



1 I have considered the petition of Respondent and the  
2 evidence and arguments in support thereof including Respondent's  
3 record as a restricted licensee. Respondent has demonstrated to  
4 my satisfaction that Respondent meets the requirements of law for  
5 the issuance to Respondent of an unrestricted real estate broker  
6 license and that it would not be against the public interest to  
7 issue said license to Respondent.

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

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

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

20 This Order shall be effective immediately.

21 DATED: August 9, 2004

22 JOHN R. LIBERATOR  
23 Acting Real Estate Commissioner

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1 I have considered Respondent's petition and the  
2 evidence and arguments in support thereof. Respondent has failed  
3 to demonstrate to my satisfaction that Respondent has undergone  
4 sufficient rehabilitation to warrant the reinstatement of  
5 Respondent's real estate broker license, in that Respondent has  
6 failed to present evidence of discharge of the following  
7 adjudicated debts:

- 8 1. \$27,359.70 Judgment in Sonoma County Family Support  
9 Division v. Barbieri, Sonoma County Superior Court.
- 10 2. \$12,232.47 Judgment in Wilson v. Barbieri, Sonoma  
11 County Municipal Court.
- 12 3. \$4,308.04 Judgment in Napa Credit Bureau v.  
13 Barbieri, Napa County Municipal Court.

14 Further, in response to a question in the petition  
15 application, "Have you ever been a defendant in any civil court  
16 litigation, including small claims court", Respondent answered  
17 "No" and failed to disclose in his petition the judgments  
18 described above. Respondent's concealment of facts and lack of  
19 candor, demonstrate that Respondent has not changed his attitude  
20 from that which existed at the time the disciplinary action was  
21 taken in this matter.

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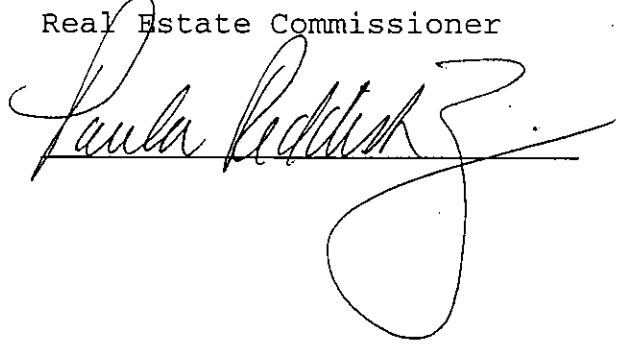
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NOW, THEREFORE, IT IS ORDERED that Respondent's  
petition for reinstatement of his real estate broker license is  
denied.

This Order shall become effective at 12 o'clock  
noon on November 14, 2000.

DATED: October 19, 2000

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner



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FILED  
JAN 29 1998  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
MICHAEL TED MCKENDREE, et al., ) No. H-7424 SF  
RONALD JAMES BARBIERI, ) OAH N-9702026  
Respondents. )

ORDER DENYING RECONSIDERATION  
AS TO RONALD JAMES BARBIERI

On December 10, 1997, a Decision was rendered in the above-entitled matter. The Decision is to become effective on January 29, 1998.

On December 23, 1997, respondent RONALD JAMES BARBIERI petitioned for reconsideration of the Decision of December 10, 1997.

I have given due consideration to the petition of respondent. I find no good cause to reconsider the Decision of December 10, 1997, and reconsideration is hereby denied.

IT IS SO ORDERED 1/29, 1998.

JIM ANTT, JR.  
Real Estate Commissioner

J. Antt Jr.





FILED  
DEC 10 1997

DEPARTMENT OF REAL ESTATE

By Shelley Ely

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
 )  
MICHAEL TED MCKENDREE, )  
MACK RAY MCKENNDREE, )  
GLENN DALE MCKENDREE, and )  
RONALD JAMES BARBIERI, )  
 )  
Respondents. )  
\_\_\_\_\_ )

NO. H-7424 SF  
OAH NO. N-9702026

DECISION

The Proposed Decision dated November 10, 1997, 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 December 30, 1997.

IT IS SO ORDERED December 10, 1997.

JIM ANTT, JR.  
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator  
Chief Deputy Commissioner



## II

On October 26, 1988, the Department issued a real estate salesperson license (No. 00875236) to Respondent Glenn Dale McKendree ("Glenn") who was employed by Respondent Ronald James Barbieri ("Barbieri") until October 4, 1994. Glenn's license was reissued on November 16, 1996, following its expiration on October 25, 1996. Her license is in full force and effect until November 15, 2000. Glenn, at all times relevant, has reported to the Department a mailing address at 3616 Sonoma Avenue, Santa Rosa, California.

## III

At an undetermined time in the early 1980s, the Department issued a real estate salesperson license (No. 00844453) to Mack.

- A. On February 6, 1989, Mack renewed his license and, although fully employed in a capacity separate and apart from activities requiring a Department license, reported Barbieri as his employing broker.
- B. On January 15, 1993, Mack, residing at 3616 Sonoma Avenue, Santa Rosa, California, renewed his license and, although still employed in a capacity not involving a Department license, reported Barbieri as his employing broker.

## IV

On March 20, 1993, the Department cancelled Mack's real estate salesperson license (Finding No. III) and issued him a real estate broker license (No. 00844453).

