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OCT 17 2001

DEPARTMENT OF REAL ESTATE

By Laurie A. Zorn

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
SCOTT JOHN NEELY,)	NO. H-6806 SF
)	
Respondent.)	
)	

ORDER DENYING REINSTATEMENT OF LICENSE

On March 14, 1994, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. Respondent failed to apply for said license.

On May 16, 2001, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone

1 sufficient rehabilitation to warrant the reinstatement of
2 Respondent's real estate broker license in that Respondent has
3 no experience acting in a fiduciary capacity since the effective
4 date of the Decision in this matter. Consequently, Respondent
5 is not able to present any evidence of compliance with Section
6 2911(j), Title 10, California Code of Regulations. Further,
7 Respondent has failed to discharge a debt in excess \$6,700.00
8 owed to the Internal Revenue Service. Respondent has entered
9 into arrangements to pay that debt but, in view of the amount
10 still owing, I am not satisfied that Respondent is sufficiently
11 rehabilitated to receive a real estate license.

12 Further, at a time when his real estate broker license
13 was revoked, Respondent, while employed by CHL Mortgage and
14 acting for another or others and in expectation of compensation,
15 negotiated loans secured by liens on real property. Said acts
16 were conducted on behalf of Rosenda D. Jewell, Alison Johnson,
17 and others unknown to me but well known by Respondent.
18 Consequently, Respondent performed acts for which a real estate
19 license is required without having such a license. In the
20 Proposed Decision in this matter, the Administrative Law Judge
21 stated, "Throughout his testimony, Respondent displayed an
22 alarming ignorance of the law as it pertains to real estate
23 brokers." Respondent's conduct establishes that he has not
24 corrected his business practices nor changed his attitude from
25 that which existed at the time of the acts that lead to the
26 disciplinary action in this matter.

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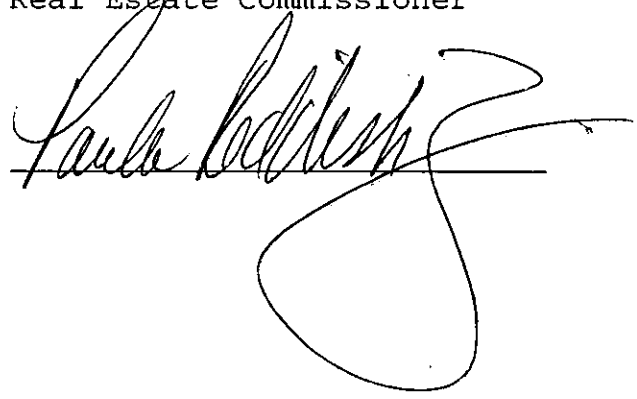
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NOW, THEREFORE, IT IS ORDERED that Respondent's
petition for reinstatement of his real estate broker license is
denied.

This Order shall become effective at 12 o'clock
noon on NOVEMBER 7, 2001.

DATED: October 9, 2001

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



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FILED
DEC - 8 1997
DEPARTMENT OF REAL ESTATE

Lucie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
SCOTT JOHN NEELY,) NO. H-6806 SF
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On March 14, 1994, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. Respondent failed to apply for said license.

On June 26, 1997, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone

1 sufficient rehabilitation to warrant the reinstatement of
2 Respondent's real estate broker license in that Respondent has no
3 experience acting in a fiduciary capacity since the effective date
4 of the Decision in this matter. Consequently, Respondent is not
5 able to present any evidence of compliance with Section 2911(j),
6 Title 10, California Code of Regulations. Further, Respondent has
7 failed to discharge debts in excess of \$1,000 owed to the
8 California Franchise Tax Board, and \$9,000 owed to the Internal
9 Revenue Service. Respondent has entered into arrangements to pay
10 those debts but, in view of the amount still owing, I am not
11 satisfied that Respondent is sufficiently rehabilitated to receive
12 an unrestricted license.

13 I am satisfied, however, that it will not be against the
14 public interest to issue a restricted real estate salesperson
15 license to Respondent since Respondent will have an opportunity to
16 demonstrate rehabilitation while operating under the close
17 supervision of a real estate broker.

