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FILED  
SEP 23 1992

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*  
Victoria Dillon

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of )	No. H-6789 SF
12	CALIFORNIA MORTGAGE FINANCIAL )	<u>ACCUSATION</u>
13	SERVICES, INC., )	
14	DAVID ALAN MORGENSEN and )	
15	JAMES ARTHUR CAMPAGNA, )	
	Respondents. )	

16  
17 The Complainant, Edward V. Chiolo, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against CALIFORNIA MORTGAGE FINANCIAL SERVICES, INC., DAVID ALAN  
20 MORGENSEN and JAMES ARTHUR CAMPAGNA (hereafter Respondents), is  
21 informed and alleges as follows:

22 I

23 Respondents CALIFORNIA MORTGAGE FINANCIAL SERVICES, INC.  
24 (hereafter CMFS), DAVID ALAN MORGENSEN (hereafter MORGENSEN) and  
25 JAMES ARTHUR CAMPAGNA (hereafter CAMPAGNA) are presently licensed  
26 and/or have license rights under the Real Estate Law, Part 1 of

27 / / / / /

1 Division 4 of the Business and Professions Code (hereafter the  
2 Code) .

3 II

4 The Complainant, Edward V. Chiolo, a Deputy Real Estate  
5 Commissioner of the State of California, makes this Accusation  
6 against Respondents in his official capacity and not otherwise.

7 III

8 Respondent CMFS was and is licensed by the Department of  
9 Real Estate of the State of California (hereafter Department) as a  
10 corporate real estate broker, and was so licensed by and through  
11 MORGENSEN as its designated broker officer from December 8, 1989  
12 through February 10, 1992. CMFS was licensed through CAMPAGNA  
13 from September 26, 1989 through December 7, 1989.

14 IV

15 Respondent MORGENSEN was and is licensed by the  
16 Department as an individual real estate broker. Respondent was  
17 also licensed as the designated broker officer of CMFS from  
18 December 8, 1989 through February 10, 1992.

19 V

20 Respondent CAMPAGNA was and is licensed by the  
21 Department as an individual real estate broker. He was also  
22 licensed as the designated officer of CMFS from September 26, 1989  
23 through December 7, 1989.

24 VI

25 At all times herein mentioned, CMFS engaged in the  
26 business of, acted in the capacity of, advertised and assumed to  
27 act as a real estate broker within the State of California,

1 including the operation and conduct of a mortgage loan brokerage  
2 business with the public wherein lenders and borrowers were  
3 solicited for loans secured directly or collaterally by liens on  
4 real property, and such loans were arranged, negotiated, processed  
5 and consummated on behalf of others, for or in expectation of  
6 compensation.

7 VII

8 Commencing in about April of 1991, the Department  
9 conducted an investigation and audit of the books and records of  
10 CMFS relating to its mortgage loan brokerage business. Between  
11 approximately January of 1990 and April of 1991, CMFS engaged in  
12 the above activities in soliciting and negotiating with borrowers  
13 for loans to be secured by real property, by and through loan  
14 agents and/or employees of CMFS who were not licensed by the  
15 Department as either real estate brokers or real estate  
16 salespersons at the times of the transactions, including but not  
17 limited to the following:

18	19	20	21	22	23	24	25	26	27
	<u>DATE</u>	<u>BORROWER</u>	<u>PROPERTY</u>	<u>UNLICENSED</u>	<u>AGENT</u>				
	10/90	Doerschuk	269 Bust Street Santa Clara	J. Gallant					
	10/90	Silvers	816 LaBra Palo Alto	J. Gallant					
	10/90	Jinks	6197 Ostenberg San Jose	J. Gallant					
	2/91	Sterner	5083 Bucknall San Jose	J. Gallant					
	2/91	Sepehri	3198 Groth San Jose	J. Gallant					

1	1/91	Pittman	3129 Sobrante Santa Clara	Barbara Johnson
2				
3	2/91	Smith	20355 Skyline La Honda	Barbara Johnson
4	2/91	Sorci	5904 Southmont San Jose	Barbara Johnson
5				
6	2/91	Hinkley	616 So. 13th St. San Jose	Barbara Johnson
7	1/91	Artil	2482 Sherlock San Jose	Lori Concha
8				
9	1/91	Minderler	14411 Arroyo Seco Campbell	Lori Concha
10	1/91	Hoskings	125 Northgate Woodside	Nelson Santiago
11				
12	7/90	Greene	1238 Candia San Jose	Jewell Rimes
13	11/89	Singh & Saini	1543 Barberry Ct. San Jose	Dennis Terry
14				

VIII

16 CMFS paid real estate commissions to unlicensed loan  
 17 agents and/or employees of CMFS for mortgage loan activities for  
 18 which a real estate license is required, including but not limited  
 19 to commissions for the transactions described in Paragraph VII  
 20 above.

