

1 Department of Real Estate
 2 185 Berry Street, Room 3400
 3 San Francisco, CA 94107-1770
 4 Telephone: (415) 904-5917

FILED
JUL 21 1994
 DEPARTMENT OF REAL ESTATE

By *Linda Montiel*
 Linda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE
 STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)	No. H-6722 SF
12 TIMOTHY PAUL RATCHFORD)	<u>STIPULATION AND AGREEMENT</u>
13 Respondent.)	<u>IN SETTLEMENT AND ORDER</u>
14 _____)	

15 It is hereby stipulated by and between TIMOTHY PAUL
 16 RATCHFORD (Respondent), represented by his attorney David J.
 17 Hofmann, and the Complainant, acting by and through Deidre L.
 18 Johnson, Counsel for the Department of Real Estate, as follows
 19 for the purpose of settling and disposing the Accusation as to
 20 them filed on June 3, 1992:

21 1. All issues which were to be contested and all
 22 evidence which was to be presented by Complainant and Respondent
 23 at a formal hearing on the Accusation, which hearing was to be
 24 held in accordance with the provisions of the Administrative
 25 Procedures Act (APA), shall instead and in place thereof be
 26 submitted solely on the basis of the provisions of this
 27 Stipulation and Agreement in Settlement.

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA and
3 the Amended Accusation filed by the Department of Real Estate in
4 this proceeding.

5 3. On June 30, 1992, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive the right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA, and that he will waive
14 other rights afforded to him in connection with the hearing such
15 as the right to present evidence in defense of the allegations in
16 the Accusation and the right to cross-examine witnesses.

17 4. Respondent has read the Discovery Provisions of the
18 APA and is aware of the right to conduct discovery in the
19 proceeding, and by entering into this stipulation, freely and
20 voluntarily waives the right to conduct further discovery.

21 5. Respondent, pursuant to the limitations set forth
22 below, hereby admits that the factual allegations set forth in the
23 Accusation are true and correct and the Real Estate Commissioner
24 shall not be required to provide further evidence of such
25 allegations. A true copy of the Accusation is attached hereto as
26 Annex A and incorporated herein by reference.

27

1 6. It is understood by the parties that the Real Estate
2 Commissioner may adopt the Stipulation and Agreement in Settlement
3 as his decision in this matter thereby imposing the penalty and
4 sanctions on Respondent's real estate license(s) and license
5 rights as set forth in the below "Order". In the event that the
6 Commissioner in his discretion does not adopt the Stipulation and
7 Agreement in Settlement, it shall be void and of no effect, and
8 Respondent shall retain the right to a hearing and proceeding on
9 the Accusation under all the provisions of the APA and shall not
10 be bound by any admission or waiver made herein.

11 7. Respondent has received, read and understands the
12 "Notice Concerning Costs of Subsequent Audits." Respondent
13 understands that by agreeing to this Stipulation and Agreement in
14 Settlement, the findings set forth below in the DETERMINATION OF
15 ISSUES become final, and that the Commissioner may charge
16 Respondent for the cost of any audit conducted pursuant to Section
17 10148 of the Business and Professions Code. The maximum cost of
18 said audit will not exceed \$2,800.00.

19 8. The Order or any subsequent Order of the Real Estate
20 Commissioner made pursuant to this Stipulation and Agreement in
21 Settlement shall not constitute an estoppel, merger or bar to any
22 further administrative or civil proceedings by the Department of
23 Real Estate with respect to any matters which were not
24 specifically alleged to be causes for accusation in this
25 proceeding.

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27 ///

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and for the purpose of settlement of the pending Amended Accusation as to Respondent without a hearing, it is stipulated and agreed that the following determination of issues shall be made:

I

The acts and/or omissions of Respondent TIMOTHY PAUL RATCHFORD, as described in Paragraphs 2, 3, and 4 of the Accusation violate Sections 10145(a) and 10232(f) of the California Business and Professions Code (the Code), and Sections 2726, 2830 and 2832(a) of Title 10, California Code of Regulations, and are grounds for the suspension or revocation of the real estate license(s) and license rights of Respondent under the provisions of Section 10177(d) of the Code.

ORDER

I

A. All real estate licenses and license rights of Respondent TIMOTHY PAUL RATCHFORD are revoked.

B. A restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.6 of the Code if he makes application therefor and pays to the Department the appropriate fee for said license within ninety (90) days of the effective date of the decision.

C. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the

1 Business and Professions Code and to the following limitations
2 imposed under authority of Section 10156.6 of said Code:

- 3 1) The restricted license may be suspended prior to
4 hearing by order of the Real Estate Commissioner
5 in the event of Respondent's conviction or plea of
6 nolo contendere to a crime which bears a
7 substantial relationship to Respondent's fitness
8 or capacity as a real estate licensee.
- 9 2) The restricted license may be suspended prior to
10 hearing by Order of the Real estate Commissioner
11 on evidence satisfactory to the Commissioner that
12 Respondent has violated provisions of the
13 California Real Estate Law, the Subdivided Lands
14 Law, Regulations of the Real Estate Commissioner
15 or conditions attaching to the restricted license.
- 16 3) Respondent shall not be eligible to apply for the
17 issuance of an unrestricted real estate license,
18 nor the removal of any of the conditions of the
19 restricted license, until one (1) year has elapsed
20 from the date of issuance of the restricted
21 license.
- 22 4) Respondent shall, within nine (9) months from the
23 effective date of this decision, present evidence
24 satisfactory to the Real Estate Commissioner that
25 he has, since the most recent issuance of an
26 original or renewal real estate license, taken and
27 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 hearing pursuant to the
Administrative Procedure Act to present such
evidence.
- 5) Pursuant to Section 10148 of the Business and
Professions Code, Respondent shall pay the
Commissioner's reasonable cost for an audit as a
result of the trust fund violation(s) stipulated to
above. In calculating the amount of the
Commissioner's reasonable cost, the Commissioner may
use the estimated average hourly salary for all
Department Audit Section personnel performing audits
of real estate brokers, and shall include an
allocation for travel time to and from the auditor's
place of work. Respondent shall pay such cost

1 within forty-five (45) days of receiving an invoice
2 from the Commissioner detailing the activities
3 performed during the audit and the amount of time
4 spent performing those activities. The total cost
5 shall not exceed \$2,800. The Commissioner may
6 suspend the restricted license issued to Respondent
7 pending a hearing held in accordance with Section
8 11500, et seq., of the Government Code, if payment
9 is not timely made as provided for therein, or as
10 provided for in a subsequent agreement between the
11 Respondent and the Commissioner. The suspension
12 shall remain in effect until payment is made in full
13 or until Respondent enters into an agreement
14 satisfactory to the Commissioner to provide for
15 payment, or until a decision providing otherwise is
16 adopted following a hearing held pursuant to this
17 condition.

11 DATED:

August 22, 1994

DEIDRE L. JOHNSON

Counsel for the Complainant

15 * * *

17 I have read the Stipulation in Settlement and Agreement,
18 have discussed it with my counsel, and its terms are understood by
19 me and are agreeable and acceptable to me. I understand that I am
20 waiving rights given to me by the California Administrative
21 Procedure Act, and I willingly, intelligently and voluntarily
22 waive those rights, including the right of requiring the
23 Commissioner to prove the allegations in the Amended Accusation at
24 a hearing at which I would have the right to cross-examine

25 ///

26 ///

27 ///

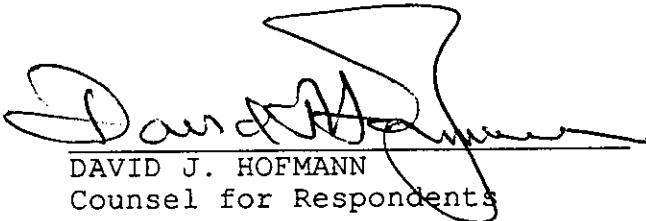
1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

3
4 DATED: 6/9/94


TIMOTHY PAUL RATCHFORD
Respondent

6
7
8 APPROVED AS TO FORM:

9 DATED: 6/14/94


DAVID J. HOFMANN
Counsel for Respondents

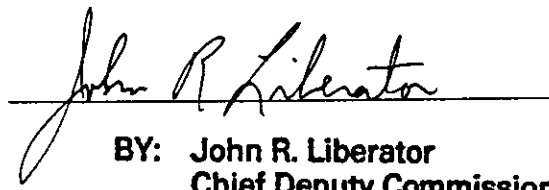
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11 * * *

12 DECISION AND ORDER

13
14 The foregoing Stipulation and Agreement in Settlement is
15 hereby adopted as my Decision and Order and shall become effective
16 at 12 o'clock noon on August 10th, 1994.