18 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
19 for reinstatement of his real estate broker license is denied.

20 A restricted real estate salesperson license shall be
21 issued to Respondent pursuant to Section 10156.5 of the Business
22 and Professions Code, if Respondent satisfies the following
23 conditions within six (6) months from the date of this Order:

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

26 2. Submittal of evidence of having, since the most
27 recent issuance of an original or renewal real estate license,



1 taken and successfully completed the continuing education
2 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
3 for renewal of a real estate license.

4 The restricted license issued to Respondent shall be
5 subject to all of the provisions of Section 10156.7 of the
6 Business and Professions Code and to the following limitations,
7 conditions and restrictions imposed under authority of Section
8 10156.6 of that Code.

9 1. The restricted license issued to Respondent may be
10 suspended prior to hearing by Order of the Real Estate
11 Commissioner in the event of Respondent's conviction or plea of
12 nolo contendere to a crime which is substantially related to
13 Respondent's fitness or capacity as a real estate licensee.

14 2. The restricted license issued to Respondent may be
15 suspended prior to hearing by Order of the Real Estate
16 Commissioner on evidence satisfactory to the Commissioner that
17 Respondent has violated provisions of the California Real Estate
18 Law, the Subdivided Lands Law, Regulations of the Real Estate
19 Commissioner or conditions attaching to the restricted license.

20 3. Respondent shall not be eligible to apply for the
21 issuance of an unrestricted real estate license nor the removal of
22 any of the limitations, conditions or restrictions of a restricted
23 license until one (1) year has elapsed from the date of the
24 issuance of the restricted license to respondent.

25 4. Respondent shall submit with any application for
26 license under an employing broker, or any application for transfer
27 to a new employing broker, a statement signed by the prospective



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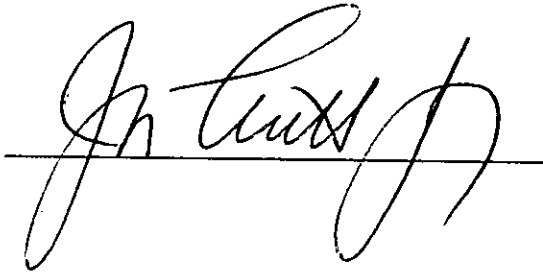
employing broker on a form approved by the Department of Real Estate which shall certify:

- a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and,
- b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

This Order shall become effective at 12 o'clock noon on December 29, 1997.

DATED: 12/4, 1997.

JIM ANTT, JR.
Real Estate Commissioner



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MAY 03 1994

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
SCOTT JOHN NEELY and)	No. H-6806 SF
WILLIAM PETER BYRD,)	
Respondents.)	OAH No. N-42139

ORDER DENYING RECONSIDERATION

On March 14, 1994, a Decision was rendered in the above-entitled matter. The Decision is to become effective on May 6, 1994.

On March 25, 1994, Respondent SCOTT JOHN NEELY only petitioned for reconsideration of the Decision of March 14, 1994.

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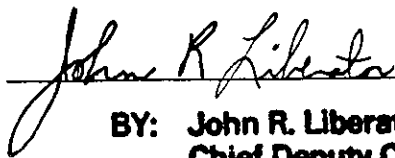
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I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of March 14, 1994, and reconsideration is hereby denied.

IT IS SO ORDERED April 29, 1994.

CLARK WALLACE
Real Estate Commissioner


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

FILED
MAR 29 1994

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-6806 SF
)	
SCOTT JOHN NEELY and)	OAH N-42139
WILLIAM PETER BYRD,)	
)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On March 14, 1994, a Decision was rendered in the above-entitled matter to become effective April 6, 1994.

IT IS HEREBY ORDERED that the effective date of the Decision of March 14, 1994, as to SCOTT JOHN NEELY, is stayed for a period of thirty (30) days.

The Decision of March 14, 1994, shall become effective at 12 o'clock noon on May 6, 1994.

DATED: March 29, 1994.