IX

22 Between approximately April of 1990 and April of 1991,  
 23 CMFS failed to deliver mortgage loan disclosure statements to  
 24 borrowers, and/or to retain copies of said disclosure statements  
 25 with its records for four years as required by Section 10240 of  
 26 the Code in the following transactions:

27 / / / / /

1	<u>BORROWER</u>	<u>PROPERTY</u>
2	Silvers	816 LaBra, Palo Alto
3	Hoskins	125 Northgate, Woodside
4	Doerschuk	269A Bush, Mountain View
5	Sepehri	3198 Groth, San Jose
6	Sorci	5904 Southmont, San Jose
7	Hinkley	616 So. 13th St., San Jose
8	Jinks	6197 Ostenberg, San Jose
9	Minderler	1411 Arroyo Seco, Campbell
10	Wimmer	927 California, San Jose

11 X

12 For the period January 1, 1991 to April 25, 1991,  
 13 Respondent CMFS negotiated at least twenty or more loans secured  
 14 directly or collaterally by liens on real property for others in  
 15 an aggregate amount of more than \$2,000,000.00, and failed to  
 16 notify the Department in writing within thirty days of meeting the  
 17 above criteria.

18 XI

19 For the period ending on or about March 31, 1991, CMFS  
 20 maintained a trust account at Bank of the West in San Jose,  
 21 California, Account No. [REDACTED] (the trust account), and used  
 22 the account for the receipt and disbursement of trust funds, as  
 23 that term is defined in Section 10145 of the Code, received from  
 24 borrowers in connection with the above mortgage loan activities.  
 25 CMFS and MORGENSEN failed or omitted to maintain adequate  
 26 subsidiary records for all separate beneficiaries or transactions  
 27 as required by Section 2831.1 Title 10, California Code of

1 Regulations (Regulations). By reason of the inadequate records,  
2 the Department was unable to ascertain a total accountability of  
3 CMFS and MORGENSEN for trust funds belonging to others as of the  
4 above date.

5 XII

6 For the period from at least September of 1990 through  
7 October 1991, Respondents CMFS and MORGENSEN permitted or  
8 authorized withdrawals to be made from the trust account by the  
9 sole signature of Steve Cornaglia, the president and sole  
10 shareholder of the company. Cornaglia was not duly licensed by  
11 the Department as either a real estate broker or real estate  
12 salesperson, and was not duly bonded with the requisite fidelity  
13 bond insurance coverage to conduct such trust account activities  
14 without a real estate license as provided for in Section 2834 of  
15 the Regulations.

16 XIII

17 As of approximately April of 1991, the license of CMFS  
18 was issued at its business office located at 1901 S. Bascom  
19 Avenue, Suite 105, San Jose. In addition, CMFS and MORGENSEN  
20 maintained branch offices located at 1901 S. Bascom Avenue,  
21 Suite 1060 and 199 S. Bascom Avenue, Suite 450, San Jose, without  
22 duly registering the branch offices with the Department as  
23 required under Section 10163 of the Code.

24 XIV

25 In October 1991 a follow up audit was done by the  
26 Department on the books and records of CMFS (second audit). The  
27 following facts were ascertained by the second audit for the

1 periods of November 1, 1989 through January 31, 1990 and October  
2 1, 1990 through October 31, 1991:

3 a. As of October 31, 1991, CMFS maintained two real  
4 estate broker trust accounts for the receipt and disbursement of  
5 trust funds. The accounts were identified as follows:

- 6 1. Bank of the West, Account No. [REDACTED] (T.A.#1)  
7 2. California Business Bank, Account No. [REDACTED]  
8 (T.A.#2)

9 T.A.#1 was used to deposit all trust funds received from  
10 December 1, 1990 to September 31, 1991.

11 T.A.#2 was opened on September 25, 1991 and was used to  
12 deposit all trust funds received on and after October 1, 1991.