## V

On July 6, 1993, Mack, residing as set forth in Finding No. III.B, executed and submitted a Change Application to the Department reporting, inter alia, the addition of a fictitious business name, to wit, Advanced Mortgage and California Realty Group doing business at 2322 4th Street, Santa Rosa, California.

## VI

On July 7, 1993, the Department of Real Estate ("Department") issued a real estate salesperson license (No. 01163030) to Respondent Michael Ted McKendree ("Michael") who was employed (see Business and Professions Code §10132; Title 10 California Code of Regulations) by Respondent Mack Ray McKendree

("Mack") at 2322 4th Street, Santa Rosa, California. The license expired on July 6, 1997.<sup>1</sup>

## VII

At all times relevant, Barbieri was licensed by the Department as a real estate broker (No. 00266460).

- A. On January 29, 1988, Barbieri executed and submitted a Broker Change Application to the Department reporting the addition of a fictitious business name, to wit, American Mortgage Company, aka AMCO, and a residence address at 2324 Fairbanks Drive, Santa Rosa, California.
- B. On December 7, 1988, Barbieri executed and submitted a Broker Change Application to the Department reporting the addition of a fictitious business name, to wit, Barbieri & Company at 2324 Fairbanks Drive, Santa Rosa, California.
- C. On February 6, 1989, Barbieri was engaged in licensed activities from a main office address reported by Barbieri to the Department as 4926 Montgomery Drive, Santa Rosa, California.
- D. On August 6, 1992, Barbieri was engaged in licensed activities from a main office address reported by Barbieri to the Department as 1825 Fourth Street, Santa Rosa, California.
- E. On January 15, 1993, Barbieri was engaged in licensed activities from a main office address reported by Barbieri to the Department as 2324 Fairbanks Drive, Santa Rosa, California.

### Factual Findings

## VIII

On January 29, 1988, Glenn, with a residence address of 3412 Spring Creek Drive, Santa Rosa, California, filed a Fictitious Business Name Statement with the Sonoma County Clerk reporting

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<sup>1</sup> Notwithstanding its expiration, Business and Professions Code §10201 allows a licensee two years from expiration to renew the issued license.

herself as sole registrant of the fictitious business name of American Mortgage Company aka AMCO ("American Mortgage").<sup>2</sup>

IX

Glenn, previously engaged in the mortgage loan business and having commenced mortgage loan activities as American Mortgage (Finding No. VIII), engaged in the business of, inter alia, soliciting lenders and borrowers for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, consummated, or serviced on behalf of others, and wherein secured promissory notes evidencing such loans were sold, exchanged, or assigned on behalf of others.

- A. Glenn's activities as a salesperson were ostensibly supervised by Barbieri, her employing broker, who possessed no ownership interest in Glenn's mortgage loan business.<sup>3</sup>
- B. Mack, at an undetermined time and possessing no ownership interest in Glenn's mortgage loan business, conducted the financial management of Glenn's activities, including monthly budgets.
- C. Glenn, periodically requiring assistance and the service of a notary public, employed her and Mack's daughter, Rayda McKendree ("Rayda").
- D. In 1991, Glenn, although claiming any awareness of her son's non-licensure, employed her and Mack's son, Michael, a person unlicensed by the Department, to engage in the business, on behalf of American Mortgage of, inter alia, soliciting lenders and borrowers for loans secured directly or collaterally by liens on real property. Glenn, aware of her son's non-licensure,<sup>4</sup> represented to Barbieri that Michael was employed by and through another Department licensed broker and submitting business through such broker.

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<sup>2</sup> The use of a fictitious business name does not create a separate legal entity from the person or corporation using it. Pinkerton's Inc. v. Superior Court (1996) 49 Cal.App.4th 1342.

<sup>3</sup> See also Business and Professions Code §17913 which provides that the name of each person or partner with a legal interest in the business must be named on the fictitious business name statement.

<sup>4</sup> Notwithstanding Glenn's claim denying awareness of her son's non-licensure, it has been established by Complainant that Glenn knew her son was not licensed by the Department when he commenced employment with American Mortgage.

- E. By 1991, American Mortgage was relocated by Glenn to the McKendree family residence ("McKendree residence") located at 3616 Sonoma Avenue, Santa Rosa, California.

X

In 1991, Clare C. Pearson, M.D. ("Pearson"), an anesthesiologist in private practice, met Michael. Various conversations took place between them at such locations as Pearson's home, the hospital where she possessed privileges, and the McKendree residence regarding loan investment opportunities extant with American Mortgage.

XI

In 1991, Pearson sought to manage her pension portfolio and obtain a higher investment return and began investing in loans facilitated by Michael. Michael, on behalf of American Mortgage and although lacking and requiring a real estate license, engaged in the business of, inter alia, soliciting lenders and borrowers for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, consummated, or serviced on behalf of others, and wherein secured promissory notes evidencing such loans were sold, exchanged, or assigned on behalf of others.

