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FILED
MAY 10 1996

DEPARTMENT OF REAL ESTATE

Lynda Montiel
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JANE MISSAMORE and)
ELIZABETH ANYA CHMEL,)
Respondents.)

No. H-7238 SF

DECISION

(as to ELIZABETH ANYA CHMEL only)

The Proposed Decision dated March 8, 1996, of Steven J. Ellis, Regional Manager, Department of Real Estate, State of California, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on May 30th, 1996.

IT IS SO ORDERED 4/24, 1996.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JANE MISSAMORE and) NO. H-7238 SF
ELIZABETH ANYA CHMEL,)
Respondents.)

PROPOSED DECISION
(as to ELIZABETH ANYA CHMEL only)

This matter was presided over as an uncontested case by Steven J. Ellis, Regional Manager, Department of Real Estate, as the designee of the Real Estate Commissioner, in San Francisco, California on March 8, 1996, against only ELIZABETH ANYA CHMEL, the matter against JANE MISSAMORE having been disposed of by separate stipulation.

Deidre L. Johnson, Counsel, represented the Complainant.

No appearance was made by or on behalf of Respondent ELIZABETH ANYA CHMEL. On proof of compliance with Government Code Section 11505, the matter proceeded as a default pursuant to Government Code Section 11520.

The following decision is proposed, certified and recommended for adoption:

FINDINGS OF FACT

I

Les R. Bettencourt made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California and not otherwise.

II

Respondent ELIZABETH ANYA CHMEL (hereafter CHMEL) is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code) as a real estate salesperson. The license expired on August 24, 1994, subject to the right of late renewal thereof. The Department of Real Estate retains

jurisdiction pursuant to Section 10103 of the Code. On or about February 26, 1992, the license was suspended until it was reinstated on December 14, 1992, pursuant to Section 10153.2 of the Code.

III

At all times herein, Respondent CHMEL was in the employ of MISSAMORE.

IV

Within the three-year period immediately preceding the filing of the Accusation, MISSAMORE, individually and doing business as RAINBOW MORTGAGE AND INVESTMENTS (RAINBOW), engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for or in expectation of compensation.

FIRST CAUSE OF ACTION

V

At various times between February 26, 1992 and December 13, 1992, when CHMEL was not actively licensed by the Department of Real Estate and her license was suspended, CHMEL performed acts for which a real estate license is required on behalf of MISSAMORE and RAINBOW in connection with the mortgage loan brokerage activities described above, including but not limited to the following, :

<u>DATE</u>	<u>LENDER</u>	<u>BORROWER</u>	<u>PROPERTY</u>
April, 1992	Steve & Michele Silver	Orr/Haupt	9890 Bodega Hwy Sebastopol
July, 1992	Anna Barrett	Nor-Cal Resorts/Wilcox	3 properties in Monte Rio, 1 in Sebastopol

VI

CHMEL was employed and compensated by MISSAMORE for performing licensed acts in connection with the above transaction(s) at times when CHMEL was not duly licensed as a real estate salesperson or a real estate broker.

SECOND CAUSE OF ACTION

VII

In or about April of 1992, CHMEL, on behalf of MISSAMORE and RAINBOW, solicited and negotiated a loan from Steve and Michele Silver in the sum of \$40,000 to be evidenced by a promissory note and secured by a deed of trust to real property located at 9890 Bodega Highway, Sebastopol, California, owned by the borrowers Linda Orr and James Haupt.

VIII

CHMEL expressly or impliedly represented to the Silvers that the borrowers wanted the loan to fix up or improve the property, and that the loan would be a good and safe investment. Silvers relied on the representations and invested in the loan, and tendered net loan proceeds, after credit for pre-paid interest, of \$33,200. Escrow closed on or about April 27, 1992.