CLARK WALLACE
Real Estate Commissioner

James W. Hardy
By: JAMES W. HARDY
Deputy Real Estate Commissioner

COPY

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jac kz
FILED
MAR 14 1994

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

By *Emily Jakko*

In the Matter of the Accusation of)
)
 SCOTT JOHN NEELY and)
 WILLIAM PETER BYRD,)
)
)
 Respondent (s).)

No. H- 6806 SF
OAH N 42139

DECISION

The Proposed Decision dated February 10, 1994,
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on April 6, 19 94.

IT IS SO ORDERED 3/14, 19 94.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of))	Case No. H-6806 SF
SCOTT JOHN NEELY and))	
WILLIAM PETER BYRD))	OAH No. N 42139
Respondents.))	
_____))	

PROPOSED DECISION

Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on January 18, 1994 at San Francisco, California.

John Van Driel, Counsel represented the complainant.

John Scott Neely represented himself.

FINDINGS OF FACT

I

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

II

John Scott Neely (respondent) is licensed and has license rights under the California Real Estate Law (Part 1, Division 4, Business and Professions Code). He was licensed as a real estate broker as of October 1, 1988. This license expired March 27, 1990. Respondent was licensed as a real estate broker as of April 19, 1990. This license will expire April 18, 1994.

Respondent's current residence address is: 330 Westline Drive, #B124, Alameda, California 94501.

III

The accusation against William Peter Byrd was resolved by way of a stipulation between Byrd and the Department effective February 22, 1993.

FIRST CAUSE OF ACTION

IV

In October 1990 and January 1991, the Department conducted an investigative audit of the books and records of respondent for the period January 1, 1989 to October 30, 1990. This audit disclosed the following:

a. As of October 9, 1990, respondent maintained a real estate broker trust account with Alameda Bank First National, Alameda, California.

b. This account was used by respondent for the receipt and disbursement of credit, appraisal and processing fees. Such funds are "trust funds" within the meaning of Section 10145.

c. As of August 8, 1990, the trust account balance was \$4,045.78. The trust fund accountability as of said date was \$8,163.50. The trust fund account shortage was \$4,117.72.

d. On October 9, 1990, respondent closed the account and transferred the balance (\$4,045.78) into his general account. When asked why he made said transfer, respondent told the auditor it was to pay all credit and appraisal vendors and that the outstanding amount was greater than the balance in the trust account. When asked why he did not transfer funds from the general account into the trust account, respondent replied he thought that would constitute commingling of funds.

e. Respondent did not prepare monthly reconciliations of the trust account records with the separate beneficiary records.

f. Respondent collected "processing fees" in connection with his mortgage loan broker activities. These fees constituted "advance fees" within the meaning of Section 10026. Respondent did not have an advance fee contract approved by the Department as required under Section 10085 and Title 10, California Code of Regulations, section 2970.

g. Respondent collected credit and appraisal fees in excess of cost. The excess funds were transferred to respondent's general account and not refunded to the borrowers who had no knowledge of and had not given consent for such conduct.

h. Respondent did not have specific authorization allowing salespersons Koch and Namvar to make withdrawals from the trust account as required by Title 10, California Code of Regulations, section 2834.

i. Respondent compensated William Peter Byrd, who was unlicensed, for soliciting borrowers and performing services in connection with loans to be secured by real property.

j. Respondent did not provide certain borrowers the Mortgage Loan Disclosure Statements as required by Section 10240.

k. Respondent operated his business under the business name "FTC of Alameda." This name was neither licensed by the Department as a real estate corporation nor listed as a fictitious business name of his real estate broker license as required by Title 10, California Code of Regulations, section 2731.

l. Respondent did not have on hand the 1989-1990 loan files for loans arranged by William Peter Byrd as required by Section 10148.

SECOND CAUSE OF ACTION

V

Findings I through IV are incorporated herein.

VI

Respondent abandoned his business office at 1437-A, Leimert Boulevard, Oakland, California. Respondent listed this address as his business address of record as of December 24, 1990. He did not maintain on file with the Department a new address for his principal place of business.

