected to pursue the Accusation only with respect to Respondents First Union and Castellanos. The disposition of the Accusation matters in respect to Respondent Worthing are to be handled separately and independent of this administrative hearing.

IV

At all times relevant herein, McKay Florence (Florence) and Francis Rogers (Rogers) were employed by First Union and were licensed as real estate salespersons. They were under the supervision of the designated officer of First Union.

During the respective times of responsibility as the designated officers of First Union, Worthing and Castellanos were responsible for the supervision and control of the activities conducted on behalf of First Union by its officers, employees and licensees as necessary to secure full compliance with the provisions of the Real Estate Law.

V

First Union was founded in 1984 by Worthing and Castellanos. Worthing initially served as president and designated officer of First Union, and Castellanos served as the chief

financial officer for the corporation. They each had a half interest in the business. First Union brokered commercial investment properties for both sellers and buyers.

Worthing and Castellanos agreed that it was not in their interests to continue together in business, and on September 30, 1988, Worthing separated from First Union and ceased any active involvement in, or supervision of, its operations. At the time of Worthing's departure, Castellanos was a real estate salesperson preparing to take his real estate broker's examination. There was no other real estate broker present to supervise activities in place and stead of Worthing.

Officially, Worthing remained the designated officer of First Union, and continued on its payroll through December 1988. However, he was never physically present to supervise corporate transactions or review matters as the designated officer. Prior to his departure Worthing advised Castellanos of his obligation to obtain a broker's license, and it was understood that even during the interim period prior to licensure Castellanos would be the de facto supervisor or "designated officer" of the corporation. The purpose for continuing Worthing's registration with the Department as the designated officer of the corporation was to help the corporation function smoothly and to close existing transactions until Castellanos received his broker's license. A corporate license application to substitute Castellanos as the designated broker officer was received by the Department on December 6, 1988.

It was established that from September 30, 1988 through December 5, 1988, Castellanos performed daily supervision and other responsibilities with First Union Investment Corporation normally associated with the corporation's designated broker officer duties, and for which a real estate license was required.

VI

On July 26, 1988, Thomas Kerr listed his property located at 1200 El Camino Avenue, Sacramento, California with Francis Rogers, a real estate salesperson and agent of First Union. The property consisted of a sixty-eight space mobile home park with an asking price of \$800,000.00.

On November 3, 1988, McKay Florence, also a real estate salesperson and agent of First Union, obtained a full price offer from Albert and Suzuko Fujimoto to purchase the property. The offer provided for a cash down payment of \$250,000.00 with the balance of \$550,000.00 to be financed through a promissory note in favor of Thomas Kerr. The Fujimotos delivered \$5,000.00 to Florence as a good faith deposit in the form of a personal check made payable to First Union Investment Corporation. The check was post-dated November 7, 1988, and deposited into First Union's trust account on November 8, 1988. At the time that the offer

was presented to Thomas Kerr on November 4, 1988, he was not advised that the good faith deposit was in the form of a post-dated check.

VII

On November 4, 1988, Kerr and the Fujimotos agreed to and executed a real property purchase agreement consisting of the Fujimotos' original offer together with five amendments set forth in two addendums to the agreement. Among other things, the agreement provided that the Fujimotos would have twelve days to review and approve specified documents, all made available by Kerr, and to deliver to Kerr or his agent a written statement approving the documents. If written approval was not provided by the Fujimotos and if title not accepted within fifteen days of the agreement's effective date, the agreement was to terminate and the deposit was to be returned to the Fujimotos.

On November 17, 1988, the Fujimotos submitted a signed Addendum to Real Purchase Agreement and Deposit Receipt to Kerr. The Addendum was prepared by First Union through its agent or employees and contained seven additional amendments to the real property purchase agreement. The amendments proposed substantial modification of the terms of the original purchase agreement, including a reduction in the cash down payment, modified financing terms and a \$10,000.00 credit in favor of the Fujimotos for miscellaneous repairs.