IX

The above representations of CHMEL were false and untrue, and were known by or should have been known by CHMEL to be false and untrue at the times they were made, and/or were made with reckless disregard for their truth or falsity. The true facts then existing were that the borrowers were in default on a senior encumbrance and were in foreclosure; that there were approximately five years of tax liens recorded against the property; and that the borrowers intended to and did use most of the loan proceeds to pay off such debts.

X

The above representations of CHMEL were false and untrue, and were known by or should have been known by CHMEL to be false and untrue at the times they were made, and/or were made with reckless disregard for their truth or falsity. The true facts then existing were that the borrowers were in default on a senior encumbrance and were in foreclosure; that there were approximately five years of tax liens recorded against the property; and that the borrowers intended to and did use most of the loan proceeds to pay off such debts.

FOURTH CAUSE OF ACTION

XI

In or about June or July of 1992, CHMEL, on behalf of MISSAMORE and RAINBOW, solicited and negotiated a loan from Anna Barrett in the sum of \$30,000 to be evidenced by a promissory note and secured by a deed of trust to four pieces of real property

owned by borrowers Nor-Cal Resorts, Inc. and Robert Wilcox, and located at: 20270 River Blvd., 20280 River Blvd, and 20285 River Blvd. Monte Rio, CA and 7042 Bodega Avenue, Sebastopol, CA.

XII

CHMEL expressly or impliedly represented to Barrett that the loan would be a good and safe short-term investment. Barrett relied on the representations and invested in the loan, and tendered net loan proceeds. Escrow closed on or about July 2, 1992.

XIII

The above representations of CHMEL were false and untrue, and were known by or should have been known by CHMEL to be false and untrue at the times they were made, and/or were made with reckless disregard for their truth or falsity. The true facts then existing were that the borrowers were in default on a senior encumbrance and were in foreclosure, and that the borrowers were having financial problems.

DETERMINATION OF ISSUES

I

The acts and/or omissions of Respondent CHMEL as found above regarding the First Cause of Action constitute violation of Section 10130 and 10153.4 of the Code, and are grounds for disciplinary action under Section 10177(d) of the Code. The acts and/or omissions also constitute grounds for disciplinary action under the provisions of Section 10177(f) of the Code.

II

The acts and/or omissions of CHMEL as found above regarding the Second Cause of Action constitute grounds for disciplinary action under the provisions of Section 10177(j) of the Code.

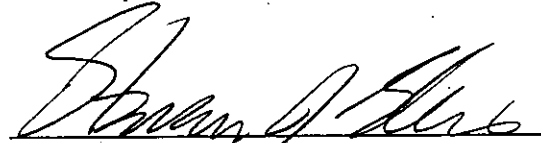
III

The acts and/or omissions of CHMEL as found above regarding the Fourth Cause of Action constitute grounds for disciplinary action under the provisions of Section 10177(j) of the Code.

ORDER

All licenses and licensing rights of Respondent
ELIZABETH ANYA CHMEL are hereby revoked under Determination of
Issues I, II and III above, jointly and separately.

DATED: March 8 1996


STEVEN J. ELLIS
Regional Manager
Department of Real Estate

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

FILED

MAR 25 1996

DEPARTMENT OF REAL ESTATE

By *Linda Montiel*
 LYMCO (P) (S)

BEFORE THE DEPARTMENT OF REAL ESTATE
 STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)	No. H-7238 SF
12 JANE MISSAMORE and)	<u>STIPULATION AND AGREEMENT</u>
13 ELIZABETH ANYA CHMEL,)	<u>IN SETTLEMENT AND ORDER</u>
14 Respondents.)	AS TO JANE MISSAMORE ONLY

15 It is hereby stipulated by and between JANE MISSAMORE
 16 (Respondent), represented by ANDREW MARTINEZ, Attorney at Law,
 17 and the Complainant, acting by and through Deidre L. Johnson,
 18 Counsel for the Department of Real Estate, as follows for the
 19 purpose of settling and disposing the amended Accusation as to
 20 him filed on May 16, 1995 in this matter:

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, and the Discovery Provisions of the APA
3 filed by the Department of Real Estate in this proceeding.

