

FILED  
SEP 21 2000

DEPARTMENT OF REAL ESTATE

By Shelly Ely

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 )	
GEORGE MATHEWS COLACICCO, )	No. H-6648 SF
Respondent. )	

ORDER GRANTING REINSTATEMENT OF LICENSE

On November 2, 1992, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on December 23, 1992, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent.

On March 26, 1999, Respondent petitioned for reinstatement of said real estate salesperson 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 and the  
2 evidence and arguments in support thereof including Respondent's  
3 record as a restricted licensee. Respondent has demonstrated to  
4 my satisfaction that Respondent meets the requirements of law for  
5 the issuance to Respondent of an unrestricted real estate  
6 salesperson license and that it would not be against the public  
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's  
9 petition for reinstatement is granted and that a real estate  
10 salesperson license be issued to Respondent if Respondent  
11 satisfies the following conditions within nine months from the  
12 date of this Order:

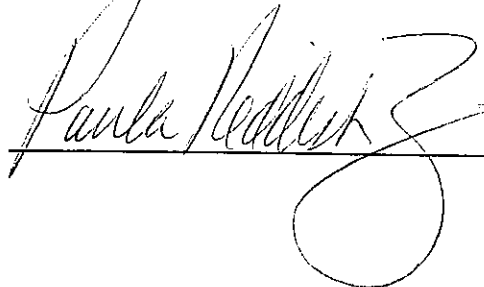
13 1. Submittal of a completed application and payment of  
14 the fee for a real estate salesperson license.

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

20 This Order shall be effective immediately.

21 DATED: August 18, 2000

23 PAULA REDDISH ZINNEMANN  
24 Real Estate Commissioner

25   
26  
27

*Flay*

**COPY FILED**

MAR 16 1993

DEPARTMENT OF REAL ESTATE

*Maria J. [Signature]*

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-6648 SF
)	)
AALL REAL ESTATE )	OAH NO.N-40507
FINANCIAL SERVICES, )	)
RAY EUGENE WAGENKNECHT, )	)
GEORGE MATHEWS COLACICCO )	)
and <u>CHARLES CASTAGNOLO,</u> )	)
)	)
Respondents. )	)

**DECISION AFTER REJECTION**

The matter came on for hearing before Jerry Mitchell, Administrative Law Judge of the Office of Administrative Hearings, in San Francisco, California, on September 29, 1992.

David B. Seals, Counsel, represented the Complainant.

RAY EUGENE WAGENKNECHT, GEORGE MATHEWS COLACICCO and CHARLES CASTAGNOLO, each represented themselves. AALL REAL ESTATE FINANCIAL SERVICES (hereinafter "AALL") was not represented.

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

1           On October 6, 1992, the Administrative Law Judge  
2 submitted a Proposed Decision which I adopted as my decision as to  
3 all Respondent's except CHARLES CASTAGNOLO. As to Mr. CASTAGNOLO  
4 I declined to adopt the Decision of the Administrative Law Judge  
5 as my Decision herein. Pursuant to Section 11517(c) of the  
6 Government Code of the State of California, Respondent CHARLES  
7 CASTAGNOLO was served with notice of my determination not to adopt  
8 the Proposed Decision of the Administrative Law Judge along with a  
9 copy of said Proposed Decision. Respondent CHARLES CASTAGNOLO was  
10 notified that the case would be decided by me upon the record, the  
11 transcript of proceedings held on September 29, 1992, and upon any  
12 written argument offered by Mr. CASTAGNOLO.

13           Respondent CASTAGNOLO and Complainant both submitted  
14 written argument.

15           I have given careful consideration to the record in this  
16 case including the transcript of the proceedings of September 29,  
17 1992.

18           The following shall constitute the Decision of the Real  
19 Estate Commissioner in this proceeding:

20                           FINDINGS OF FACT

21                           I

22           Complainant, Edward V. Chiolo, a Deputy Real Estate  
23 Commissioner of the State of California, made the First Amended  
24 Accusation against Respondent CHARLES CASTAGNOLO in his official  
25 capacity and not otherwise.

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

The First Amended Accusation was orally amended to change the figure "14" to "10" on page 7, line 19.

III

At all times relevant hereto, Respondent CHARLES CASTAGNOLO was licensed as a real estate broker, and Respondent AALL was licensed as a real estate corporation, with Respondent CHARLES CASTAGNOLO as its designated officer.

IV

At all times pertinent hereto, Respondent RAY EUGENE WAGENKNECHT was licensed as a real estate salesperson and was the president, chief executive officer, and fifty-one percent owner of Respondent AALL, which was at all such times licensed as a real estate corporation.

V

Respondent GEORGE MATHEWS COLACICCO is presently licensed as a real estate salesperson. However, he was not licensed prior to March 5, 1991.

VI

The acts and omissions of AALL hereafter set forth were done or omitted under the direction of WAGENKNECHT and CASTAGNOLO.

VII

In April 1989, AALL hired COLACICCO, whom WAGENKNECHT and CASTAGNOLO knew to be unlicensed, to work on a commission basis negotiating loans secured by real property. Between April 1989 and May 31, 1990, COLACICCO negotiated at least ten such

1 loans for AALL. During 1989, he received \$38,000 in commissions  
2 from AALL for negotiating such loans.

3 VIII

4 On or about November 30, 1989, AALL received \$320 on  
5 behalf of prospective borrowers Martin and Debra Fiedler to cover  
6 the costs of an appraisal and credit report in connection with the  
7 possible refinancing of their residence. The money had been  
8 requested by COLACICCO, who told the Fiedlers that any portion not  
9 used would be refunded to them. On or about February 8, 1990, the  
10 Fiedlers canceled their loan application and requested that their  
11 money be refunded. Although the Fiedlers' property had never been  
12 appraised, CASTAGNOLO countermanded COLACICCO and allowed only \$25  
13 to be refunded to the Fiedlers, with the explanation that the  
14 remaining \$295 was being retained by AALL as "a processing fee."  
15 The Fiedlers had not been informed of, nor did they agree to pay,  
16 any such fee.

17 IX

18 Between September 9, 1988 and May 31, 1990, AALL  
19 deposited into a bank account that was not a trust fund account,  
20 advance fees totaling \$4,117.46 that it received from prospective  
21 borrowers for appraisals and credit reports, as well as \$21,456.75  
22 of its own funds, thereby commingling the two types of funds.

23 X

24 Between September 9, 1988 and May 31, 1990, AALL failed  
25 to keep the records required by Sections 2831.1, Title 10,  
26 California Code of Regulations (hereinafter "the Regulations") and  
27

1 was therefore unable to reconcile them as required by Section  
2 2831.2 of the Regulations.