VIII

Amendment #7 of the November 17, 1988 Addendum specified that:

"Buyer has reviewed and inspected contingency items in paragraph six (6) of the Agreement and hereby approves and removes these items as contingencies to the Purchase. Furthermore, the undersigned Buyer and Seller hereby instruct Broker to deliver to escrow holder any Deposits pertaining to Agreement held in Broker's Trust Account."

Paragraph six (6) of the agreement references the document and inspection contingencies described in Finding VII. Kerr understood Amendment #7 of the November 17, 1988 Addendum to unilaterally remove the document and inspection contingencies in paragraph six (6) of the real property purchase agreement.

Accordingly, on November 21, 1988, he wrote a letter to Frank Rogers instructing First Union to increase the deposit to \$30,000.00 and to transfer all deposits to the escrow holder under the terms of the agreement. Kerr expressly rejected the remaining six amendments set forth in the November 17, 1988 Addendum, and never signed the Addendum where indicated to

acknowledge his acceptance of same. He rejected any attempts by the Fujimotos to renegotiate terms of the original agreement, and essentially accepted the representations in Amendment #7 as written notice that all document and inspection contingencies had been removed as of that date.

IX

Albert Fujimoto communicated to Kerr in a letter dated November 30, 1988, that the intent of the November 17, 1988 Addendum was to remove document and inspection contingencies subject to the changes in amendments 6, 8, 10, 11 and 12. Fujimoto averred that he could not accept the original financing terms and that he had instructed his agent to return his \$5,000.00 deposit. This letter was hand delivered to Kerr during a meeting that he had with Frank Rogers and Donald W. Atkinson, president and manager of First Union's San Francisco office. An attempt was made to persuade Kerr to go along with Fujimoto's proposed amendments.

On December 1, 1988, Kerr reiterated in a letter to Frank Rogers and First Union Investment Corporation that it was his position that the document and inspection contingencies had been removed and that he was instructing First Union Investment Corporation as his agent to transfer the deposit and increased deposit to the escrow holder as provided by the purchase agreement.

X

On December 5, 1988, check number 1162 made payable to Albert Fujimoto in the amount of \$5,000.00 and drawn from First Union Investment Corporation's trust account was released by First Union. This deposit was returned to the Fujimotos without the knowledge or consent of Kerr.

It was established that funds held in trust by First Union were disbursed against the instructions of one party (Kerr) to the transaction at a time when there existed a dispute over who held title to such funds. Whether or not the Fujimotos actually removed the contingencies, or whether such removal was subject to acceptance of additional terms and conditions, it remained unclear whether title to the deposit had passed from the Fujimotos to Kerr. Under these circumstances, deposits should have remained in trust or in escrow until the legal question of title was resolved.

XI

The Fujimoto/Kerr transaction was overseen by Donald Atkinson, who reviewed all files for the San Francisco office. He is not a real estate broker and there was no written delegation authorizing him to review files. Neither Worthing or

Castellanos had any knowledge of or involvement in the transaction. Castellanos was unaware of the dispute until an investigative audit was performed by the Department in 1990.

XII

On July 26, 1990, Department auditor John Monroe examined First Union Investment Corporation records for the period November 1, 1988 through June 30, 1990. Trust account records, check books, control accounts, bank statements, canceled checks, listing and sales files, licenses and broker salesperson agreements were reviewed for compliance with Department regulations.

As of June 30, 1990, First Union maintained a real estate trust account with Pacific Western Bank in San Jose, California designated as Account No. 80-002529-9. In respect to First Union's trust fund accountability and balances, it was established that:

1. Separate beneficiary records were not maintained. Because of this, no reconciliation between the control account and the separate beneficiary records was possible.
2. After November 29, 1989, the record of trust funds received and placed into the broker's trust account (control account) was incomplete. All of the receipts and disbursements were not recorded, and a daily balance was not maintained. The dates on which trust funds were received and disbursed were not recorded.
3. There were no records maintained of all trust funds received but not placed into the broker's trust account.