4 3. On May 15, 1995, Respondent filed her Notice of
5 Defense pursuant to Section 11505 of the Government Code for the
6 purpose of requesting a hearing on the allegations in the
7 Accusation. Respondent hereby freely and voluntarily withdraws
8 said Notice of Defense. Respondent acknowledges that she
9 understands that by withdrawing said Notice of Defense she will
10 thereby waive her right to require the Commissioner to prove the
11 allegations in the amended Accusation at a contested hearing held
12 in accordance with the provisions of the APA, and that she will
13 waive other rights afforded to her in connection with the hearing
14 such as the right to present evidence in defense of the
15 allegations in the amended Accusation and the right to cross-
16 examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations pertaining to
19 her in Paragraphs I through IV of the amended Accusation filed in
20 this proceeding are true and correct and the Real Estate
21 Commissioner shall not be required to provide further evidence of
22 such allegations.

23 5. Without admitting the truth of the allegations
24 pertaining to her contained in Paragraphs V through XXV of the
25 amended Accusation, Respondent stipulates that she will not
26 interpose a defense thereto. Respondent stipulates that the
27 Department may issue findings and determinations of issues that

1 the acts and/or omissions of Respondent as stipulated above
2 constitute grounds for disciplinary action as set forth herein. A
3 true copy of the amended Accusation is attached hereto as Annex A
4 and incorporated herein by reference.

5 6. No additional documentary, testimonial, or other
6 evidence, except that which is necessary to establish
7 Complainant's jurisdiction, shall be required to be presented by
8 Complainant at any hearing in this proceeding in order to prove
9 the Accusation as above stipulated.

10 7. Respondent enters into this stipulation for purposes
11 of this amended Accusation only, and the execution of this
12 stipulation shall not be construed to be an admission of liability
13 except as may pertain to the grounds for the stipulation, and
14 shall not be construed to be an admission for any purpose
15 whatsoever, pursuant to the provisions of California Evidence Code
16 Section 1152.

17 8. It is understood by the parties that the Real Estate
18 Commissioner may adopt the Stipulation and Agreement in Settlement
19 as his decision in this matter thereby imposing the penalty and
20 sanctions on Respondent's real estate license and license rights
21 as set forth in the below "Order". In the event that the
22 Commissioner in his discretion does not adopt the Stipulation and
23 Agreement in Settlement, it shall be void and of no effect, and
24 Respondent shall retain the right to a hearing and proceeding on
25 the amended Accusation under all the provisions of the APA and
26 shall not be bound by any admission or waiver made herein.

27

1 9. The Order or any subsequent Order of the Real Estate
2 Commissioner made pursuant to this Stipulation and Agreement in
3 Settlement shall not constitute an estoppel, merger or bar to any
4 further administrative or civil proceedings by the Department of
5 Real Estate with respect to any matters which were not
6 specifically alleged to be causes for accusation in this
7 proceeding.

8 DETERMINATION OF ISSUES

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

14 I

15 The acts and/or omissions of Respondent JANE MISSAMORE
16 as stipulated above violate Sections 10148 and 10232.4 of the
17 California Business and Professions Code (hereafter the Code), and
18 constitute grounds for the suspension or revocation of the real
19 estate broker license(s) and license rights of Respondent under
20 the provisions of Sections 10137, 10177(d), 10176(a), 10176(i),
21 10177(g) and 10177(h) of the Code.

22 ORDER

23 A. All real estate license(s) and license rights of
24 Respondent JANE MISSAMORE are hereby revoked.

25 B. A restricted real estate broker license shall be
26 issued to Respondent pursuant to Section 10156.6 of the Code if
27 she makes application therefor and pays to the Department the

1 appropriate fee for said license within ninety (90) days of the
2 effective date of the decision.