3 XI

4 AALL collected the advance fees described in Findings  
5 VIII and IX without an advance fee agreement approved by the  
6 Department of Real Estate (hereinafter "Department").

7 XII

8 In 1988 and 1989, in connection with 20 loans made by  
9 AALL and secured by real property, AALL failed to provide to its  
10 borrowers the mortgage loan disclosure statements required by  
11 Section 10240 of the Code.

12 XIII

13 Between September 9, 1988 and August 16, 1989, AALL  
14 negotiated 26 loans, directly or collaterally secured by liens on  
15 real property, in an aggregate amount of \$3,789,350, pursuant to  
16 Sections 10131(d) and 10131.1 of the Code, as agent for others,  
17 thereby meeting the criteria of subdivision (a) of Section 10232  
18 of the Code, and failed to notify the Department of that fact or  
19 file a trust fund status report within 30 days.

20 XIV

21 CASTAGNOLO asserts that he held an innocently mistaken  
22 belief that AALL did not have to maintain a trust account for  
23 processing fees, provide the disclosure statement required by  
24 Section 10240 of the Code, or comply with the threshold broker  
25 provisions of Section 10131 et seq. of the Code. By way of  
26 rehabilitation, a trust fund account was promptly established when  
27

1 the need for one was brought to the attention of WAGENKNECHT and  
2 CASTAGNOLO by the Department.

3 DETERMINATION OF ISSUES

4 I

5 By reason of the facts set forth in Findings IV, VI and  
6 VII cause exists for disciplinary action against Respondent  
7 CASTAGNOLO under Section 10137 of the Code.

8 II

9 The facts set forth in Finding IX constitute violation  
10 of Sections 10145(a) and 10146 of the Code and Section 2830 of the  
11 Regulations and, by reason of Findings IV and VI, establish cause  
12 for disciplinary action against Respondent CASTAGNOLO under  
13 Sections 10176(e) and 10177(d) of the Code.

14 III

15 The facts set forth in Finding X constitute violation of  
16 Sections 2831.1 and 2831.2 of the Regulations and, by reason of  
17 Findings IV and VI, establish cause for disciplinary action  
18 against Respondent CASTAGNOLO under Section 10177(d) of the Code.

19 IV

20 The facts set forth in Finding XI constitute a violation  
21 of Section 10085 of the Code and, by reason of Findings IV and VI,  
22 establish cause for disciplinary action against Respondent  
23 CASTAGNOLO under that section.

24 V

25 The facts set forth in Finding XII constitute violations  
26 of Section 10240 of the Code and, by reason of Findings IV and VI,  
27



1 establish cause for disciplinary action against Respondent  
2 CASTAGNOLO under Section 10177(d) of the Code.

3 VI

4 The facts set forth in Finding XIII constitute  
5 violations of Section 10232(f) and 10232.25 of the Code and, by  
6 reason of Findings IV and VI, establish cause for disciplinary  
7 against Respondent CASTAGNOLO under Section 10177(d) of the Code.

8 ORDER

9 I

10 All real estate licenses and licensing rights heretofore  
11 issued to Respondent CHARLES CASTAGNOLO by the Department of Real  
12 Estate are revoked; provided, however, that a restricted real  
13 estate salesperson's license shall be issued to said Respondent  
14 pursuant to Section 10156.5 of the Business and Professions Code  
15 if he makes application therefore within ninety (90) days from  
16 the effective date of this decision. The restricted license shall  
17 be subject to all of the provisions of Section 10156.7 of the  
18 Business and Professions Code and to the following limitations,  
19 conditions and restrictions imposed under authority of Section  
20 10156.6 of that Code:

- 21 A. The restricted license shall be suspended for  
22 the first ninety (90) days following its  
issuance.
- 23 B. The restricted license may be suspended prior  
24 to hearing by order of the Real Estate  
25 Commissioner in the event of Respondent's  
26 conviction or plea of nolo contendere to a  
27 crime which bears a significant relationship to  
his fitness or capacity as a real estate  
licensee.

1 C. The restricted license may be suspended prior  
2 to hearing by order of the Real Estate  
3 Commissioner on evidence satisfactory to the  
4 Commissioner that Respondent has violated  
5 provisions of the California Real Estate Law,  
6 the Subdivided Lands Law, Regulations of the  
7 Real Estate Commissioner or conditions  
8 attaching to the restricted license.

9 D. Respondent shall not be eligible to apply for  
10 the issuance of an unrestricted real estate  
11 license nor for the removal of any of the  
12 conditions, limitations or restrictions of a  
13 restricted license until one (1) year has  
14 elapsed from the date of issuance of the  
15 restricted license to Respondent.

16 E. Respondent shall submit with any application  
17 for a license under an employing real estate  
18 broker, or any application for transfer to a  
19 new employing broker, a statement signed by the  
20 prospective employing broker which shall  
21 certify:

22 (1) That the employing broker has read the  
23 Decision of the Real Estate  
24 Commissioner which granted the right to  
25 a restricted license;

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

19 F. Respondent shall, within nine (9) months from  
20 the effective date of this decision, present  
21 evidence satisfactory to the Real Estate  
22 Commissioner that he has, since the most recent  
23 issuance of an original or renewal real estate  
24 license, taken and successfully completed the  
25 continuing education requirements of Article  
26 2.5 of Chapter 3 of the Real Estate Law for  
27 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

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

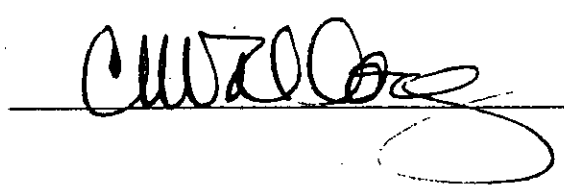
hearing pursuant to the Administrative  
Procedure Act to present such evidence.

This Decision shall become effective at 12 o'clock noon

on April 5, 1993.

IT IS SO ORDERED 3/10, 1993.

CLARK WALLACE  
Real Estate Commissioner



Flag/JAC

COPY

FILED  
DEC 23 1992  
DEPARTMENT OF REAL ESTATE

By Emily Jackson

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-6648 SF
AALL REAL ESTATE FINANCIAL SERVICES,	)	
RAY EUGENE WAGENKNECHT,	)	OAH NO. N-40611
GEORGE MATHEWS COLACICCO,	)	
and CHARLES CASTAGNOLO,	)	<u>AS TO AALL REAL ESTATE</u>
	)	<u>FINANCIAL SERVICES ONLY</u>
<u>Respondent.</u>	)	

ORDER DENYING RECONSIDERATION

On November 2, 1992, a Decision was rendered in the above-entitled matter. The Decision is to become effective December 24, 1992.