XIII

Over the period that Worthing acted as the designated officer of First Union, he failed to initial and date documents prepared or signed by his agents which had a material effect on the rights or obligations of the parties to the Kerr/Fujimoto transaction. Specifically, he failed to review the July and November documents prepared by his agents in connection with the 1200 El Camino Avenue property transaction.

Over the period that Castellanos acted as the designated officer of First Union, he failed to initial and date documents prepared or signed by his agents which had a material

effect on the rights or obligations of principal parties in the following transactions:

<u>Date</u>	<u>Party</u>	<u>Property</u>
07/89	Siegle	514-518 W. MacArthur, Oakland
09/89	Mitchell/ Siegle	514-518 W. MacArthur, Oakland
09/89	Kelly	6309 Baine, Newark
10/89	Kelly/Medonca	6309 Baine, Newark

XIV

During the course of the audit, John Monroe asked to see a list of all current agents employed by First Union. Three names (Steven Borch, Kevin Butt and James Miller) appeared that were not reported to the Department as being agents, and ten names appeared that had not been forwarded to the Department as salespersons who had been terminated.

Of the three unreported agents, it was established that Steven Borch and James Miller were not employed by First Union as of June 30, 1989, and that the third, Kevin Butt, had only worked as a college intern essentially performing research for one of the agents. He apparently performed no work for which a real estate license was required.

XV

It was established that the following six salespersons had been terminated from employment with First Union without immediate written notification to the Department:

- | | |
|-----------------|-----------------|
| 1. Gary Boss | 4. Chris Morris |
| 2. Davi Herrera | 5. Paul Radich |
| 3. Daniel Lew | 6. David Snider |

Two other individuals named in the Accusation as having been terminated, James Peluso and Joseph Sorrentino, were still employed with First Union as of June 30, 1989. They each had a change in payroll status that was misconstrued to be a termination.

XVI

Castellanos acknowledges the problems found during the Department's audit respecting trust account record keeping and timely reporting of personnel changes to the Department. He

explains that First Union was in the midst of a major down sizing of operations. The corporation went from a peak in 1987-88 of twenty staff and fifty-five salespersons, to a staff of five and eighteen salespersons over a fifteen month period. By December 1989, the San Francisco office of First Union was closed, and sometime in 1991, the San Jose location was closed.

Currently, Castellanos owns and operates his own apartments. He has allowed his license to expire. He no longer has occasion to maintain monies for clients in trust accounts. And First Union Investment Corporation is no longer active in the brokerage business.

XVII

In connection with the above Findings, and over the period that Castellanos was the designated officer of First Union, it was established that he failed to exercise reasonable supervision and control of activities of First Union and its agents for which a real estate license is required. Castellanos should have known of the above problems that occurred over the period of his responsibility, and should have taken the actions necessary to assure compliance of First Union and its agents and employees with the Real Estate Law and Regulations. He demonstrated negligence or incompetence in his failure to do so.

DETERMINATION OF ISSUES

First Union Investment Corporation

I

Cause for disciplinary action against Respondent First Union under Business and Professions Code sections 10145 and 10177(d), and section 2832, Title 10 California Code of Regulations (CCR) exists, by reason of the matters set forth in Findings VI through X. Funds deposited in trust were not maintained there until disbursed in accordance with instructions from the person entitled to said funds. This occurred at a time when uncertainty existed over who held title to these trust funds.

II

Cause for disciplinary action against Respondent First Union under Business and Professions Code section 10177(d), and sections 2831, 2831.1 and 2831.2 of Title 10 CCR exists, by reason of the matters set forth in Finding XII.

III

Cause for disciplinary action against Respondent First Union under Business and Professions Code sections 10177(d) and 10161.8 exists, by reason of the matters set forth in Findings XIV and XV.

James Castellanos

IV

No cause for disciplinary action against Respondent Castellanos under Business and Professions Code section 10145, and Title 10 CCR section 2832 exists, by reason of the matters set forth in Findings X and XI. Castellanos officially became the designated officer of First Union on December 6, 1988, one day after the deposits in trust were returned in connection with the Kerr/Fujimoto transaction. Even though Castellanos purportedly served as the de facto designated officer over the two months prior, liability for mishandling of trust funds accepted by a broker would not technically apply to him.