OTHER MATTERS

VII

Respondent's explanation for the above findings is: Byrd presented a file containing fraudulent tax forms of a borrower to a prospective lender. When the borrower came to the office to sign the loan forms, the borrower complained. Respondent fired Byrd upon learning of this conduct. Respondent asserts that this event precipitated the investigation against him. Respondent postures that all other matters are merely technical.

VIII

Respondent's partner was Namvar. At the time of the audit, the partnership was in the process of dissolution. Respondent concedes that trust funds were improperly transferred into the general account. During the year preceding the partnership breakup, respondent was involved with another business effort and was spending much time away from his mortgage loan business.

At the start of 1992, respondent and his wife went to Russia for one and one-half years to pursue volunteer work for his church. He returned to the United States in August 1993.

IX

Byrd worked for respondent in San Rafael when both were with another company. Respondent thought Byrd was licensed. When respondent opened his office in Alameda, he offered Byrd a job. Respondent did not determine if Byrd was actually licensed by the Department. In fact, when respondent finally did learn of Byrd's unlicensed status, he told Byrd he could continue to function as a licensee under respondent's license until he acquired his own.

X

Throughout his testimony, respondent displayed an alarming ignorance of the law as it pertains to real estate brokers. For instance:¹

1. He was unaware of the requirement to have his dba listed on his license. He discovered this in 1988 but did not take steps to comply because of his difficulty in obtaining a properly notarized copy from the City of Alameda.

¹ These are not all inclusive.

2. He was unaware of the Threshold requirements for a broker and did not comply with the statutory requirements when he reached threshold.

3. He was unaware that written authorization was required for signatories on his firm's trust account.

4. He did not know about the requirement to submit the processing fee agreement to the Department for approval.

5. He was unaware that the State of California requires submission to the borrower a truth in lending statement pursuant to Section 10240.

The evidence also showed that respondent did not exercise reasonable supervision over his salespersons. The evidence did not show that respondent was negligent or incompetent in the conduct of his business.

XI

Respondent is forty years old and married. His wife is a licensed insurance agent. He currently works part-time for Intervest Financial Corporation in Hayward as an agent though he considers himself an independent broker. He solicits real estate loans. Respondent does not have a document describing his working relationship with Intervest's broker. He is unaware one is required. Respondent also works as a substitute teacher under a thirty day emergency credential.

XII

Respondent was first licensed as a salesperson in 1979. He obtained his broker license in 1981 or 1982.

XIII

Respondent submitted an ex parte communication to the administrative law judge on January 19, 1994. Pursuant to Government Code section 11513.5, said communication was provided to the complainant's counsel who was given until February 3, 1994 to respond. On January 26, 1994, the complainant indicated that no response was forthcoming. All of these communications have been marked for the record as Exhibit A.

DETERMINATION OF ISSUES

I

Finding XIII: After careful consideration, the administrative law judge declines to recuse himself from

further consideration of this matter finding no cause to do so under Government Code section 11512.

II

First Cause of Action: Respondent violated Sections 10085, 10145, 10146, 10148, 10159.5 and 10240 and Title 10, California Code of Regulations, sections 2731, 2831.2, 2834 and 2970. Cause for disciplinary action exists under Sections 10177(d) and (h), 10137 and 10176(e) and (i).

III

First Cause of Action: Cause for disciplinary action was not established under Section 10177(g).

IV

Second Cause of Action: Respondent violated Section 10162. Cause for disciplinary action exists under Section 10177(d).

ORDER

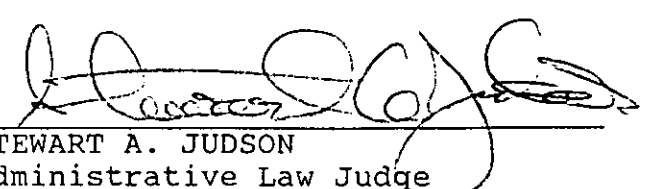
All licenses and licensing rights of Scott John Neely under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law,

Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one (1) year has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: February 12, 1974


STEWART A. JUDSON
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

In the Matter of the Accusation of

SCOTT JOHN NEELY and
WILLIAM PETER BYRD,

Case No. H-6806 SF,

OAH No. N 42139

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

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

on January 18, 1994 (1/2 Day Hearing), at the hour of 1:30 p.m.,
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: September 27, 1993

By *John Van Driel*
JOHN VAN DRIEL, Counsel

nd

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

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FEB 02 1993

3 Telephone: (415) 904-5917
4

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-6806 SF
12	SCOTT JOHN NEELY and)	
	WILLIAM PETER BYRD,)	<u>STIPULATION AND AGREEMENT</u>
13)	<u>IN SETTLEMENT AND ORDER</u>
14	Respondents.)	