On November 9, 1992, Respondent **AALL REAL ESTATE FINANCIAL SERVICES** petitioned for reconsideration of the Decision of November 2, 1992.

I have given due consideration to the petition of Respondent **AALL REAL ESTATE FINANCIAL SERVICES**. I find no good cause to reconsider the Decision of November 2, 1992 and reconsideration is hereby denied.

IT IS HEREBY ORDERED December 23, 1992.

CLARK WALLACE  
Real Estate Commissioner

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

*Flag/SA*

COPY

FILED  
DEC 23 1992  
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By *Emily Jakobs*

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-6648 SF
AALL REAL ESTATE FINANCIAL SERVICES,	)	
RAY EUGENE WAGENKNECHT,	)	OAH NO. N-40611
GEORGE MATHEWS COLACICCO,	)	
and CHARLES CASTAGNOLO,	)	<u>AS TO RAY EUGENE</u>
	)	<u>WAGENKNECHT ONLY</u>
<u>Respondent.</u>	)	

ORDER DENYING RECONSIDERATION

On November 2, 1992, a Decision was rendered in the above-entitled matter. The Decision is to become effective December 24, 1992.

On November 9, 1992, Respondent RAY EUGENE WAGENKNECHT petitioned for reconsideration of the Decision of November 2, 1992.

I have given due consideration to the petition of Respondent RAY EUGENE WAGENKNECHT. I find no good cause to reconsider the Decision of November 2, 1992 and reconsideration is hereby denied.

IT IS HEREBY ORDERED December 23, 1992.

CLARK WALLACE  
Real Estate Commissioner

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

*Fry/SA*

**COPY**

**FILED**  
DEC 23 1992  
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By *Trudy J. J. J.*

\* \* \*

In the Matter of the Accusation of	)	
	)	NO. H-6648 SF
AALL REAL ESTATE FINANCIAL SERVICES,	)	
RAY EUGENE WAGENKNECHT,	)	OAH NO. N-40611
GEORGE MATHEWS COLACICCO,	)	
and CHARLES CASTAGNOLO,	)	<u>AS TO GEORGE MATHEWS</u>
	)	<u>COLACICCO ONLY</u>
<u>Respondent.</u>	)	

ORDER DENYING RECONSIDERATION

On November 2, 1992, a Decision was rendered in the above-entitled matter. The Decision is to become effective December 24, 1992.

On November 5, 1992, Respondent **GEORGE MATHEWS COLACICCO** petitioned for reconsideration of the Decision of November 2, 1992.

I have given due consideration to the petition of Respondent **GEORGE MATHEWS COLACICCO**. I find no good cause to reconsider the Decision of November 2, 1992 and reconsideration is hereby denied.

IT IS HEREBY ORDERED December 23, 1992.

**CLARK WALLACE**  
Real Estate Commissioner

*John R. Liberator*  
by **JOHN R. LIBERATOR**  
Chief Deputy Commissioner



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

The Decision of November 2, 1992, shall become effective  
at 12 o'clock noon on December 24, 1992.

DATED: November 20, 1992.

CLARK WALLACE  
Real Estate Commissioner  
*Edward V. Chio*

By: EDWARD V. CHIOLO  
Deputy Real Estate Commissioner



*Hay / SAC*

**COPY**

**FILED**

NOV 17 1992

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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-6648 SF
AALL REAL ESTATE FINANCIAL	)	
SERVICES,	)	OAH N-40507
RAY EUGENE WAGENKNECHT,	)	
GEORGE MATHEWS COLACICCO	)	
and CHARLES CASTAGNOLO,	)	
	)	
Respondents.	)	

ORDER STAYING EFFECTIVE DATE

On November 2, 1992, a Decision was rendered in the above-entitled matter to become effective November 24, 1992.

IT IS HEREBY ORDERED that the effective date of the Decision of November 2, 1992, is stayed as to WAGENKNECHT only for a period of (30) thirty days.

/ / / / / /  
/ / / / /  
/ / / /  
/ / /  
/ / /  
/ /

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

The Decision of November 2, 1992, shall become effective  
at 12 o'clock noon on December 24, 1992.

DATED: 11/17/92

CLARK WALLACE  
Real Estate Commissioner

*Norman G. Catalano*  
By: NORMAN G. CATALANO  
Deputy Real Estate Commissioner



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

The Decision of November 2, 1992, shall become effective  
at 12 o'clock noon on December 24, 1992.

DATED: November 13, 1992

CLARK WALLACE  
Real Estate Commissioner  
*Edward V. Chioło*  
By: EDWARD V. CHIOLO  
Deputy Real Estate Commissioner

*Floy*

**COPY FILED**  
NOV 04 1992

DEPARTMENT OF REAL ESTATE

By *Maria Zuleta*

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 )	
AALL REAL ESTATE FINANCIAL )	NO. H-6648 SF
SERVICES, )	
RAY EUGENE WAGENKNECHT, )	OAH NO. N-40507
GEORGE MATHEWS COLACICCO, )	
and CHARLES CASTAGNOLO, )	
Respondents. )	

NOTICE

TO: CHARLES CASTAGNOLO, Respondent

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 6, 1992, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner as to respondent, CHARLES CASTAGNOLO. A copy of the Proposed Decision dated October 6, 1992, 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



*Fly/SAC*

**COPY**

**FILED**  
NOV 03 1992

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

*Mark J. ...*

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 )  
AALL REAL ESTATE FINANCIAL )  
SERVICES, RAY EUGENE WAGENKNECHT, )  
GEORGE MATHEWS COLACICCO, )  
and CHARLES CASTAGNOLO, )  
 )  
Respondents. )

NO. H-6648 SF  
OAH NO. N-40507

**DECISION**

The Proposed Decision dated October 6, 1992, 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 as to respondents AALL REAL ESTATE FINANCIAL SERVICES, RAY EUGENE WAGENKNECHT, and GEORGE MATHEWS COLACICCO, only. The Proposed Decision with respect to respondent CHARLES CASTAGNOLO has been rejected.

This Decision shall become effective at 12 o'clock noon on November 24, 19 92.

IT IS SO ORDER November 2, 19 92.