13 b. The separate beneficiary records to be maintained  
14 for a trust account as required by Section 2831.1 of the  
15 Regulations were not maintained for T.A.#1 as of October 31, 1991.  
16 Therefore, Respondent's accountability for trust funds received  
17 could not be determined for this account. The separate records  
18 maintained for T.A.#2 after October 1, 1991 were not in compliance  
19 with the requirements of Section 2831.1 of the Regulations.

20 c. Accountability and adjusted bank balance was  
21 calculated for T.A.#2 as of October 31, 1991. Respondents  
22 accountability for trust funds received in T.A.#2 was \$11,949.35  
23 and the adjusted bank balance was \$14,309.35, thereby causing an  
24 overage in T.A.#2 of \$2,360.00 as of October 31, 1991. The  
25 overage was caused by Respondent's failure to remove earned  
26 commissions from T.A.#2 within a reasonable time and represent a

27 / / / / /

1 commingling of Respondents' non-trust funds with the trust funds  
2 in T.A.#2.

3 d. Between November 1, 1989, and January 31, 1990, CMFS  
4 collected processing fees in advance from at least one hundred  
5 borrowers. Prior to collecting such advance fees, as that term is  
6 defined in Section 10026 of the Code, Respondents did not request  
7 and receive the Department's approval of Respondents' written  
8 advance fee agreement, as required by Section 2970 of the  
9 Regulations.

10 XV

11 CAMPAGNA was the designated officer of CMFS from  
12 September 26, 1989 through December 7, 1989 and was responsible  
13 under Section 10159.2 of the Code for the supervision and control  
14 of the activities conducted by the corporation, its officers and  
15 employees to secure full compliance with the Real Estate Law  
16 during that period. CAMPAGNA was negligent or incompetent in the  
17 performance of the above responsibilities, and/or failed to  
18 exercise reasonable supervision and control of the activities of  
19 the company, in that he knew or should have known all of the facts  
20 alleged above which occurred during that period and could and  
21 should have taken steps to assure CMFS's compliance.

22 XVI

23 MORGENSEN was the designated officer of CMFS from  
24 December 8, 1989 through February 10, 1992, and was responsible  
25 under Section 10159.2 of the Code for the supervision and control  
26 of the activities conducted by the corporation, its officers and  
27 employees to secure full compliance with the Real Estate Law



1 during that period. MORGENSEN was negligent or incompetent in the  
2 performance of the above responsibilities, and/or failed to  
3 exercise reasonable supervision and control of the activities of  
4 the company, in that he knew or should have known all of the facts  
5 alleged above which occurred during that period and could and  
6 should have taken steps to assure CMFS's compliance.

7 XVII

8 The acts and/or omissions of Respondent CMFS as alleged  
9 in Paragraphs VI through VIII above constitute grounds for  
10 disciplinary action under the provisions of Section 10137 of the  
11 Code.

12 XVIII

13 The acts and/or omissions of Respondent CMFS as alleged  
14 in Paragraphs IX through XIII above violate Sections 10163, 10232,  
15 and 10240 of the Code and Sections 2831.1 and 2834 of the  
16 Regulations, and constitute grounds for disciplinary action under  
17 the provisions of Section 10177(d) of the Code.

18 XIX

19 The acts and/or omissions of CMFS as alleged in  
20 Paragraph XIV above violate Sections 2831.1, 2834 and 2970 of the  
21 Regulations and constitute grounds for disciplinary action under  
22 the provisions of Section 10177(d) of the Code. Said acts and/or  
23 omissions are also grounds for discipline under Sections 10085 and  
24 10176(e) of the Code.

25 XX

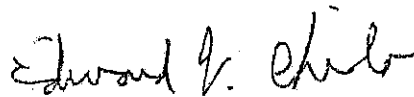
26 The acts and/or omissions of Respondent MORGENSEN as  
27 alleged in Paragraph XVI above violate Section 10159.2 of the Code

1 and constitute grounds for disciplinary action under the  
2 provisions of Sections 10177(g) and/or 10177(h) of the Code.

3 XXI

4 The acts and/or omissions of Respondent CAMPAGNA as  
5 alleged in Paragraph XV above violate Section 10159.2 of the Code  
6 and constitute grounds for disciplinary action under the  
7 provisions of Sections 10177(g) and/or 10177(h) of the Code.

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

15  
16 

17 \_\_\_\_\_  
18 EDWARD V. CHIOLO  
Deputy Real Estate Commissioner

19 Dated at San Francisco, California  
20 this 17<sup>th</sup> day of SEPTEMBER, 1992.