3 C. The restricted license issued to Respondent shall be
4 subject to all of the provisions of Section 10156.7 of the
5 Business and Professions Code and to the following limitations
6 imposed under authority of Section 10156.6 of said Code:

- 7 (1) The restricted license may be suspended prior to
8 hearing by order of the Real Estate Commissioner
9 in the event of Respondent's conviction or plea of
10 nolo contendere to a crime which bears a
11 substantial relationship to Respondent's fitness
12 or capacity as a real estate licensee.
- 13 (2) The restricted license may be suspended prior to
14 hearing by Order of the Real estate Commissioner
15 on evidence satisfactory to the Commissioner that
16 Respondent has violated provisions of the
17 California Real Estate Law, the Subdivided Lands
18 Law, Regulations of the Real Estate Commissioner
19 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,
22 nor the removal of any of the conditions of the
23 restricted license, until one (1) year has elapsed
24 from the date of issuance of the restricted
25 license.
- 26 (4) Respondent shall, within nine (9) months from the
27 effective date of this decision, present evidence
satisfactory to the Real Estate Commissioner that
she 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 hearing pursuant to the
Administrative Procedure Act to present such
evidence.
- (5) Respondent shall, within six (6) months from the
effective date of this Decision, take and pass the
Professional Responsibility Examination

1 administered by the Department including the
2 payment of the appropriate examination fee. If
3 Respondent fails to satisfy this condition, the
4 Commissioner may order suspension of the
5 restricted license until Respondent passes the
6 examination.

7 (6) Respondent shall, within one (1) year from the
8 effective date of this Decision, submit proof to
9 the satisfaction of the Real Estate Commissioner
10 that she has made restitution to Steve and Michele
11 Silver, and to Anna Barrett, pertaining to the
12 matters alleged in the amended Accusation herein.

13 DATED:

February 29, 1996

DEIDRE L. JOHNSON

Counsel for the Complainant

14 * * *

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

25 DATED:

2-26-96

JANE MISSAMORE

Respondent

26 APPROVED AS TO FORM:

27 DATED:

2-27-96

ANDREW MARTINEZ

Attorney for Respondent

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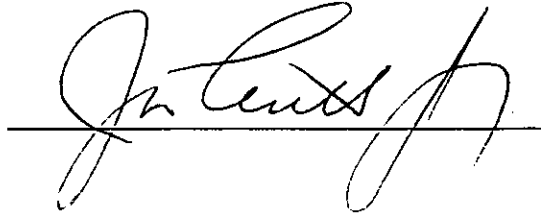
* * *

DECISION AND ORDER

The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on April 12th, 1996.

IT IS SO ORDERED 3-13, 1996.

JIM ANTT, JR.
Real Estate Commissioner



Flag

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FILED
DEC 14 1995

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

Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

JANE MISSAMORE and
ELIZABETH A. CHMEL,

Case No. H-7238 SF

OAH No. N 9505186

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, in the WORLD SAVINGS TOWER,

1970 Broadway, Second Floor, Oakland, California 94612

on Tues. & Weds., January 16th & 17th, 1996 (2 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: December 14, 1995

By

Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

flag

COPY

FILED
AUG 21 1995

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

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

JANE MISSAMORE and
ELIZABETH A. CHMEL,

Case No. H-7238 SF

OAH No. N 9505186

Respondent

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 in the WORLD SAVINGS TOWER,

1970 Broadway, Second Floor, Oakland, California 94612

on Thurs. & Fri., December 21 & 22, 1995 (2 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: August 21, 1995

By

Deidre L. Johnson
DEIDRE L. JOHNSON,

Counsel

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

5 Telephone: (415) 904-5917

FILED
 MAY 16 1995
 DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*
 Lynda Montiel

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-7238 SF
12 JANE MISSAMORE and)	
13 ELIZABETH ANYA CHMEL,)	
14 Respondents.)	<u>AMENDED</u>
	<u>ACCUSATION</u>

15

16 The Complainant, Les R. Bettencourt, a Deputy Real

17 Estate Commissioner of the State of California, for amended causes

18 of Accusation against JANE MISSAMORE and ELIZABETH ANYA CHMEL

19 (Respondents), is informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 I

22 The Complainant, Les R. Bettencourt, a Deputy Real

23 Estate Commissioner of the State of California, makes this amended

24 Accusation against Respondents in his official capacity and not

25 otherwise.