15 It is hereby stipulated by and between WILLIAM PETER
16 BYRD and the Complainant, acting by and through John Van Driel,
17 Counsel for the Department of Real Estate, as follows for the
18 purpose of settling and disposing the Accusation filed on
19 October 26, 1992 (the Accusation), in this matter, as to
20 Respondent BYRD only:

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.

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

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

17 4. Respondent BYRD, pursuant to the limitations set
18 forth below, hereby admits that the factual allegations (or
19 findings of fact as set forth below) in paragraphs IV and V i. of
20 the Accusation are true and correct and the Real Estate
21 Commissioner shall not be required to provide further evidence of
22 such allegations. The admissions of fact made herein are made
23 solely for the purpose of establishing jurisdiction for the
24 Commissioner to take disciplinary action and are made solely in

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27

1 reference to this proceeding and any subsequent proceeding before
2 the Commissioner and may not be used in or as a part of any other
3 civil action or criminal action now pending or which may be filed
4 against Respondent, pursuant to the provisions of Section 1152 of
5 the California Evidence Code. A true copy of the Accusation is
6 attached hereto as Annex A and incorporated herein by reference.

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

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

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DETERMINATION OF ISSUES

1 By reason of the foregoing stipulations, admissions and
2 waivers and for the purpose of settlement of the pending
3 Accusation without a hearing, it is stipulated and agreed that the
4 following determination of issues shall be made:

I

6 The conduct of Respondent BYRD as described in the
7 Accusation in this matter is grounds for the suspension or
8 revocation of all of his real estate licenses and license rights
9 under the provisions of Sections 10130, 10131 and 10177(d) of the
10 Code

ORDER

12 1. All real estate licenses and license rights of
13 Respondent WILLIAM PETER BYRD shall be suspended for a period of
14 (30) days from the effective date of the Decision.

15 2. The first twenty (20) days of said suspension are
16 stayed for a period of one (1) year on the condition that no cause
17 for disciplinary action against Respondent occurs within one (1)
18 year from the effective date of the Decision. If the Real Estate
19 Commissioner determines that further cause for disciplinary action
20 against Respondent's license has occurred within one (1) year from
21 the effective date of the Decision, the stay of suspension hereby
22 granted, or such portion of the stay as the Real Estate
23 Commissioner shall deem appropriate, shall be vacated.

24 ///

25 ///

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1 3: If Respondent petitions the Department in writing
2 pursuant to Section 10175.2 of the Business and Professions Code,
3 ten (10) additional days of said suspension shall be stayed upon
4 the following conditions:

5 (1) Respondent shall pay the requested monetary
6 penalty pursuant to Section 10175.2 of the Business and
7 Professions Code at the rate of \$100.00 for each day of the
8 suspension for a total monetary penalty of \$1,000.00.

9 (2) Said payment shall be in the form of a
10 cashier's check or certified check made payable to the Recovery
11 Account of the Real Estate Fund. Said check must be delivered to
12 the Department prior to the effective date of the Decision in this
13 matter.

14 (3) No further cause for disciplinary action
15 against the real estate license of Respondent occurs within one
16 year from the effective date of the Decision in this matter.

17 (4) If Respondent fails to pay the monetary
18 penalty in accordance with the terms and conditions of the
19 Decision, the Commissioner may, without a hearing, order the
20 immediate suspension, in which event, Respondent shall not be
21 entitled to any repayment nor credit, prorated or otherwise, for
22 money paid to the Department on the terms of the Decision.