V

Cause for disciplinary action against Respondent Castellanos under Business and Professions Code section 10177(d), and Title 10 CCR sections 2831, 2831.1 and 2831.2 exists, by reason of the matters set forth in Finding XII.

VI

Cause for disciplinary action against Respondent Castellanos under Business and Professions Code section 10177(d), and Title 10 CCR section 2725(a) exists, by reason of the matters set forth in Finding XIII.

VII

Cause for disciplinary action against Respondent Castellanos under Business and Professions Code sections 10177(d) and 10161.8 exists, by reason of the matters set forth in Findings XIV and XV.

VIII

Cause for disciplinary action against Respondent Castellanos under Business and Professions Code sections 10177(g) and (h) exists, by reason of the matters set forth in Finding XVII.

ORDER

I

All real estate licenses and licensing rights issued to Respondent First Union Investment Corporation by the Department of Real Estate are revoked pursuant to Determination of Issues I through III, separately and for all of them.

II

All real estate licenses and licensing rights issued to Respondent James Rudolph Castellanos by the Department of Real Estate are revoked pursuant to Determination of Issues V through VIII, separately and for all of them.

III

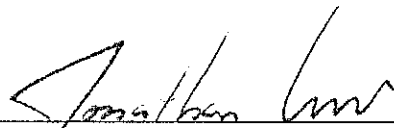
However, a restricted real estate broker license shall be issued to Respondent Castellanos pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days 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:

1. 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.
2. 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.
3. 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 two (2) years have elapsed from the effective date of this Decision.

4. Respondent shall, within six (6) 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 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. Respondent shall, within six months from the effective date of the restricted license, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until Respondent passes the examination.

DATED: March 29 1993



JONATHAN LEW
Administrative Law Judge

COPY

*Reg
Jab
X 2*

FILED
MAR 03 1993

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

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)	No. H-6622 SF
)	
FIRST UNION INVESTMENT CORP.,)	
JOHN LEONARD WORTHING and)	
JAMES RUDOLPH CASTELLANOS,)	
)	
Respondents.)	

DISMISSAL

The Accusation herein filed on January 15, 1992 against Respondent JOHN LEONARD WORTHING only, is DISMISSED.

IT IS SO ORDERED this 2 day of March

1993.

CLARK WALLACE
Real Estate Commissioner

[Signature]

Blay

COP.

FILED

JAN 15 1992

JOHN VAN DRIEL, Counsel
DEPARTMENT OF REAL ESTATE
185 Berry Street, Room 3400
San Francisco, California 94107-1770

DEPARTMENT OF REAL ESTATE

By *Maria Tuleala*

(415) 904-5917

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
FIRST UNION INVESTMENT CORP.,)	NO. H- 6622 SF
JOHN LEONARD WORTHING and)	
JAMES RUDOLPH CASTELLANOS,)	<u>ACCUSATION</u>
Respondents.)	

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against FIRST UNION INVESTMENT CORPORATION, JOHN LEONARD WORTHING, and JAMES RUDOLPH CASTELLANOS, is informed and alleges as follows.

I

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity and not otherwise.

II

FIRST UNION INVESTMENT CORPORATION (First Union), JOHN LEONARD WORTHING (Worthing) and JAMES RUDOLPH CASTELLANOS

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

4 III

5 At all times mentioned herein, First Union was a real
6 estate corporation licensed by the Department and acting by and
7 through its designated officer, who was Worthing through
8 December 6, 1988 and Castellanos on and after December 7, 1988.
9 First Union's real estate corporation license expires on May 28,
10 1992.

11 IV

12 Worthing is licensed as a real estate broker in his
13 individual capacity and his license expires on April 19, 1992.
14 His license as designated officer of First Union expired on
15 December 7, 1988.