26 ///

27 ///

1

II

2

Respondents are licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code) as follows:

5

a) JANE MISSAMORE (MISSAMORE) - as a real estate broker individually and doing business as RAINBOW MORTGAGE AND INVESTMENTS, and as RAINBOW REALTY.

8

b) ELIZABETH ANYA CHMEL (CHMEL) - as a real estate salesperson. The license expired on August 24, 1994, subject to the right of late renewal thereof. On or about February 26, 1992, the license was suspended until it was reinstated on December 14, 1992, pursuant to Section 10153.2 of the Code.

13

III

At all times herein, respondent CHMEL was in the employ of MISSAMORE.

16

IV

Within the three-year period immediately preceding the filing of this Accusation, respondent MISSAMORE, individually and doing business as RAINBOW MORTGAGE AND INVESTMENTS (RAINBOW), engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for or in expectation of compensation.

1 FIRST CAUSE OF ACTION

2 V

3 At various times between February 26, 1992 and
4 December 13, 1992, when CHMEL was not actively licensed by the
5 Department of Real Estate, CHMEL performed acts for which a real
6 estate license is required on behalf of MISSAMORE and RAINBOW in
7 connection with the mortgage loan brokerage activities described
8 above. MISSAMORE permitted CHMEL to solicit and/or negotiate with
9 lenders or acquiesced in, consented to, and/or ratified such
10 conduct regarding secured loans, including but not limited to the
11 following:

12	<u>DATE</u>	<u>LENDER</u>	<u>BORROWER</u>	<u>PROPERTY</u>
13	April, 1992	Steve & Michele Silver	Orr/Haupt	9890 Bodega Hwy Sebastopol
14				
15	July, 1992	Anna Barrett	Nor-Cal Resorts/Wilcox	3 properties in Monte Rio, 1 in Sebastopol
16				

17
18 VI

19 MISSAMORE employed and/or compensated CHMEL for
20 performing licensed acts in connection with the above
21 transaction(s) at times when CHMEL was not duly licensed as a real
22 estate salesperson or a real estate broker.

23 VII

24 The acts and/or omissions of respondent MISSAMORE as
25 alleged above constitute grounds for disciplinary action under the
26 provisions of Section 10137 of the Code.

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VIII

The acts and/or omissions of respondent CHMEL as alleged above constitute violation of Section 10130 and 10153.4 of the Code and are grounds for disciplinary action under Section 10177(d) of the Code. The acts and/or omissions also constitute grounds for disciplinary action under the provisions of Section 10177(f) of the Code.

SECOND CAUSE OF ACTION

IX

In or about April of 1992, CHMEL, on behalf of MISSAMORE and RAINBOW, solicited and negotiated a loan from Steve and Michele Silver in the sum of \$40,000 to be evidenced by a promissory note and secured by a deed of trust to real property located at 9890 Bodega Highway, Sebastopol, California, owned by the borrowers Linda Orr and James Haupt.

X

MISSAMORE failed to prepare or cause to be prepared a lender disclosure statement required by Section 10232.4 of the Code, containing all information required by Section 10232.5 of the Code; and/or failed to deliver or cause delivery of the statement to the Silvers not less than twenty-four hours before the Silvers became obligated to make the loan and before they paid the loan funds.