XII

During the course of the business relationship between Pearson and Michael:

- A. Pearson, vaguely aware from a representation by Michael that American Mortgage's activities were operating under the license of Barbieri, presumed that Michael was a real estate broker who engaged in the loan business with his mother, Glenn.
- B. On occasions when Pearson would call the office to inquire about documents or issues related to her loan investments and Michael was not present, Glenn, although not directly involved in transactions between Pearson and American Mortgage, would assist Pearson or assure Pearson that the message would be communicated to Michael for his response.

XIII

Pearson invested substantial sums of pension portfolio money and, in particular, upon the solicitation of Michael on behalf of American Mortgage, having tendered payment to Michael, engaged, inter alia, in the following investments:

- A. On July 6, 1993, the day before his licensure with the Department (Finding No. VI), Michael, on behalf of American Mortgage, negotiated the sale of a loan to Pearson, evidenced by a note secured by a deed of trust to real property located at 7 Rocca Drive, Santa Rosa, California.
- B. On August 3, 1993, Michael, on behalf of American Mortgage and although employed by Mack, negotiated the sale of a loan and sold to Pearson, evidenced by a note secured by a deed of trust to real property located at 305 Jefferson Street, Cloverdale, California.
- C. On August 20, 1993, Michael, on behalf of American Mortgage and although employed by Mack, negotiated the sale of a loan and sold to Pearson, evidenced by a note secured by a deed of trust to real property located at Healdsburg, California.
- D. On August 31, 1993, Michael, on behalf of American Mortgage and while employed by Advanced Mortgage, negotiated the sale of a loan and sold to Pearson, evidenced by a note secured by a deed of trust to real property located at 2018 Mission Boulevard, Santa Rosa, California.
- E. On September 7, 1993, Michael, on behalf of American Mortgage and while employed by Advanced Mortgage, negotiated the sale of a loan and sold to Pearson, evidenced by a note secured by a deed of trust to real property located at 380 Sunset Parkway, Novato, California.
- F. On March 7, 1994, Michael, on behalf of American Mortgage and while employed by Advanced Mortgage, inappropriately maintained funds due and belonging to Pearson, and, with Pearson's retained funds, negotiated the sale of a loan subsequently sold to Pearson and evidenced by a note secured by a deed of trust to real property located at 1315 Lombardi Lane, Santa Rosa, California.



XIV

Prior to Pearson becoming obligated on the loan or its purchase as referenced in Finding No. XIII.F, Michael, employed by Advanced Mortgage but undertaking activities on behalf of American Mortgage, failed to provide to Pearson a written lender/purchaser disclosure statement.<sup>5</sup>

XV

In late 1994, Michael advised Pearson that the business name was for vague reasons relating to the employing broker being changed from American Mortgage to Advanced Mortgage.

XVI

In 1991, Michael, representing himself to Werner and Jeanne Doellstedt ("the Doellstedts") as employed by American Mortgage, solicited the Doellstedts, owners of the Richmond Wholesale Meat Company, to invest Richmond Wholesale Meat Company Profit Sharing Trust employee pension funds (hereinafter "the RWM Trust") in loan investment opportunities extant with American Mortgage.

XVII

In 1991, the Doellstedts, seeking to manage the pension portfolio and obtain a higher investment return, having provided particular investment guidelines to Michael, tendered RWM employee trust funds to Michael, in his capacity as an agent for American Mortgage and invested in loans facilitated by Michael who, in such capacity and without a license, engaged in the business of, inter alia, soliciting lenders and borrowers for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, consummated, or serviced on behalf of others, and wherein secured promissory notes evidencing such loans were sold, exchanged, or assigned on behalf of others.

XVIII

Sometime in 1994, Michael advised Mrs. Doellstedt that the business name was for vague reasons being changed from American Mortgage to Advanced Mortgage.

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<sup>5</sup> Although it is clearly and convincingly established that in several other transactions, other required documents were not provided Pearson, such failure, not properly alleged, does not provide a basis for culpability. James v. Board of Dental Examiners (1985) 172 Cal.App.3d 1096.

XIX

Having earlier acquired some nonperforming loans which failed to meet the investment guidelines provided Michael, Mrs. Doellstedt notified Michael and, in June 1994, he, possessed of the original loans and claiming to have made proper arrangements for tender of due consideration to Pearson for exchange of deeds of trust belonging to Pearson (Finding Nos. XIII.A - XIII.E), arranged an exchange of the loans for the benefit of the RWM Trust and recorded the instruments as follows:

- A. On June 15, 1994, Michael, without the knowledge or consent of his mother, forged the signature of Glenn to an Assignment of Deed of Trust securing the property referenced in Finding No. XIII.A.
  - 1. On June 16, 1994, Michael forged the signature of Rayda to the notarial acknowledgement of Glenn's signature on the Assignment of Deed of Trust securing the property referenced in Finding No. XIII.A.
  - 2. On July 5, 1994, Michael, using a fictitious seal and number, purported to record the forged Assignment of Deed of Trust referenced in Finding Nos. XIX.A and XIX.A.1.
  
- B. On June 15, 1994, Michael, without the knowledge or consent of Pearson, forged the signature of Pearson to an Assignment of Deed of Trust securing the property referenced in Finding No. XIII.B.
  - 1. On June 15, 1994, Michael forged the signature of Rayda to the notarial acknowledgement of Pearson's signature on the Assignment of Deed of Trust securing the property referenced in Finding No. XIII.B.
  - 2. On June 29, 1994, Michael, using a fictitious seal and number, purported to record the forged Assignment of Deed of Trust referenced in Finding Nos. XIX.B and XIX.B.1.
  