23 (5) If Respondent pays the monetary penalty and if
24 no further cause for disciplinary action against the real estate

25 ///

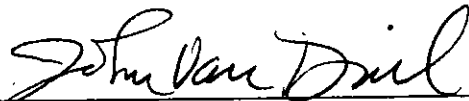
26 ///

27

1 licenses of Respondent occurs within one year from the effective
2 date of the Decision, the stay hereby granted in this
3 subparagraph 3. shall become permanent. If the Real Estate
4 Commissioner determines that further cause for disciplinary action
5 against Respondent's license has occurred within one year from the
6 effective date of the Decision, the stay of suspension hereby
7 granted, or such portion of the stay as the Real Estate
8 Commissioner shall deem appropriate, shall be vacated.


9
10 DEPARTMENT OF REAL ESTATE

11 DATED: 1-12-93


12 JOHN VAN DRIEL
13 Counsel for the Complainant

14 APPROVED AS TO FORM:

15 DATED: 1-8-93


16 WILLIAM S. HOCHMAN
17 Counsel for Respondent

18 * * *

19
20 I have read the Stipulation in Settlement and Agreement,
21 its term have been explained to me by my attorney, and its terms
22 are understood by me and are agreeable and acceptable to me. I
23 understand that I am waiving rights given to me by the California
24 Administrative Procedure Act, and I willingly, intelligently and
25 voluntarily waive those rights, including the right of requiring

26 ///

27 ///

1 the Commissioner to prove the allegations in the Accusation at a
2 hearing at which I would have the right to cross-examine witnesses
3 against me and to present evidence in defense and mitigation of
4 the charges.

5 DATED: 1/8/93 William Peter Byrd
6 WILLIAM PETER BYRD
7 Respondent

8
9 DECISION AND ORDER

10 The foregoing Stipulation and Agreement in Settlement is
11 hereby adopted as my Decision and Order and shall become effective
12 at 12 o'clock noon on February 22, 1993.

13 IT IS SO ORDERED January 26, 1993.

14 DEPARTMENT OF REAL ESTATE

15
16 Clark Wallace
17 CLARK WALLACE
18 Real Estate Commissioner

19 by: John R. Liberator

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

COPY

*Flag
Inc*

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

FILED
OCT 26 1992

5 Telephone: (415) 904-5917

DEPARTMENT OF REAL ESTATE

6 By *Victoria Dillon*
7 Victoria Dillon

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-6806 SF
12	SCOTT JOHN NEELY and)	
13	WILLIAM PETER BYRD)	<u>ACCUSATION</u>
14	Respondents.)	

15 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JOHN SCOTT NEELY and WILLIAM PETER BYRD (Respondents) is
18 informed and alleges as follows:

19 I

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

23 II

24 JOHN SCOTT NEELY (NEELY) and WILLIAM PETER BYRD (BYRD)
25 are presently licensed and/or have license rights under the Real
26 Estate Law (Part 1 of Division 4 of the Business and Professions
27 Code) (Code).

1 III

2 At all times mentioned herein, Neely was licensed as a
3 real estate broker by the Department of Real Estate of the State
4 of California (Department) in his individual capacity.

5 IV

6 Byrd was licensed by the Department as a conditional
7 real estate salesperson on January 18, 1991. His conditional
8 license expired on July 18, 1992.

9 FIRST CAUSE OF ACCUSATION

10 V

11 In October 1990 and January 1991, an investigative audit
12 was made by the Department on the books and records of Neely for
13 the period of January 1, 1989, through October 30, 1990.

14 The following facts were ascertained by the audit.

15 a. As of 10/9/90 Neely maintained a real estate broker
16 trust account with Alameda Bank First National, Alameda,
17 California designated as account #1992732 (the trust account).

18 b. The trust account was used by Neely for the receipt
19 and disbursement of "trust funds", as that term is defined in
20 Section 10145 of the Code. The signatories on the trust account
21 were Neely and Greg Koch and Manouchehr Namvar (real estate
22 salespersons).

23 c. As of 10/8/90 the trust account adjusted bank
24 balance was \$4,045.78; the trust fund accountability was
25 \$8,163.50; resulting in a trust fund shortage of \$4,117.72.