16 V

17 Castellanos is licensed as a real estate broker in his
18 individual capacity and his license expires on November 28,
19 1992. His license as designated officer of First Union expires
20 on May 28, 1992.

21 VI

22 At all times mentioned herein, McKay Florence
23 (Florence) and Francis Rogers (Rogers) were employed by First
24 Union and were licensed as real estate salespersons.

25 VII

26 During their respective times of responsibility, as
27 the designated officers of First Union, Worthing and Castellanos

1 were responsible for the supervision and control of the
2 activities conducted on behalf of First Union by its officer,
3 employees and licensees as necessary to secure full compliance
4 with the provisions of the Real Estate Law.

5 VIII

6 Whenever reference is made in an allegation in this
7 Accusation to acts or omissions of First Union, such allegation
8 shall be deemed to mean that the officers, directors, employees,
9 agents and real estate licensees employed by or associated with
10 First Union committed such acts or omissions while engaged in
11 furtherance of the business or operation of First Union and
12 while acting within the course and scope of their corporate
13 authority and employment.

14 FIRST CAUSE OF ACCUSATION

15 IX

16 On or about July 26, 1988, Thomas Kerr (Seller) listed
17 his property located at 1200 El Camino Avenue, Sacramento,
18 California (the property) with Rogers who acted as an agent of
19 First Union.

20 X

21 On or about November 3, 1988, Florence, also acting as
22 an agent of First Union, obtained an offer from Albert and
23 Suzuko Fujimoto (Buyer) to purchase the property. Along with
24 the offer, Buyer delivered to Florence a good faith deposit (the
25 deposit) in the form of a personal check in the amount of \$5000
26 made payable to First Union and post-dated November 7, 1988.
27 The deposit was "trust funds" as that term is defined in Section

1 10145 of the Code.

2 XI

3 Florence presented Buyers' offer to Rogers in behalf
4 of Seller on or about November 4, 1988. At the time Florence
5 presented Buyers' offer to Rogers, Florence did not tell Rogers
6 or Seller that the deposit was in the form of a post-dated
7 check.

8 XII

9 On or about November 7, 1988, Buyer and Seller agreed
10 to the terms of a contract for the sale of the property and
11 signed the purchase agreement and two addenda (the contract).
12 Buyer was required by the terms of the contract to remove all
13 inspection and document contingencies on or before November 17,
14 1988. The contract stated that if said contingencies were not
15 removed in writing in a timely manner, the deposit would be
16 returned to Buyer.

17 XIII

18 On or about November 17, 1988, Buyer signed and
19 submitted an "Addendum to Real Purchase Agreement and Deposit
20 Receipt" (Addendum) to Seller. The Addendum was prepared by
21 First Union and/or its agents or employees. Buyer's intended
22 purpose of the Addendum was to modify several terms of the
23 contract. In addition to the proposed modifications, as
24 "Amendment No. 7" of the Addendum, Buyer stated:

25 "Buyer has reviewed and inspected contingency items in
26 paragraph six (6) of the Agreement and hereby approves and
27 removes these items as contingencies to the Purchase.
Furthermore, the undersigned Buyer and Seller hereby instruct
Broker to deliver to escrow holder any Deposits pertaining to
Agreement held in Broker's Trust Account."

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

XVII

The acts and/or omissions of First Union as alleged above violate Section 10145 of the Code and Section 2832 of the Regulations and are grounds for discipline under Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

XVIII

Paragraphs I through XVII are incorporated herein.