- C. On June 15, 1994, Michael, without the knowledge or consent of Pearson, forged the signature of Pearson to an Assignment of Deed of Trust securing the property referenced in Finding No. XIII.C.

1. On June 15, 1994, Michael forged the signature of Rayda to the notarial acknowledgement of Pearson's signature on the Assignment of Deed of Trust securing the property referenced in Finding No. XIII.C.
  2. On June 29, 1994, Michael, using a fictitious seal and number, purported to record the forged Assignment of Deed of Trust referenced in Finding Nos. XIX.C and XIX.C.1.
- D. On June 15, 1994, Michael, without the knowledge or consent of Pearson, forged the signature of Pearson to an Assignment of Deed of Trust securing the property referenced in Finding No. XIII.D.
1. On June 15, 1994, Michael forged the signature of Rayda to the notarial acknowledgement of Pearson's signature on the Assignment of Deed of Trust securing the property referenced in Finding No. XIII.D.
  2. On June 29, 1994, Michael, using a fictitious seal and number, purported to record the forged Assignment of Deed of Trust referenced in Finding Nos. XIX.D and XIX.D.1.
- E. On June 16, 1994, Michael, without the knowledge or consent of Pearson, forged the signature of Pearson to an Assignment of Deed of Trust securing the property referenced in Finding No. XIII.E.
1. On June 16, 1994, Michael forged the signature of Rayda to the notarial acknowledgement of Pearson's signature on the Assignment of Deed of Trust securing the property referenced in Finding No. XIII.E.
  2. On July 5, 1994, Michael, using a fictitious seal and number, purported to record the forged Assignment of Deed of Trust referenced in Finding Nos. XIX.E. and XIX.E.1.

XX

Notwithstanding the delivery to Michael by the Doellstedts of employee pension funds for investment towards the loans referenced in Finding No. XIX, Michael, without the knowledge or approval of the Doellstedts, diverted, commingled, and converted the funds entrusted to him and, with some of the funds received, continued to send Pearson monthly payments on the referenced loans for a period of time. Receiving the assignment of rents to RWM

Trust as referenced in Finding Nos. XIX.A - XIX.E from Michael, Mrs. Doellstedt, however, became concerned when payments on the deeds of trust were not forthcoming. Michael provided a vague and nondispositive excuse. Preferring to service loans made with RWM trust funds, Mrs. Doellstedt, on behalf of RWM Trust, wrote, in September 1994, to the appropriate borrowers on the referenced deeds of trust and, advising them that the deeds of trust had been assigned, directed that further payments be made to RWM Trust. Thereafter, commencing in October 1994, payments were received by her for RWM Trust.

#### XXI

On October 4, 1994, Barbieri cancelled his licensure as American Mortgage with the Department.

#### XXII

Pearson, unaware of the transactions referenced in Finding Nos. XIX - XX, and, in October 1994, not having received payments due her pursuant to the deeds of trust referenced in Finding Nos. XIII and XIX - XX, contacted a payor on Columbus Day 1994 to ascertain the reason for the nonreceipt of any payment, and was advised that an assignment of the deed of trust had been transferred to RWM Trust. Unable to obtain a response from Michael, she contacted RWM Trust and, referred to Mrs. Doellstedt, learned of the transfer and assignments referenced in Finding Nos. XIX - XX. Arranging a meeting that afternoon with the Doellstedts, she reviewed the documents provided by Michael to the Doellstedts purportedly effectuating the transfer as referenced in Finding No. XIX and noted that the assignments purportedly bearing her signature as referenced in Finding Nos. XIX.B, XIX.C, XIX.D and XIX.E did not contain her signature. Pearson and the Doellstedts, contacted by Mack, were invited to a meeting that evening at Mack's business address as set forth in Finding No. VI.

#### XXIII

Michael, having disclosed earlier that day for the first time his errant conduct to his unsuspecting family, particularly his parents, Mack and Glenn, attended the meeting arranged by Mack. Arriving at the meeting, at which Mack, Glenn, Rayda, and Michael were already present, Mack displayed unbridled anger for the conduct of his son to Pearson and the Doellstedts. At the meeting, Michael admitted his falsification of the loans as referenced in Finding No. XIX. Mack, assuming both control of the meeting and responsibility for the errant conduct of his son and agent, repeatedly expressed an interest to "make things right" with both Pearson and the Doellstedts.

- A. Mack, using his paternal and broker influence on Michael, successfully prevailed on Michael in the ensuing period to properly effectuate documentary transfers to provide appropriate title to Pearson.
- B. Selling assets and borrowing funds, Mack paid RWM Trust: \$305,000. Owing \$125,000 to RWM Trust for trust principal, no further payments have been made since January 30, 1995; although requests for accounting have been sought by Mack relating to restitution.

XXIV

Pearson and Mrs. Doellstedt competently and candidly testified that Michael, employed by Mack and conducting activities on behalf of American Mortgage, and while engaged in the activities referenced in Finding Nos. XI and XVII:

- A. Failed to appropriately and timely provide client documents.
- B. Failed to appropriately and timely account for funds.
- C. Failed to appropriately follow client directions with respect to transactions or client imposed parameters.