17 IT IS SO ORDERED July 13, 1994.

18 CLARK WALLACE
19 Real Estate Commissioner

20
21 
22 BY: John R. Liberator
23 Chief Deputy Commissioner
24
25
26
27

flag

COPY

FILED
MAR 9 1994

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

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

TIMOTHY PAUL RATCHFORD,

Case No. H-6722 SF

OA# No. N 41332

Respondent

**CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,

455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

on Monday, May 16th, 1994 (1/2 day), 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 9, 1994

By Deidre L. Johnson/Lm
DEIDRE L. JOHNSON, Counsel

Flag

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FILED

OCT 13 1993

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

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

TIMOTHY PAUL RATCHFORD,

By

Lynda Montiel
Lynda Montiel

Case No. H-6722 SF

OAH No. N 41332

Respondent

CONTINUED

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,

455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

on Friday, December 3, 1993 (1/2 Day), at the hour of 1:30 pm,
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: October 13, 1993

By

Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

Flag

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FILED
JUN 03 1992

1 DEIDRE JOHNSON, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107

DEPARTMENT OF REAL ESTATE

5 Telephone: (415) 904-5917

By *Maria L. L. L.*

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 TIMOTHY PAUL RATCHFORD,)
13 Respondent.)

NO. H-6722 SF

ACCUSATION

14
15 The Complainant, Edward V. Chiolo, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against TIMOTHY PAUL RATCHFORD (hereinafter "Respondent") is
18 informed and alleges as follows:

19 1.

20 The Complainant, Edward V. Chiolo, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 against Respondent in his official capacity.

23 2.

24 Respondent TIMOTHY PAUL RATCHFORD is licensed and/or has
25 license rights under the Real Estate Law, Part 1 of Division 4 of
26 the Business and Professions Code (hereinafter "Code") as a real
27 estate broker. Respondent was so licensed during 1989 and 1990.

- 1 -

3.

From time to time during 1989 and 1990, Respondent conducted a mortgage loan brokerage business in San Jose, California, under the fictitious business name South Bay Mortgage Company. Respondent solicited and/or negotiated loans and in that context collected credit report fees and appraisal fees from potential borrowers. Respondent performed these activities for compensation or in expectation of compensation.

4.

In the course of conducting the business described in paragraph 3., during 1989 and 1990, Respondent violated the Real Estate Law as follows:

(a) As of July 31, 1990, the total amount of funds belonging to others [Business and Professions Code Sections 10145(a)] (trust funds) which Respondent should have had in his trust account, according to Respondent's own records, was \$4,025.50. As of July 31, 1990, Respondent's trust fund account had been overdrawn through the payment of trust fund obligations by the amount of \$1,180.45.

Accordingly, as of July 31, 1990, there was a total trust fund shortage of \$5,205.95.

(b) During 1990, Respondent in at least twelve instances failed to deposit in his trust account by the next business day trust funds received by Respondent in the course of conducting the business described in paragraph 3.

1 (c) During the period March 6, 1990 through August 21, 1990
2 in the course of the business described in paragraph 3.,
3 Respondent negotiated 23 or more loans secured by lien
4 on real property with a total face amount of
5 \$3,346,807.00. Respondent did not notify the Department
6 of Real Estate of this activity within the time limit
7 given by Section 10232(f) of the Business and
8 Professions Code, or at any time.

9 (d) Until September 20, 1990, Respondent employed Clay Alan
10 Brasnell as a real estate salesperson without entering
11 into a written agreement with Brasnell covering all
12 material aspects of the broker - salesperson
13 relationship including the salesperson's duties and
14 compensation and the form and extent of the supervision
15 which would be exercised by the broker over the
16 salesperson's activities.

17 (e) During 1989 and 1990, Respondent failed to maintain a
18 bank account in his name, as trustee, for depositing and
19 maintaining trust funds received by Respondent in the
20 course of the business described in paragraph 3.
21 Respondent did maintain a bank account in the name of
22 Southmark Mortgage Co., Inc., a person not licensed by
23 the Department of Real Estate in any capacity.

24 5.

25 Respondent's acts and/or omissions alleged in paragraph
26 4., are grounds for the suspension or revocation of Respondent's
27 license as follows:

- 1 (a) As to paragraph 4(a), under Section 10177(d) of the Code
2 in conjunction with Section 10145(a) of the Code.
3 (b) As to paragraph 4(b), under Section 10177(d) in
4 conjunction with Section 2832(a) of Title 10, California
5 Code of Regulations (Regulations).
6 (c) As to paragraph 4(c), under Section 10177(d) of the Code
7 in conjunction with Section 10232(f) of the Code.
8 (d) As to paragraph 4(d), under Section 10177(d) of the Code
9 in conjunction with Regulation 2726.
10 (e) As to paragraph 4(e), under Section 10177(d) of the Code
11 in conjunction with Section 10145(a) of the Code and
12 Regulation 2830.

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

20 *Edward V. Chio*

21
22 EDWARD V. CHIOLO
23 Deputy Real Estate Commissioner

24 Dated at San Francisco, California,
25 this 27th day of May, 1992.
26
27