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 ) No. H-6648 SF  
 )  
AALL REAL ESTATE FINANCIAL SERVICES, ) OAH No. N 40507  
 )  
RAY EUGENE WAGENKNECHT, )  
 )  
GEORGE MATHEWS COLACICCO, )  
 )  
and CHARLES CASTAGNOLO, )  
 )  
 )  
Respondents. )  
 )

---

PROPOSED DECISION

This matter was heard by Jerry Mitchell, Administrative Law Judge, Office of Administrative Hearings, on September 29, 1992, at San Francisco, California.

The Department of Real Estate was represented by David B. Seals, Counsel. Respondents Ray Eugene Wagenknecht, George Mathews Colacicco and Charles Castagnolo were present and represented themselves. Respondent AALL Real Estate Financial Services, a California corporation, was represented by respondent Wagenknecht, its president, chief executive officer and fifty-one percent owner.

Evidence having been received and the matter submitted, the Administrative Law Judge proposes the following decision.

FINDINGS OF FACT

1. This matter proceeded on a First Amended Accusation which was made by Edward V. Chiolo in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. The First Amended Accusation was orally amended to change the figure "14" to "10" on page 7, line 19.

3. At all times pertinent hereto, respondent Ray Eugene Wagenknecht was licensed as a real estate salesperson and was the president, chief executive officer, and fifty-one percent owner of respondent AALL Real Estate Financial Services, which was at all such times licensed as a real estate corporation.



4. At all times pertinent hereto, respondent Charles Castagnolo was licensed as a real estate broker and was the designated broker for AALL.

5. Respondent George Mathews Colacicco is presently licensed as a real estate salesperson. However, he was not licensed prior to March 5, 1991.

6. The acts and omissions of AALL hereafter set forth were done or omitted under the direction of Wagenknecht and Castagnolo.

7. In April 1989, AALL hired Colacicco, whom Wagenknecht and Castagnolo knew to be unlicensed, to work on a commission basis negotiating loans secured by real property. Between April 1989 and May 31, 1990, Colacicco negotiated at least ten such loans for AALL. During 1989, he received \$38,000 in commissions from AALL for negotiating such loans.

8. On or about November 30, 1989, AALL received \$320 on behalf of prospective borrowers Martin and Debra Fiedler to cover the costs of an appraisal and credit report in connection with the possible refinancing of their residence. The money had been requested by Colacicco, who told the Fiedlers that any portion not used would be refunded to them. On or about February 8, 1990, the Fiedlers cancelled their loan application and requested that their money be refunded. Although the Fiedlers' property had never been appraised, Castagnolo countermanded Colacicco and allowed only \$25 to be refunded to the Fiedlers, with the explanation that the remaining \$295 was being retained by AALL as "a processing fee." The Fiedlers had not been informed of, nor did they agree to pay, any such fee.

9. Between September 9, 1988 and May 31, 1990, AALL deposited into a bank account that was not a trust fund account, advance fees totalling \$4,117.46 that it received from prospective borrowers for appraisals and credit reports, as well as \$21,456.75 of its own funds, thereby commingling the two types of funds.

10. Between September 9, 1988 and May 31, 1990, AALL failed to keep the records required by Sections 2831.1 of the Regulations and was therefore unable to reconcile them as required by Section 2831.2 of the Regulations.

11. AALL collected the advance fees described in Findings 8 and 9 without an advance fee agreement approved by the Department.

12. In 1988 and 1989, in connection with 20 loans made by AALL and secured by real property, AALL failed to provide to its borrowers the mortgage loan disclosure statements required by

Section 10240 of the Business and Professions Code (hereafter "the Code").

13. Between September 9, 1988 and August 16, 1989, AALL negotiated 26 loans, directly or collaterally secured by liens on real property, in an aggregate amount of \$3,789,350, pursuant to Sections 10131(d) and 10131.1 of the Code, as agent for others, thereby meeting the criteria of subdivision (a) of Section 10232 of the Code, and failed to notify the Department of that fact or file a trust fund status report within 30 days.

14. In mitigation, Wagenknecht, Colacicco and Castagnolo assert that they held an innocently mistaken belief that relevant provisions of the law and regulations did not apply to what they were doing. By way of rehabilitation, a trust fund account was promptly established when the need for one was brought to the attention of Wagenknecht and Castagnolo by the Department of Real Estate.

15. Those allegations not hereinabove found to be true, are found to be unproved or surplusage.

#### DETERMINATION OF ISSUES

1. The facts set forth in Findings 3, 4, 6 and 7 establish cause for disciplinary action against respondents AALL, Wagenknecht and Castagnolo under Section 10137 of the Code.

2. The facts set forth in Finding 9 constitute violations of Sections 10145(a) and 10146 of the Code and Section 2830 of the Regulations of the Real Estate Commissioner (hereafter "the Regulations") and, by reason of Findings 3, 4 and 6, establish cause for disciplinary action against respondents AALL, Wagenknecht and Castagnolo under Sections 10176(e) and 10177(d) of the Code.

3. The facts set forth in Finding 10 constitute violations of Sections 2831.1 and 2831.2 of the Regulations and, by reason of Findings 3, 4 and 6, establish cause for disciplinary action against respondents AALL, Wagenknecht and Castagnolo under Section 10177(d) of the Code.

4. The facts set forth in Finding 11 constitute a violation of Section 10085 of the Code and, by reason of Findings 3, 4 and 6, establish cause for disciplinary action against respondents AALL, Wagenknecht and Castagnolo under that section.

5. The facts set forth in Finding 12 constitute violations of Section 10240 of the Code and, by reason of Findings 3, 4 and 6, establish cause for disciplinary action against respondents AALL, Wagenknecht and Castagnolo under Section 10177(d) of the Code.

6. The facts set forth in Finding 13 constitute violations of Section 10232(f) and 10232.25 of the Code and, by reason of Findings 3, 4 and 6, establish cause for disciplinary against respondents AALL, Wagenknecht and Castagnolo under Section 10177(d) of the Code.

7. The facts set forth in Findings 5 and 7 constitute a violation of Section 10130 of the Code and establish cause for disciplinary action against respondent Colacicco under Section 10177(d) of the Code.

#### ORDER

##### I

All real estate licenses and licensing rights heretofore issued to respondent AALL Real Estate Financial Services by the Department of Real Estate are revoked.

##### II

All real estate licenses and licensing rights heretofore issued to respondent Ray Eugene Wagenknecht by the Department of Real Estate are revoked; provided, however, that a restricted real estate salesperson's license shall be issued to said respondent pursuant to Section 10156.5 of the Business and Professions Code if he makes application therefor within thirty (30) days from the effective date of this decision. The restricted license 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 shall be suspended for the first one hundred and eighty (180) days following its issuance.
- B. The restricted license 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 bears a significant relationship to his fitness or capacity as a real estate licensee.
- C. The restricted license 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.