XXV

On November 20, 1995, Glenn left Barbieri's employment.

XXVI

Intermittently between June 1995 and December 1995, Department Auditor Sharon M. Nation ("Nation") conducted an audit of Mack at 3616 Sonoma Avenue, Santa Rosa, California, for the period January 1, 1993 through May 31, 1995 ("the audit period"). Although Nation's appointment was made with Mack, Michael acted as a spokesperson and representative for his father. Nation found the following deficiencies during the audit period:

- A. Mack, despite receipt of non-negotiated client checks for investments (Finding Nos. XIII and XVII) and submission to escrows, did not maintain a Record of All Trust Fund Received - Not Placed in the Broker's Trust Account for checks received.
- B. Broker files lacked several documents, including copies of:

1. Completed and executed Lender/Purchaser Disclosure Statements.
  2. Assignments of Deeds of Trust.
  3. Appraisal reports.
- C. Loan files lacked broker consistency in establishing the providing of Lender/Purchaser Disclosure Statements.

XXVII

On December 18 and 20, 1995, Nation conducted an audit of Barbieri at 100 E Street, Suite 317, Santa Rosa, California, for the period January 1, 1993 through December 31, 1995 ("the audit period"). Nation, in addition to reviewing various files, records and documents, interviewed Barbieri, Glenn, and Kathleen Meier ("Meier"). Functional licensed activities are divided as follows:

- A. Glenn handles loan activities as referenced in Finding No. IX.
- B. Meier, doing business as Premier Property Management, handles property management activities under the license of her broker and husband, Barbieri.
- C. Barbieri handles resale activities.

XXVIII

Following the performance of her audit (Finding No. XXVII), Nation found the following deficiencies during the audit period:

- A. The broker trust account contained an unidentified overage of \$1,317.71 on November 30, 1995. No record was maintained for the unidentified overage.
- B. Accounting monthly reconciliation with the trust bank balance is not effected.
- C. The broker trust account is not in the name of the broker as trustee.
- D. Loan files did not establish that in loan transactions the broker consistently provided Lender/Purchaser Disclosure Statements.

- E. An appropriate fictitious business name license had not been issued by the Department for Premier Property Management.

XXIX

Glenn, testifying, claims:

- A. She possessed particular experience in Department licensed activities relating to mortgage lending prior to developing and undertaking activities on behalf of American Mortgage.
- B. Michael, prior to undertaking the activities on behalf of American Mortgage, had engaged in similar activities with another business and, thereby, gained experience in loan transactions.
1. Michael, an employee of American Mortgage, used a desk ordinarily reserved for Barbieri when he was present.
  2. While she handled borrowers, Michael solicited and negotiated with private investors in "hard-money" mortgage loan transactions.
- C. Unaware as to when Michael received his license, she believed that Michael possessed a Department license while he engaged in transactions involving American Mortgage for which he was compensated by American Mortgage.
- D. She did not relate to Barbieri that Michael was employed by her to conduct activities on behalf of American Mortgage and referred to his affiliation as an association through another broker.
- E. Barbieri exercised supervision over her and American Mortgage's licensed activities.
- F. All loan packages contained required lender/borrower disclosure statements.
- G. Mack, in addition to conducting periodic appraisals on behalf of American Mortgage transactions, handled the bookkeeping functions of American Mortgage.
- H. American Mortgage clients occasionally submitted checks incident to loans for transmission to investors.

XXX

Mack, testifying, claims:

- A. His wife, Glenn, possessed particular experience in Department licensed activities relating to mortgage lending prior to developing and undertaking her activities conducted and exclusively owned by her under the business name of American Mortgage.
- B. He, in addition to conducting periodic appraisals on behalf of American Mortgage transactions, handled the bookkeeping functions of American Mortgage.
- C. All loan packages examined and/or approved by him contained required lender/borrower disclosure statements and other appropriate documents. The lack of such documents is attributed to loss occasioned by Department expert witnesses or others (i.e., the Internal Revenue Service, or the Department of Labor).
- D. Following his licensure as a broker, he undertook efforts to develop and build a business, Advanced Mortgage, that would include his wife, Glenn, and his son, Michael, and, thereby avoid the necessity of his wife to use Barbieri with the concomitant costs associated thereto.
- E. American Mortgage and Advanced Mortgage clients occasionally submitted checks incident to loans for transmission to investors.
- F. Pearson and the Doellstedts, engaging in questionable conduct, share some responsibility for facilitating the errant behavior of Michael.

XXXI

Michael, testifying, claims:

- A. His mother, Glenn, possessed particular experience in Department licensed activities relating to mortgage lending prior to developing and undertaking her activities conducted under the business name of American Mortgage.
- B. He engaged in Department licensed activities on behalf of American Mortgage for which he was compensated by American Mortgage.



- C. He occasionally received and delivered checks on behalf of pending loan transactions for deposit in escrow with title companies.
- D. American Mortgage and Advanced Mortgage clients occasionally submitted checks incident to loans for transmission to investors.