XI

MISSAMORE and CHMEL expressly or impliedly represented to the Silvers that the borrowers wanted the loan to fix up or improve the property, and that the loan would be a good and safe

1 investment. Silvers relied on the representations and invested in
2 the loan, and tendered net loan proceeds, after credit for pre-
3 paid interest, of \$33,200. Escrow closed on or about April 27,
4 1992.

5 XII

6 The above representations of MISSAMORE and CHMEL were
7 false and untrue, and were known by or should have been known by
8 them to be false and untrue at the times they were made, and/or
9 were made with reckless disregard for their truth or falsity. The
10 true facts then existing were that the borrowers were in default
11 on a senior encumbrance and were in foreclosure; that there were
12 approximately five years of tax liens recorded against the
13 property; and that the borrowers intended to and did use most of
14 the loan proceeds to pay off such debts.

15 XIII

16 The acts and/or omissions of MISSAMORE as alleged above
17 violate Section 10232.4 of the Code, and constitute grounds for
18 disciplinary action under the provisions of Section 10177(d) of
19 the Code. Said acts and/or omissions constitute grounds for
20 disciplinary action under the provisions of Sections 10176(a),
21 10176(i), and/or 10177(j) of the Code.

22 XIV

23 The acts and/or omissions of CHMEL as alleged above
24 constitute grounds for disciplinary action under the provisions of
25 Sections 10176(a), 10176(i), and/or 10177(j) of the Code.

26 ///

27 ///

1 were made with reckless disregard for their truth or falsity. The
2 true facts then existing were that the borrowers were in default
3 on a senior encumbrance and were in foreclosure, and that the
4 borrowers were having financial problems.

5 XXII

6 The acts and/or omissions of MISSAMORE as alleged above
7 violate Section 10232.4 of the Code, and constitute grounds for
8 disciplinary action under the provisions of Section 10177(d) of
9 the Code. Said acts and/or omissions constiute grounds for
10 disciplinary action under the provisions of Sections 10176(a),
11 10176(i), and/or 10177(j) of the Code.

12 XXIII

13 The acts and/or omissions of CHMEL as alleged above
14 constiute grounds for disciplinary action under the provisions of
15 Sections 10176(a), 10176(i), and/or 10177(j) of the Code.

16
17 FIFTH CAUSE OF ACTION

18 XXIV

19 At all times above mentioned, MISSAMORE was responsible
20 for the supervision and control of the activities conducted on
21 behalf of RAINBOW by her agents and employees, and failed to so
22 exercise reasonable supervision and control. Respondent MISSAMORE
23 was negligent and/or incompetent in the performance of her
24 responsibilities as alleged above in that she knew or should have
25 known all of the facts alleged in this amended Accusation, and
26 could have and should have taken reasonable and prudent steps to

27

1 assure the company's compliance with the Real Estate Law and the
2 Regulations, and failed to do so.

3 XXV

4 The acts and/or omissions of Respondent MISSAMORE as
5 alleged above are grounds for the suspension or revocation of the
6 licenses and license rights of respondent under the provisions of.
7 Sections 10177(g) and/or 10177(h) of the Code.

8 WHEREFORE, Complainant prays that a hearing be conducted
9 on the allegations of this Accusation and that upon proof thereof
10 a decision be rendered imposing disciplinary action against all
11 licenses and license rights of Respondents, 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 provisions of law.

15

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LES R. BETTENCOURT
Deputy Real Estate Commissioner

19 Dated at San Francisco, California,

20 this 16th day of May, 1995.

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FILED
APR 24 1995

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

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185 Berry Street, Room 3400
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JANE MISSAMORE and)
ELIZABETH ANYA CHMEL,)
Respondents.)

No. H-7238 SF

ACCUSATION

The Complainant, Les R. Bettencourt, a Deputy Real
Estate Commissioner of the State of California, for causes of
Accusation against JANE MISSAMORE and ELIZABETH ANYA CHMEL
(Respondents) is informed and alleges as follows:

PRELIMINARY ALLEGATIONS

I

The Complainant, Les R. Bettencourt, a Deputy Real
Estate Commissioner of the State of California, makes this
Accusation against Respondents in his official capacity and not
otherwise.