- D. 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 five (5) years have elapsed from the date of issuance of the restricted license to respondent.
- E. Respondent shall submit with any application for a license under an employing real estate broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:
- (1) That the employing broker has read the Decision of the Real Estate Commissioner which granted the right to a restricted license;
  - (2) That the employing real estate broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
- F. Respondent shall, within nine (9) months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he 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.

### III

All real estate licenses and licensing rights heretofore issued to respondent George Mathews Colacicco by the Department of Real Estate are revoked; provided, however, that a restricted real estate salesperson's license shall be issued to said respondent

pursuant to Section 10156.5 of the Business and Professions Code if he makes application therefor within thirty (30) days from the effective date of this decision. The restricted license 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 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 bears a significant relationship to his fitness or capacity as a real estate licensee.
- B. The restricted license 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 three (3) years have elapsed from the date of issuance of the restricted license to respondent.
- D. Respondent shall, within nine (9) months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he 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.

IV

*Not adopted* { The real estate broker's license and licensing rights heretofore issued to respondent Charles Castagnolo are revoked, and an unrestricted real estate salesperson's license shall be issued to him in their stead. Said unrestricted real estate salesperson's license shall be suspended for the first ninety (90) days following its issuance.

Dated: October 6, 1992



---

JERRY MITCHELL  
Administrative Law Judge  
Office of Administrative Hearings

*Flag*

**COPY**

**FILED**

MAR 31 1992

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

By *David B. Seals*

*In the Matter of the Accusation of*

AALL REAL ESTATE FINANCIAL SERVICES,  
RAY EUGENE WAGENKNECHT,  
GEORGE MATHEWS COLACICCO and  
CHARLES CASTAGNOLO,

}

Case No. H-6648 SF

OAH No. N-40507

*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, S.F., CA 94102

on September 29 & 30, 1992 (1½ days), at the hour of 9:00 am,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: March 31, 1992

By *David B. Seals* *md*  
DAVID B. SEALS, Counsel

*File*

**COPY**

**FILED**

MAR 23 1992

DEPARTMENT OF REAL ESTATE

DAVID B. SEALS, Counsel  
Department of Real Estate  
185 Berry Street, Room 3400  
San Francisco, California 94107-1770

(415) 904-5917

By *David Seals*

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 )  
AALL REAL ESTATE )  
FINANCIAL SERVICES, )  
RAY EUGENE WAGENKNECHT, )  
GEORGE MATHEWS COLACICCO )  
and CHARLES CASTAGNOLO, )  
Respondents. )

NO. H-6648 SF

FIRST AMENDED  
ACCUSATION

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against AALL REAL ESTATE FINANCIAL SERVICES (AALL), a California corporation, RAY EUGENE WAGENKNECHT (WAGENKNECHT), GEORGE MATHEWS COLACICCO (COLACICCO) and CHARLES CASTAGNOLO (CASTAGNOLO) (hereinafter Respondents) 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.



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

CASTAGNOLO, COLACICCO, WAGENKNECHT, and AALL 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).

III

AALL at all times mentioned herein was licensed by the Department as a real estate corporation. AALL's real estate corporation license, however, expired on January 31, 1992. At all times mentioned herein until October 11, 1990 CASTAGNOLO was the designated broker for AALL.

IV

WAGENKNECHT is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson. WAGENKNECHT's real estate salesperson license expires March 6, 1995.

V

COLACICCO is presently licensed by the Department as a real estate salesperson. However, COLACICCO was not licensed by the Department from September 13, 1982 until March 5, 1991. COLACICCO's real estate salesperson license expires March 4, 1995.

VI

CASTAGNOLO is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker. CASTAGNOLO's individual real estate broker license expires July 14, 1994. CASTAGNOLO was at

1 all times mentioned herein until October 11, 1990 the designated  
2 officer of AALL.

3  
4 VII

5 As the designated officer of AALL during the times  
6 specified herein, Respondent CASTAGNOLO was responsible for the  
7 supervision and control of the activities conducted on behalf of  
8 AALL by its officers and employees as necessary to secure full  
9 compliance with the provisions of the Real Estate Law.

10 VIII

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

18 IX

19 That at all times herein mentioned, AALL and  
20 CASTAGNOLO engaged in the business of, acted in the capacity of,  
21 advertised, or assumed to act as real estate brokers in the  
22 State of California within the meaning of Section 10131 of the  
23 Code for or in expectation of compensation.

24 FIRST CAUSE OF ACCUSATION

25 X

26 On or about August 21, 1989 WAGENKNECHT, while in the  
27 employ of AALL, negotiated the terms and conditions of a loan on  
behalf of borrowers Florante and Veronica Guijo (the Guijos),

1 who wanted to refinance their property located at 4413 Fellow  
2 Street in Union City and another property.

3 XI

4 The Guijos informed WAGENKNECHT that they wanted a  
5 fixed rate loan and WAGENKNECHT told them he could get a jumbo  
6 loan for \$250,000 at 9 7/8% interest.

7 XII

8 When the Guijos went to close escrow on the Fellow  
9 Street property they discovered that the interest rate was  
10 10.50% rather than the 9 7/8% they were expecting and that the  
11 demand for payment of fees to WAGENKNECHT's company, AALL,  
12 contained various unexplained and duplicative charges. Although  
13 the Guijos protested they signed and allowed escrow to close.

14 XIII

15 Based on the alleged overcharges referred to in  
16 Paragraph XII above, the Guijos sued WAGENKNECHT in Small Claims  
17 Court and obtained a judgment in the amount of \$845 plus costs  
18 of \$23.

19 XIV

20 By reason of the acts and/or omissions as alleged in  
21 Paragraphs X through XIII above, Respondents WAGENKNECHT, AALL  
22 and CASTAGNOLO were in violation of Sections 10176(a), 10176(b)  
23 and 10176(i) of the Code and said acts and/or omissions  
24 constitute grounds for disciplinary action thereunder.

25 XV

26 By reason of the acts and/or omissions as alleged in  
27 Paragraphs X through XIII above, Respondent CASTAGNOLO, as the

1 designated officer of AALL, was in violation of Section  
2 10159.2(a) of the Code and as such is subject to disciplinary  
3 action under the provisions of Section 10177(d) of the Code.

4 SECOND CAUSE OF ACCUSATION

5 XVI

6 There is hereby incorporated into this second,  
7 separate and distinct Cause of Accusation, all of the  
8 allegations contained in Paragraphs I through IX above with the  
9 same force and effect as if herein fully set forth.