XXXII

Meier, testifying, claims:

- A. She, a Department licensed salesperson, engages in property management activities and is the owner of Premier Property Management which is licensed to her husband and broker, Barbieri.
- B. American Mortgage was Glenn's company.
- C. The overage at the time of the audit referenced in Finding No. XXVIII.A resulted from a failure to immediately withdraw compensation earned. Such compensation which constituted the referenced overage is ordinarily withdrawn by her once a month.
- D. A mandatory monthly reconciliation is effected each month.
- E. Barbieri, albeit possessing an evident lack of comprehension of financial reports, otherwise exercises supervision over her licensed activities.

XXXIII

Barbieri, testifying, claims:

- A. Michael was never an agent of American Mortgage.
- B. The conduct of Michael involving Pierson and the Doellstedts occurred during a period when Michael was either unlicensed or, later, an agent of his father, Mack.
- C. Told by Glenn that Michael's presence at and activity with American Mortgage was via an affiliation through another broker, he had no reason to believe that Michael was employed by American Mortgage.

- D. Glenn possessed particular experience in Department licensed activities relating to mortgage lending prior to developing and undertaking her activities conducted under the business name of American Mortgage, exclusively owned by Glenn but operating under his Department license.
- E. Michael's affiliation with loan transactions involving American Mortgage was explained to Barbieri by Glenn as transactions effected by Michael as a licensee to another.
- F. He believed that his conduct with regard to his wife's property management activities as referenced in Finding No. XXVII.B comported with the Real Estate Law and regulations incident thereto, including:
  - 1. Providing appropriate documentation to the Department.
  - 2. Designating himself as a broker on the trust account referenced in Finding Nos. XXVIII.A - XXVIII.C. The developing discrepancy, he claims, arises not from his lack of effort but a clear misunderstanding by the bank officer in the necessitated contextual trust and agency relationship required by the Department. During the course of these proceedings, he returned to the bank and obtained, to accomodate bank policy and meet the requirements of licensure, a power of attorney over the trust account.
- G. He has exercised, at all times relevant, supervision over Glenn's, American Mortgage's and his wife's licensed activities. All loan packages examined and/or approved by him contained required lender/borrower disclosure statements.

#### XXXIV

Factors concerning the credibility of evidence are contained, in part, at Evidence Code §§412, 780, 786, 790 and 791. When applied to the evidence herein, this tribunal concludes, on balance, that Complainant has established violations of the Real Estate Law by the respondents herein.

- A. Notwithstanding the licensure of American Mortgage to Barbieri, the evidence establishes that Glenn owned and operated American Mortgage.

1. Glenn, despite her claim that she believed her son possessed Department licensure, is not found credible.
  - a. The alacrity with which Mack employed and formed Advanced Mortgage following the licensure of his son with the avowed intent of assisting his wife in reducing an expense benefitting Barbieri, combined with Glenn's demeanor, testimonial equivocation, and selective recollection, lacks the relative convincing force to be particularly dispositive and wholly credible.
  - b. Glenn, aware of her son's non-licensure, allowed him to engage in compensible licensed activities on behalf of her business, American Mortgage.
  - c. In the conduct of her business activities, Glenn deceived Barbieri by failing to disclose Michael's unlicensed status and subsequent employment with his father, Mack, while simultaneously undertaking compensible licensed activities on behalf of American Mortgage.
  - d. Aware that her son occasionally accessed the American Mortgage accounts without her express permission or authorization, Glenn neither reported his errant conduct to his or her supervising broker or undertook efforts to preclude his access.
2. Barbieri, notwithstanding his periodic and ostensible presence and record review at American Mortgage, failed to appropriately supervise the licensed activities of Glenn.
  - a. Barbieri's review of documents generated by American Mortgage with Michael's name should have provided pause and particular scrutiny into the scope and extent of his activities at American Mortgage.
  - b. A proper review of American Mortgage compensation records by Barbieri would have disclosed that Michael, particularly during the period he was unlicensed, was

paid directly by American Mortgage and not through any independent broker.<sup>6</sup>

c. Barbieri, compensated for the use of his license at the rate of \$150.00 a month, was relegated to a desk shared by Michael.

(1) He ordinarily conducted his own licensed activities in the resale real estate market at a location separate and apart from American Mortgage's place of business.

(2) He lacked control or appropriate authority to issue American Mortgage checks.

(3) He lacked control or appropriate authority to execute American Mortgage checks.

(4) He lacked control or appropriate authority to review American Mortgage financial status records.

d. Notwithstanding his licensure and responsibility for American Mortgage, Barbieri had a full indemnity agreement arising from Glenn's conduct in American Mortgage's licensed activities.

3. Michael, prior to Department licensure, engaged in unlicensed activities on behalf of Glenn, doing business as American Mortgage.

4. Michael, following Department licensure, engaged in unsupervised licensed activities on behalf of Glenn, doing business as American Mortgage; and Mack, doing business as Advanced Mortgage.

5. Michael, a person lacking appropriate moral character, engaged in the defalcation of funds entrusted to him on behalf of activities referenced in Finding No. XXIV.C. His testimony is not found to be competent or credible.

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<sup>6</sup> See Business and Professions Code §10137.