XIX

In July 1990 an investigative audit (audit) was performed by the Department on the books and records of First Union. The following facts were ascertained by the audit:

a - As of June 30, 1990 First Union maintained a real estate trust account with Pacific Western Bank, San Jose, California designated as Account #80-002529-9 (the trust account).

b - As of June 30, 1990 First Union failed to maintain the records of trust funds required by Sections 2831, 2831.1 and 2831.2 of the Regulations.

c - While Worthing acted as the designated officer of First Union, he failed to initial and date documents prepared or signed by his agents which had a material effect on the rights or obligations of a party to the transaction (who was First Unions' principal) in the following transactions:

<u>Date</u>	<u>Party</u>	<u>Property</u>
07/88	Kerr	1200 El Camino, Sacramento
11/88	Kerr/Fujimoto	1200 El Camino, Sacramento

1 d - While Castellanos acted as the designated officer
2 of First Union, he failed to initial and date documents prepared
3 or signed by his agents which had a material effect on the
4 rights or obligations of a party to the transaction (who was
5 First Unions' principal) in the following transactions:

6 <u>Date</u>	<u>Party</u>	<u>Property</u>
7 07/89	Siegle	514-518 W. McArthur, Oakland
8 09/89	Mitchell/ 9 Siegle	514-518 W. McArthur, Oakland
10 09/89	Kelly	6309 Baine, Newark
11 10/89	Kelly/Medonca	6309 Baine, Newark

12 e - As of June 30, 1989, First Union employed the
13 following salespersons and failed to notify the Department of
14 said employment immediately and in writing:

15 Steven Borch

16 Kevin Butt

17 James Miller

18 f - As of June 30, 1989, the following salespersons
19 had been terminated from the employment of First Union without
20 immediate written notification to the Department:

21 G. Boss

J. Peluso

22 D. Herrera

P. Radich

23 D. Lew

D. Snider

24 C. Morris

J. Sorrentino

25 XX

26 The acts and/or omissions of Respondents as set out in
27 Paragraph XIX violated Sections of the Code (BPC) and

1 Regulations (Reg.) and are grounds for discipline as follows:

2 <u>Paragraph</u>	<u>Respondent</u>	<u>Violation</u>	<u>Cause for Discipline</u>
3 XX b.	First Union & Castellanos	Reg. 2831, 2831.1, 2831.2	BPC 10177(d)
4 XX c.	Worthing	Reg. 2725(a)	BPC 10177(d)
5 XX d.	Castellanos	Reg. 2725(a)	BPC 10177(d)
6 XX e. & f.	First Union & Castellanos	BPC 10161.8	BPC 10177(d)

7
8
9 THIRD CAUSE OF ACCUSATION

10 XXI

11 Paragraphs I through XX are incorporated herein.

12 XXII

13 In connection with the allegations as set out above,
14 Castellanos failed to exercise reasonable supervision and
15 control of the activities of First Union and its agents for
16 which a real estate license is required during his period of
17 responsibility and was negligent or incompetent in performing
18 acts for which a real estate license is required, in that he
19 knew or should have known all the facts set forth above which
20 occurred during the period of his responsibility and that he
21 could have and should have taken the actions necessary to assure
22 the compliance of First Union and its agents and employees with
23 the Real Estate Law and Regulations.

24 XXIII

25 In connection with the allegations as set out above,
26 Worthing failed to exercise reasonable supervision and control
27 of the activities of First Union and its agents for which a real

1 estate license is required during this period of responsibility
2 and was negligent or incompetent in performing acts for which a
3 real estate license is required, in that he knew or should have
4 known all the facts set forth above which occurred during the
5 period of his responsibility and that he could have and should
6 have taken the actions necessary to assure the compliance of
7 First Union and its agents and employees with the Real Estate
8 Law and Regulations.

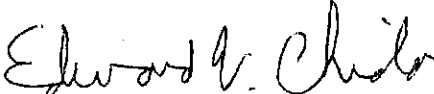
9
10 XXIV

11 Castellanos' acts and/or omissions alleged in
12 Paragraph XXII constitute grounds for disciplinary action under
13 the provisions of Sections 10177(g) and/or (h) of the Code.

14 XXV

15 Worthing's acts and/or omissions alleged in Paragraph
16 XXIII constitute grounds for disciplinary action under the
17 provisions of Sections 10177(g) and/or (h) of the Code.

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 

26 EDWARD V. CHIOLO
27 Deputy Real Estate Commissioner

Dated at San Francisco, California

this 15th day of JANUARY, 1992.