10 XVII

11 On or about November 30, 1989 COLACICCO, while  
12 employed by AALL, negotiated the terms and conditions of a loan,  
13 including the preparation of a good faith estimate of closing  
14 costs, on behalf of borrowers, Martin and Debra Fiedler (the  
15 Fiedlers). As part of the loan process the Fiedlers mailed a  
16 personal check to COLACICCO in the amount of \$320 to cover the  
17 cost of appraisal fees (\$275) and a credit report fee (\$45).  
18 However, the Fiedlers were informed that if any portion of the  
19 fees were not spent that the remainder would be sent to them.

20 XVIII

21 The Fiedlers cancelled their loan application on or  
22 about February 8, 1990 indicating that the loan rates were too  
23 high and requested a refund of their \$320. A refund check was  
24 issued from AALL in the amount of \$25 to the Fiedlers with the  
25 explanation that the rest was retained by AALL as a processing  
26 fee. There was no appraisal done on the property.

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

XIX

That at all times mentioned herein, Respondents AALL and CASTAGNOLO accepted or received funds in trust (hereafter trust funds) from and on behalf of their principals placing them in general accounts not trust accounts, and at times thereafter made disbursements of such funds.

XX

That from June 22, 1990 to July 6, 1990, an investigative audit was made by the Department of the records and bank records of AALL for the period from September 9, 1988 to May 31, 1990 as said records related to its activities as a real estate broker.

XXI

That it was ascertained by said audit that AALL maintained a general bank account, at Wells Fargo Bank, San Jose Main Office, P.O. Box 970, San Jose, California 95108, Account No. 0460-116056. Both trust funds and regular corporate funds were placed in the account.

XXII

It was also ascertained by the audit that the adjusted balance of the account as of May 31, 1990 was TWENTY FIVE THOUSAND FIVE HUNDRED SEVENTY FOUR and 21/100 DOLLARS (\$25,574.21).

XXIII

It was further ascertained by said audit that the bank account accountability from December 1, 1990 to May 31, 1990 was FOUR THOUSAND ONE HUNDRED SEVENTEEN and 46/100 DOLLARS

1 (\$4,117.46) and that therefore AALL as of May 31, 1990 had a  
2 bank account overage of TWENTY ONE THOUSAND FOUR HUNDRED FIFTY  
3 SIX and 75/100 DOLLARS (\$21,456.75). The overage was due to  
4 corporate funds and funds collected in advance in excess of  
5 credit report and appraisal fees paid by AALL.

6 XXIV

7 It was ascertained by said audit that proper trust  
8 fund record keeping was not maintained in that separate  
9 beneficiary ledgers were not prepared nor were reconciliation of  
10 these records with the control account done on a monthly basis.

11 XXV

12 It was further ascertained by the audit that advanced  
13 fees were collected by AALL without an advance fee agreement  
14 approved by the Department.

15 XXVI

16 It was ascertained by the audit that COLACICCO while  
17 employed and compensated by AALL acted as the loan officer  
18 including but not limited to negotiating loans, an activity  
19 which requires a real estate license, in 14 transactions. At  
20 the time when COLACICCO was engaged in these activities he was  
21 not a real estate licensee.

22 XXVII

23 The audit further revealed that AALL failed to provide  
24 mortgage loan disclosure statements to its borrowers during the  
25 period of the audit in violation of Section 10240 of the Code.

26 XXVIII

27 It was finally ascertained by the audit that between

1 September 9, 1988 and August 16, 1989 AALL negotiated  
2 approximately 26 loans secured directly or collaterally by liens  
3 on real property pursuant to subdivision (d) of Section 10131 or  
4 10131.1 of the Code as agent for another or others and in an  
5 aggregate amount of more than three million dollars but failed  
6 to (1) timely notify the Department of such fact or (2) timely  
7 file a trust funds status report, in violation of Section  
8 10232(f) and 10232.25 of the Code, respectively.

9 XXIX

10 WAGENKNECHT was at all times herein mentioned the  
11 Chief Executive Officer of AALL and directed and controlled its  
12 activities, including but not limited to the mortgage loan  
13 brokerage activities herein described. WAGENKNECHT personally  
14 hired COLACICCO, and opened the bank account referred to in  
15 Paragraph XXI above. WAGENKNECHT knew COLACICCO was not a  
16 licensed real estate salesperson when he was performing licensed  
17 activities and knew or should have known the above bank account  
18 was not a trust account. WAGENKNECHT knew or should have known  
19 all the facts alleged in the First and Second Causes of Action  
20 alleged herein, and could have and should have taken steps as an  
21 officer, director and owner of the corporation to assure AALL's  
22 compliance with the Real Estate Law, and willfully disregarded  
23 the statutes and regulations charged herein against AALL.

24 XXX

25 That by reason of the facts as alleged in Paragraphs  
26 V, XVII, XVIII and XXVI above, Respondent COLACICCO violated  
27 Sections 10130 and 10137 of the Code and said acts and/or

1 omissions constitute grounds for disciplinary action under the  
2 provisions of Sections 10177(d) and 10137 of the Code,  
3 respectively.

4 XXXI

5 By reason of the facts as alleged in Paragraphs V,  
6 XVII, XVIII and XXVI above, Respondents AALL and CASTAGNOLO  
7 violated Section 10137 of the Code and as such are subject to  
8 disciplinary action under the provisions of Section 10137 of the  
9 Code.

10 XXXII

11 By reason of the facts as alleged in Paragraphs XIX  
12 through XXIII above, Respondents AALL and CASTAGNOLO violated  
13 Sections 10145(a), 10146, and 10176(e) of the Code and Section  
14 2830 of the Regulations and said acts and/or omissions  
15 constitute grounds for disciplinary action under Section  
16 10177(d) of the Code as to Sections 10145(a), 10146 and 2830 and  
17 under Section 10176(e) as to that section itself.

18 XXXIII

19 By reason of the acts and/or omissions as alleged in  
20 Paragraph XXIV Respondents AALL and CASTAGNOLO were in violation  
21 of Sections 2831.1 and 2831.2 of the Regulations and said acts  
22 and/or omissions constitute grounds for disciplinary action  
23 pursuant to Section 10177(d) of the Code.

24 XXXIV

25 By reason of the acts and/or omissions as alleged in  
26 Paragraph XXV above, Respondents AALL and CASTAGNOLO were in  
27 violation of section 10085 of the Code and said acts and/or



1 omissions constitute grounds for disciplinary action thereunder.

2 XXXV

3 By reason of the acts and/or omissions as alleged in  
4 Paragraph XXVII, Respondents AALL and CASTAGNOLO were in  
5 violation of Section 10240 of the Code and said acts and/or  
6 omissions constitute grounds for disciplinary action pursuant to  
7 Section 10177(d) of the Code.