- B. Barbieri, along with Meier, are each found to be credible. Notwithstanding his credibility, Barbieri has been less than responsible in conducting broker duties, functions, and obligations.
1. He has failed to appropriately discharge his duties and responsibilities with respect to the deficiencies set forth in Finding No. XXXIX.A.2.
  2. Notwithstanding his apparent supervision and record review at Premier Property Management, he has failed to appropriately supervise the licensed activities of Meier.
  3. His purported transmission of documents to the Department relative to the use of the fictitious name of Premier Property Management does not, ipso facto, permit the undertaking of licensed activities under a fictitious business name until a license is received from the Department bearing the fictitious business name.
  4. He has not fully appreciated the obligations imposed by the Real Estate Law on a Department licensed broker and that he possesses an astounding lack of competent knowledge in the Real Estate Law.
- C. Mack, clearly lacking in appropriate experience to conduct the activities for which he was both licensed and compelled to supervise Glenn and Michael, is not found credible.
1. His claims were largely self-serving, and misguided puerile efforts to shift responsibility.
  2. He lacks apparent insight into the import of Department licensure and a comprehension into the duties, responsibilities, functions, and obligations of a real estate broker.
  3. Admittedly a victim of his own son, he, lacking evident understanding of the Real Estate Law, failed to exercise any competent, appropriate or responsible supervision over his son in the conduct of his licensed activities. Aware that his son was employed by him as a real estate licensee, Mack, monitoring the books of his wife's business,

was aware of Michael's business efforts on behalf of American Mortgage, including his occasional access to American Mortgage funds and accounts.

4. Notwithstanding the errant conduct of Michael, Mack failed to appropriately discharge his duties and responsibilities with respect to the deficiencies set forth in Finding No. XXVI.
5. Mack, consistent with his American Mortgage bookkeeping functions, was aware that Michael, despite both his non-licensure and subsequent licensure, was compensated for engaging in licensed activities on behalf of American Mortgage, including when he was employed as a licensee of Advanced Mortgage.

XXXV

Michael, despite his affiliation with American Mortgage, never had his license placed under the supervision of Barbieri. It is not evident that Barbieri was ever aware that Michael was conducting activities on behalf of American Mortgage, although Michael was aware that Barbieri's license allowed American Mortgage and his mother to engage in Department licensed activities. It is evident, however, that Glenn, Barbieri's agent, was aware that her son, Michael, had his license placed under the supervision of his father, Mack, who financially managed her licensed activities as American Mortgage, and that Michael was conducting licensed activities on behalf of American Mortgage.

#### Circumstances in Mitigation

##### Glenn

XXXVI

Despite her daily presence at American Mortgage and knowledge, training, and experience of mortgage lending, Glenn was a victim of Michael.

XXXVII

Despite the conduct of Michael, Glenn remains a mother evidently devoted to and concerned about her son.

Mack

XXXVIII

Mack, a victim of his son, Michael, is evidently deeply hurt by his son's behavior, its impact on his reputation, his wife, his family, and their remaining years. Notwithstanding such evident pain, it is evident that he shares, with his wife, an abiding love for Michael.

XXXIX

Notwithstanding the vagaries of the California real estate market, Mack made significant efforts to effect restitution to the victims.

Barbieri

XL

Barbieri was candid and cooperative in these proceedings.

XLI

Barbieri retains the evident concern, love and devotion of his wife, Meier.

Respondents

XLII

More than two years have elapsed since the conduct underlying the Accusation as set forth in Finding Nos. I - XXXV.

XLIII

No Respondent has ever been disciplined by the Department.

Circumstances in Aggravation

Michael

XLIV

Michael engaged in multiple acts of moral turpitude.

XLV

Michael, consistent with his lack of moral character and propensity for dissembling, fraud, and deception, was, simply put, incredible. His testimony was self-serving, less than candid, and

displayed little regard for the import of the Department's licensure or these proceedings.

XLVI

Michael took advantage of and breached a position of trust reposed by his clients and, sadly, his parents.

XLVII

Michael was licensed less than two years when he engaged in the conduct referenced in Finding Nos. I - XXXV.

Glenn

XLVIII

Notwithstanding her experience, training, and knowledge in mortgage lending, Glenn has an astounding ignorance of the Real Estate Law.

XLIX

Glenn, the sole owner of American Mortgage, conducted her licensed activities without appropriate regard for the Real Estate Law and, deliberately, without appropriate broker supervision.

L

Glenn, profitting from her son's activities for which he was compensated by her, misrepresented to Barbieri the employment, compensation, and scope and extent of Michael's duties conducted on behalf of American Mortgage.

LI

Glenn engaged in conduct of moral turpitude.

Mack

LII

Mack, despite his licensure as a real estate broker, has an astounding ignorance of the Real Estate Law.

LIII

Mack was licensed as a broker less than two years when his agent undertook the conduct referenced in Finding Nos. I - XXXV.



LIV

Mack lacks insight into the significance and import of Department licensure as a broker and the concomitant obligations, functions, duties, and responsibilities imposed thereto.

DETERMINATION OF ISSUES

I

Complainant alleges in the First Cause of Action that Michael has violated the provisions of Business and Professions Code §10137. Section 10137 provides, in pertinent part:

"No real estate salesman shall be employed by...any person other than the broker under whom he is at the time licensed."