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II

2 Respondents are licensed and/or have license rights
3 under the Real Estate Law, Part 1 of Division 4 of the California
4 Business and Professions Code (hereafter the Code) as follows:

5 a) JANE MISSAMORE (MISSAMORE) - as a real estate broker
6 individually and doing business as RAINBOW MORTGAGE AND
7 INVESTMENTS, and as RAINBOW REALTY.

8 b) ELIZABETH ANYA CHMEL (CHMEL) - as a real estate
9 salesperson. The license expired on August 24, 1994, subject to
10 the right of late renewal thereof. On or about February 26, 1992,
11 the license was suspended until it was reinstated on December 14,
12 1992, pursuant to Section 10153.2 of the Code.

13

III

14 At all times herein, respondent CHMEL was in the employ
15 of MISSAMORE.

16

IV

17 Within the three-year period immediately preceding the
18 filing of this Accusation, respondent MISSAMORE, individually and
19 doing business as RAINBOW MORTGAGE AND INVESTMENTS (RAINBOW),
20 engaged in the business of, acted in the capacity of, advertised
21 or assumed to act as a real estate broker within the State of
22 California, including the operation and conduct of a mortgage loan
23 brokerage business with the public wherein lenders and borrowers
24 were solicited for loans secured directly or collaterally by liens
25 on real property, and wherein such loans were arranged,
26 negotiated, processed, and consummated on behalf of others for or
27 in expectation of compensation.

1 FIRST CAUSE OF ACTION

2 V

3 At various times between February 26, 1992 and
4 December 13, 1992, when CHMEL was not actively licensed by the
5 Department of Real Estate, CHMEL performed acts for which a real
6 estate license is required on behalf of MISSAMORE and RAINBOW in
7 connection with the mortgage loan brokerage activities described
8 above. MISSAMORE permitted CHMEL to solicit and/or negotiate with
9 lenders or acquiesced in, consented to, and/or ratified such
10 conduct regarding secured loans, including but not limited to the
11 following:

12 <u>DATE</u>	<u>LENDER</u>	<u>BORROWER</u>	<u>PROPERTY</u>
13 April, 1992	Steve & Michele Silver	Orr/Haupt	9890 Bodega Hwy Sebastopol

14

15 VI

16 MISSAMORE employed and/or compensated CHMEL for
17 performing licensed acts in connection with the above
18 transaction(s) at times when CHMEL was not duly licensed as a real
19 estate salesperson or a real estate broker.

20 VII

21 The acts and/or omissions of respondent MISSAMORE as
22 alleged above constitute grounds for disciplinary action under the
23 provisions of Section 10137 of the Code.

24 VIII

25 The acts and/or omissions of respondent CHMEL as alleged
26 above constitute violation of Section 10130 and 10153.4 of the
27 Code and are grounds for disciplinary action under Section

1 10177(d) of the Code. The acts and/or omissions also constitute
2 grounds for disciplinary action under the provisions of Section
3 10177(f) of the Code.

4 SECOND CAUSE OF ACTION

5 IX

6 In or about April of 1992, CHMEL, on behalf of MISSAMORE
7 and RAINBOW, solicited and negotiated a loan from Steve and
8 Michele Silver in the sum of \$40,000 to be evidenced by a
9 promissory note and secured by a deed of trust to real property
10 located at 9890 Bodega Highway, Sebastopol, California, owned by
11 the borrowers Linda Orr and James Haupt.

12 X

13 MISSAMORE failed to prepare or cause to be prepared a
14 lender disclosure statement required by Section 10232.4 of the
15 Code, containing all information required by Section 10232.5 of
16 the Code; and/or failed to deliver or cause delivery of the
17 statement to the Silvers not less than twenty-four hours before
18 the Silvers became obligated to make the loan and before they paid
19 the loan funds.