8 XXXVI

9 That by reason of the acts and/or omissions as alleged  
10 in Paragraph XXVIII, Respondents AALL and CASTAGNOLO were in  
11 violation of Sections 10232(f) and 10232.25 of the Code and said  
12 acts and/or omissions constitute grounds for disciplinary action  
13 pursuant to Section 10177(d) of the Code.

14 XXXVII

15 The acts and/or omissions of WAGENKNECHT as alleged in  
16 Paragraph XXIX above constitute grounds for disciplinary action  
17 under the provisions of Sections 10177(d) and 10177(f) of the  
18 Code.

19 WHEREFORE, the Complainant prays that a hearing be  
20 conducted on the allegations of the Accusation and that upon  
21 proof thereof, a decision be rendered imposing disciplinary  
22 action against all licenses and license rights of Respondents

23 / / / / / /

24 / / / /

25 / / /

26 / /

27 /

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

under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

*Edward V. Chiolo*

EDWARD V. CHIOLO  
Deputy Real Estate Commissioner

Dated at San Francisco, California  
this 15<sup>th</sup> day of March, 1992.

*Frag*

**COPY**

**FILED**  
MAR 05 1992

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

DAVID B. SEALS, Counsel  
Department of Real Estate  
185 Berry Street, Room 3400  
San Francisco, California 94107-1770  
  
(415) 904-5917

DEPARTMENT OF REAL ESTATE

By *Edward V. Chiolo*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
AALL REAL ESTATE )	NO. H- 6648 SF
FINANCIAL SERVICES, )	<u>ACCUSATION</u>
RAY EUGENE WAGENKNECHT, )	
GEORGE MATHEWS COLACICCO )	
and CHARLES CASTAGNOLO, )	
Respondents. )	

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against AALL REAL ESTATE FINANCIAL SERVICES (AALL), a California corporation, RAY EUGENE WAGENKNECHT (WAGENKNECHT), GEORGE MATHEWS COLACICCO (COLACICCO) and CHARLES CASTAGNOLO (CASTAGNOLO) (hereinafter Respondents) 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.

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

CASTAGNOLO, COLACICCO, WAGENKNECHT, and AALL 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).

III

AALL at all times mentioned herein was licensed by the Department as a real estate corporation. AALL's real estate corporation license, however, expired on January 31, 1992. At all times mentioned herein until October 11, 1990 CASTAGNOLO was the designated broker for AALL.

IV

WAGENKNECHT is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate salesperson. WAGENKNECHT's real estate salesperson license expires March 6, 1995.

V

COLACICCO is presently licensed by the Department as a real estate salesperson. However, COLACICCO was not licensed by the Department from September 13, 1982 until March 5, 1991. COLACICCO's real estate salesperson license expires March 4, 1995.

VI

CASTAGNOLO is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker. CASTAGNOLO's individual real estate broker license expires July 14, 1994. CASTAGNOLO was at

1 all times mentioned herein until October 11, 1990 the designated  
2 officer of AALL.

3 VII

4 As the designated officer of AALL during the times  
5 specified herein, Respondent CASTAGNOLO was responsible for the  
6 supervision and control of the activities conducted on behalf of  
7 AALL by its officers and employees as necessary to secure full  
8 compliance with the provisions of the Real Estate Law.

9 VIII

10 Whenever reference is made in an allegation in this  
11 Accusation to an act or omission of AALL such allegation shall  
12 be deemed to mean that the officers, directors, employees,  
13 agents and real estate licensees employed by or associated with  
14 AALL committed such act or omission while engaged in furtherance  
15 of the business or operation of AALL and while acting within the  
16 course and scope of their corporate authority and employment.

17 IX

18 That at all times herein mentioned, AALL and  
19 CASTAGNOLO engaged in the business of, acted in the capacity of,  
20 advertised, or assumed to act as real estate brokers in the  
21 State of California within the meaning of Section 10131 of the  
22 Code for or in expectation of compensation.

23 FIRST CAUSE OF ACCUSATION

24 X

25 On or about August 21, 1989 WAGENKNECHT, while in the  
26 employ of AALL, negotiated the terms and conditions of a loan on  
27 behalf of borrowers Florante and Veronica Guijo (the Guijos),

1 who wanted to refinance their property located at 4413 Fellow  
2 Street in Union City and another property.

3 XI

4 The Guijos informed WAGENKNECHT that they wanted a  
5 fixed rate loan and WAGENKNECHT told them he could get a jumbo  
6 loan for \$250,000 at 9 7/8% interest.

7 XII

8 When the Guijos went to close escrow on the Fellow  
9 Street property they discovered that the interest rate was  
10 10.50% rather than the 9 7/8% they were expecting and that the  
11 demand for payment of fees to WAGENKNECHT's company, AALL,  
12 contained various unexplained and duplicative charges. Although  
13 the Guijos protested they signed and allowed escrow to close.

14 XIII

15 Based on the alleged overcharges referred to in  
16 Paragraph XII above, the Guijos sued WAGENKNECHT in Small Claims  
17 Court and obtained a judgment in the amount of \$845 plus costs  
18 of \$23.

19 XIV

20 By reason of the acts and/or omissions as alleged in  
21 Paragraphs X through XIII above, Respondents WAGENKNECHT, AALL  
22 and CASTAGNOLO were in violation of Sections 10176(a), 10176(b)  
23 and 10176(i) of the Code and said acts and/or omissions  
24 constitute grounds for disciplinary action thereunder.

25 XV

26 By reason of the acts and/or omissions as alleged in  
27 Paragraphs X through XIII above, Respondent CASTAGNOLO, as the

1 designated officer of AALL, was in violation of Section  
2 10159.2(a) of the Code and as such is subject to disciplinary  
3 action under the provisions of Section 10177(d) of the Code.

4 SECOND CAUSE OF ACCUSATION

5 XVI

6 There is hereby incorporated into this second,  
7 separate and distinct Cause of Accusation, all of the  
8 allegations contained in Paragraphs I through IX above with the  
9 same force and effect as if herein fully set forth.

10 XVII

11 On or about November 30, 1989 COLACICCO, while  
12 employed by AALL, negotiated the terms and conditions of a loan,  
13 including the preparation of a good faith estimate of closing  
14 costs, on behalf of borrowers, Martin and Debra Fiedler (the  
15 Fiedlers). As part of the loan process the Fiedlers mailed a  
16 personal check to COLACICCO in the amount of \$320 to cover the  
17 cost of appraisal fees (\$275) and a credit report fee (\$45).  
18 However, the Fiedlers were informed that if any portion of the  
19 fees were not spent that the remainder would be sent to them.