26 d. On 10/9/90 Neely closed the trust account and
27 transferred the \$4,045.78 balance of trust funds to his general
checking account #14-92743.

1 e. Neely failed to reconcile separate beneficiary or
2 transaction records with the bank trust account records as
3 required by Section 2831.2 of Title 10, California Code of
4 Regulations (Regulations).

5 f. During the audit period, Neely collected "processing
6 fees" from borrowers in connection with his mortgage loan broker
7 activities. These amounts paid to Neely were "advance fees", as
8 that term is defined in Section 10026 of the Code. Neely's
9 collection of the advance fees set out above was not done pursuant
10 to an advance fee contract approved by the Department prior to its
11 use, as required by Section 10085 of the Code and Section 2970 of
12 the Regulations.

13 g. During the audit period, Neely collected credit and
14 appraisal fees from borrowers in excess of the actual cost of
15 those fees paid by Neely. The excess funds were transferred to
16 Neely's general account and not refunded to the borrowers, all
17 without their knowledge or consent.

18 h. During the audit period, salespersons Koch and
19 Namvar did not have specific written authorization from Neely to
20 withdraw trust funds, as required by Section 2834 of the
21 Regulations.

22 i. During the audit period, Byrd was employed and
23 compensated by Neely for soliciting and performing services for
24 borrowers in connection with loans to be secured by real property
25 at a time when he was not licensed as a real estate broker or
26 salesperson.

27 / / / / /

1 j. During the audit period, Neely failed to deliver to
2 certain borrowers the disclosure statements required by Section
3 10240 of the Code, as follows:

4	Date	Borrower	Property
5	3/89	Duffy	McKinley Ave., Berkeley
	1/89	Rancanco	Shell Ct., Modesto
6	5/89	Glen	Bordeaux Ct., Danville
	7/89	Townsend	Bonnie Dr., El Cerrito
7	9/89	Jung	Prince St., Berkeley

8 k. At all times mentioned above, Neely operated his
9 business under the business name of "FTC of Alameda". During this
10 time, that name was neither licensed by the Department as a real
11 estate corporation nor listed as a fictitious business name of
12 Neely's real estate broker license, as required by Section 2731 of
13 the Regulations.

14 l. Neely did not retain for 3 years copies of all loan
15 files and documents obtained by Byrd in connection with his loan
16 officer activities, as required by Section 10148 of the Code.

17 VI

18 The acts and/or omissions of Neely alleged in Paragraphs
19 I through V violate Sections 10085, 10145, 10146, 10148, 10159.5
20 and 10240 of the Code and Sections 2731, 2831.2, 2834 and 2970 of
21 the Regulations and are grounds for disciplinary action under
22 Section 10177(d) of the Code. Said acts/or and omissions are also
23 grounds for discipline under Sections 10137, 10176(e), 10176(i)
24 and/or 10177(g), and 10177(h) of the Code.

25 VII

26 The acts and/or omissions of Byrd alleged in Paragraphs
27 I through IV and V i. violate Sections 10130 and 10131 of the Code

1 and are grounds for disciplinary action under Section 10177(d) of
2 the Code.

3 SECOND CAUSE OF ACCUSATION

4 VIII

5 Paragraphs I through V are incorporated herein by
6 reference.

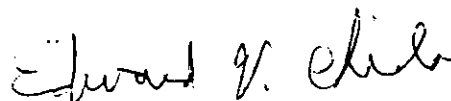
7 IX

8 Neely has abandoned his business office at 1437-A
9 Leimert Blvd., Oakland, California, his main business and mailing
10 address on the Department's records, and has failed to maintain on
11 file with the Department a new address for the principal place of
12 business for his real estate brokerage activities.

13 X

14 The acts and/or omissions of Neely alleged in Paragraphs
15 VIII and IX violate Section 10162 of the Code and are grounds for
16 disciplinary action under Section 10177(d) of the Code.

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

24 

25 _____
26 EDWARD V. CHIOLO
Deputy Real Estate Commissioner

27 Dated at San Francisco, California
this 26th day of OCTOBER, 1992.