20 XI

21 MISSAMORE and CHMEL expressly or impliedly represented
22 to the Silvers that the borrowers wanted the loan to fix up or
23 improve the property, and that the loan would be a good and safe
24 investment. Silvers relied on the representations and invested in
25 the loan, and tendered net loan proceeds, after credit for pre-
26 paid interest, of \$33,200. Escrow closed on or about April 27,
27 1992.

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XII

2 The above representations of MISSAMORE and CHMEL were
3 false and untrue, and were known by or should have been known by
4 MISSAMORE and CHMEL to be false and untrue at the times they were
5 made, and/or were made with reckless disregard for their truth or
6 falsity. The true facts then existing were that the borrowers
7 were in default on a senior encumbrance and were in foreclosure;
8 that there were approximately five years of tax liens recorded
9 against the property; and that the borrowers intended to and did
10 use most of the loan proceeds to pay off such debts.

11

XIII

12 The acts and/or omissions of MISSAMORE as alleged above
13 violate Section 10232.4 of the Code, and constitute grounds for
14 disciplinary action under the provisions of Section 10177(d) of
15 the Code. Said acts and/or omissions constitute grounds for
16 disciplinary action under the provisions of Sections 10176(a),
17 10176(i), and/or 10177(j) of the Code.

18

XIV

19 The acts and/or omissions of CHMEL as alleged above
20 constitute grounds for disciplinary action under the provisions of
21 Sections 10176(a), 10176(i), and/or 10177(j) of the Code.

22

23

THIRD CAUSE OF ACTION

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XV

25 Beginning on or prior to February 2, 1995, the
26 Department conducted an investigation of Respondent MISSAMORE and
27 RAINBOW's books and records pertaining to the above mortgage loan

1 business, and gave Respondent reasonable notice to make available
2 such books and records available for that purpose.

3 XVI

4 Beginning on or about February 2, 1995, and continuing
5 through the present, Respondent MISSAMORE has failed to retain and
6 make available for examination and inspection by a designated
7 representative of the Commissioner of the Department, all
8 documents executed or obtained by her in connection with
9 transactions for which a real estate license is required, and
10 requested by the Department, including but not limited to the loan
11 file on 9890 Bodega Avenue, Sebastopol, referred to above; and
12 commissions paid to CHMEL on another or other transactions for the
13 year 1992.

14 XVII

15 The acts and/or omissions of Respondent MISSAMORE as
16 alleged above violate Section 10148 of the Code and constitute
17 grounds for disciplinary action under the provisions of Section
18 10177(d) of the Code.

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20 FOURTH CAUSE OF ACTION

21 XVIII

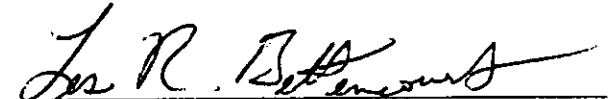
22 At all times above mentioned, MISSAMORE was responsible
23 for the supervision and control of the activities conducted on
24 behalf of RAINBOW by her agents and employees, and failed to so
25 exercise reasonable supervision and control. Respondent MISSAMORE
26 was negligent and/or incompetent in the performance of her
27 responsibilities as alleged above in that she knew or should have

1 known all of the facts alleged in this Accusation, and could have
2 and should have taken reasonable and prudent steps to assure the
3 company's compliance with the Real Estate Law and the Regulations,
4 and failed to do so.

5 XIX

6 The acts and/or omissions of Respondent MISSAMORE as
7 alleged above are grounds for the suspension or revocation of the
8 licenses and license rights of respondent under the provisions of
9 Sections 10177(g) and/or 10177(h) of the Code.

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

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18 LES R. BETTENCOURT
Deputy Real Estate Commissioner

19 Dated at San Francisco, California,
20 this 24th day of April, 1995.

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