20 XVIII

21 The Fiedlers cancelled their loan application on or  
22 about February 8, 1990 indicating that the loan rates were too  
23 high and requested a refund of their \$320. A refund check was  
24 issued from AALL in the amount of \$25 to the Fiedlers with the  
25 explanation that the rest was retained by AALL as a processing  
26 fee. There was no appraisal done on the property.

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

XIX

That at all times mentioned herein, Respondents AALL and CASTAGNOLO accepted or received funds in trust (hereafter trust funds) from and on behalf of their principals placing them in general accounts not trust accounts, and at times thereafter made disbursements of such funds.

XX

That from June 22, 1990 to July 6, 1990, an investigative audit was made by the Department of the records and bank records of AALL for the period from September 9, 1988 to May 31, 1990 as said records related to its activities as a real estate broker.

XXI

That it was ascertained by said audit that AALL maintained a general bank account, at Wells Fargo Bank, San Jose Main Office, P.O. Box 970, San Jose, California 95108, Account No. 0460-116056. Both trust funds and regular corporate funds were placed in the account.

XXII

It was also ascertained by the audit that the adjusted balance of the account as of May 31, 1990 was TWENTY FIVE THOUSAND FIVE HUNDRED SEVENTY FOUR and 21/100 DOLLARS (\$25,574.21).

XXIII

It was further ascertained by said audit that the bank account accountability from December 1, 1990 to May 31, 1990 was FOUR THOUSAND ONE HUNDRED SEVENTEEN and 46/100 DOLLARS



1 (\$4,117.46) and that therefore AALL as of May 31, 1990 had a  
2 bank account overage of TWENTY ONE THOUSAND FOUR HUNDRED FIFTY  
3 SIX and 75/100 DOLLARS (\$21,456.75). The overage was due to  
4 corporate funds and funds collected in advance in excess of  
5 credit report and appraisal fees paid by AALL.

6 XXIV

7 It was ascertained by said audit that proper trust  
8 fund record keeping was not maintained in that separate  
9 beneficiary ledgers were not prepared nor were reconciliation of  
10 these records with the control account done on a monthly basis.

11 XXV

12 It was further ascertained by the audit that advanced  
13 fees were collected by AALL without an advance fee agreement  
14 approved by the Department.

15 XXVI

16 It was ascertained by the audit that COLACICCO while  
17 employed and compensated by AALL acted as the loan officer  
18 including but not limited to negotiating loans, an activity  
19 which requires a real estate license, in 14 transactions. At  
20 the time when COLACICCO was engaged in these activities he was  
21 not a real estate licensee.

22 XXVII

23 The audit further revealed that AALL failed to provide  
24 mortgage loan disclosure statements to its borrowers during the  
25 period of the audit in violation of Section 10240 of the Code.

26 XXVIII

27 It was finally ascertained by the audit that between

1 September 9, 1988 and August 16, 1989 AALL negotiated  
2 approximately 26 loans secured directly or collaterally by liens  
3 on real property pursuant to subdivision (d) of Section 10131 or  
4 10131.1 of the Code as agent for another or others and in an  
5 aggregate amount of more than three million dollars but failed  
6 to (1) timely notify the Department of such fact or (2) timely  
7 file a trust funds status report, in violation of Section  
8 10232(f) and 10232.25 of the Code, respectively.

9 XXIX

10 That by reason of the facts as alleged in Paragraphs  
11 V, XVII, XVIII and XXVI above, Respondent COLACICCO violated  
12 Sections 10130 and 10137 of the Code and said acts and/or  
13 omissions constitute grounds for disciplinary action under the  
14 provisions of Sections 10177(d) and 10137 of the Code,  
15 respectively.

16 XXX

17 By reason of the facts as alleged in Paragraphs V,  
18 XVII, XVIII and XXVI above, Respondents AALL and CASTAGNOLO  
19 violated Section 10137 of the Code and as such are subject to  
20 disciplinary action under the provisions of Section 10137 of the  
21 Code.

22 XXXI

23 By reason of the facts as alleged in Paragraphs XIX  
24 through XXIII above, Respondents AALL and CASTAGNOLO violated  
25 Sections 10145(a), 10146, and 10176(e) of the Code and Section  
26 2830 of the Regulations and said acts and/or omissions  
27 constitute grounds for disciplinary action under Section

1 10177(d) of the Code as to Sections 10145(a), 10146 and 2830 and  
2 under Section 10176(e) as to that section itself.

3 XXXII

4 By reason of the acts and/or omissions as alleged in  
5 Paragraph XXIV Respondents AALL and CASTAGNOLO were in violation  
6 of Sections 2831.1 and 2831.2 of the Regulations and said acts  
7 and/or omissions constitute grounds for disciplinary action  
8 pursuant to Section 10177(d) of the Code.

9 XXXIII

10 By reason of the acts and/or omissions as alleged in  
11 Paragraph XXV above, Respondents AALL and CASTAGNOLO were in  
12 violation of section 10085 of the Code and said acts and/or  
13 omissions constitute grounds for disciplinary action thereunder.

14 XXXIV

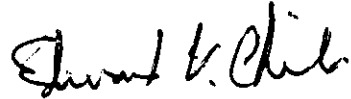
15 By reason of the acts and/or omissions as alleged in  
16 Paragraph XXVII, Respondents AALL and CASTAGNOLO were in  
17 violation of Section 10240 of the Code and said acts and/or  
18 omissions constitute grounds for disciplinary action pursuant to  
19 Section 10177(d) of the Code.

20 XXXV

21 That by reason of the acts and/or omissions as alleged  
22 in Paragraph XXVIII, Respondents AALL and CASTAGNOLO were in  
23 violation of Sections 10232(f) and 10232.25 of the Code and said  
24 acts and/or omissions constitute grounds for disciplinary action  
25 pursuant to Section 10177(d) of the Code.

26 WHEREFORE, the Complainant prays that a hearing be  
27 conducted on the allegations of the Accusation and that upon

1 proof thereof, a decision be rendered imposing disciplinary  
2 action against all licenses and license rights of Respondents  
3 under the Real Estate Law (Part 1 of Division 4 of the Business  
4 and Professions Code) and for such other and further relief as  
5 may be proper under other applicable provisions of law.

6  
7 

8 EDWARD V. CHIOLO  
9 Deputy Real Estate Commissioner

10 Dated at San Francisco, California

11 this 3<sup>rd</sup> day of MARCH, 1992.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27