It is abundantly clear that Michael, notwithstanding his licensure under the license of Mack, was actively engaged in activities for American Mortgage, a broker separate and apart from his father.

Cause exists to suspend or revoke the license of Respondent Michael Ted McKendree pursuant to Business and Professions Code §10137, in conjunction with §10201, for unlawful employment as set forth in Finding Nos. XIII.F, XIX - XX; XXII and XXXIV.A.

II

Cause exists to suspend or revoke the license of Respondent Michael Ted McKendree pursuant to Business and Professions Code §§10176(a), 10176(c), 10176(i) and 10177(j), and each of them, for misrepresentation, fraud, and dishonest dealing as set forth in Finding Nos. XIII, XIX - XX, XXII - XXIII, XXXIV.A.5 and XLI.

III

Cause exists to suspend or revoke the license of Respondent Michael Ted McKendree's pursuant to Business and Professions Code §10176(e) for commingling as set forth in Finding Nos. XIX - XX and XXII - XXIII.

IV

Cause exists to suspend or revoke the license of Respondent Glenn Dale McKendree pursuant to Business and Professions Code §10177(j) for fraud or dishonest dealing as set forth in Finding Nos. VIII - XIII, XV - XXV, XXIII and XXXIV.A.4.

V

Cause does not exist to suspend or revoke the license of Respondent Glenn Dale McKendree pursuant to Business and Professions Code §10176(e) for commingling as set forth in Finding Nos. XIX - XX, XXII - XXIII and XXXV.

VI

Cause exists to suspend or revoke the license of Respondent Mack Ray McKendree pursuant to Business and Professions Code §§10148, 10232.4, and Title 10, California Code of Regulations, §2831(a)(6), in conjunction with Business and Professions Code §10177(d), for failure to retain appropriate records as set forth in Finding Nos. III - V and XXVI.

VII

Cause exists to suspend or revoke the license of Respondent Mack Ray McKendree pursuant to Business and Professions Code §10177(g) for negligence or incompetence as set forth in Finding Nos. III - V, XIII.F, XXVI and XXXIV.C.

VIII

Cause exists to suspend or revoke the license of Respondent Mack Ray McKendree pursuant to Business and Professions Code §10177(h) for failing to exercise reasonable supervision as set forth in Finding Nos. III - V, XIII.F, XXXVI and XXXIV.C.

IX

Barbieri contends that alleged violations of Business and Professions Code §10137 and Title 10, California Code of Regulations, §2752 are barred by the statute of limitations.

Business and Professions Code §10101 provides, in pertinent part:

"The accusation...shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise in which case the accusation must be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later...."

The conduct herein was discovered by the aggrieved parties on Columbus Day 1994. The accusation was filed on December 16, 1996 (Finding No. I), more than one year after discovery. Accordingly, only conduct occurring within three years of the December 16, 1996 filing date may be proper "grounds for disciplinary action." Business and Professions Code §10101. Respondent's motion to dismiss errant conduct antedating December 16, 1993, as "grounds for disciplinary action" is granted; however, the granting of such motion does not preclude this tribunal from considering errant conduct relative to the imposition of discipline.<sup>7</sup>

Cause does not exist to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Business and Professions Code §10137 and Title 10, California Code of Regulations, §2752, in conjunction with Business and Professions Code §10177(d), for failing to notify the Department of the employment of a salesperson as set forth in Finding Nos. VII, XXIX.D, XXXIII.C, XXXIII.E and XXXIV.A.

X

Cause exists to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Title 10, California Code of Regulations, §2830, in conjunction with Business and Professions Code §§10145 and 10177(d), for failing to deposit trust funds into a trust bank account in the name of a licensed real estate broker as set forth in Finding Nos. VII, XXVII - XXVIII and XXXIV.B.

XI

Cause exists to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Title 10, California Code of Regulations, §2831.2, in conjunction with Business and Professions Code §10177(d), for failing to conduct monthly reconciliations as set forth in Finding Nos. VII, XXVII - XXVIII and XXXIV.B.

XII

Cause exists to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Title 10, California Code of Regulations, §2831(a)(6), in conjunction with Business and Professions Code §10177(d), for failing to maintain appropriate

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<sup>7</sup> Although the McKendrees have not interposed any objection or motion with respect to the statute of limitation, this tribunal predicates its determinations of issues as applicable to each McKendree only on conduct properly captured within the statute of limitations.

trust records as set forth in Finding Nos. VII, XXVII - XXVIII and XXXIV.B.

XIII

Cause exists to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Title 10, California Code of Regulations, §2731, in conjunction with Business and Professions Code §10177(d), for inappropriate use of a fictitious name as set forth in Finding Nos. VII, XXVII - XXVIII and XXXIV.B.

XIV

Cause exists to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Business and Professions Code §10177(g) for negligence or incompetence as set forth in Finding Nos. VII, XXVII - XXVIII and XXXIV.B.

XV

Cause exists to suspend or revoke the license of Respondent Ronald James Barbieri pursuant to Business and Professions Code §10177(h) for failing to exercise reasonable supervision as set forth in Finding Nos. VII - XXV and XXXIV.B.

XVI

Licensure by the Department is not readily granted. Qualifications must be met (Business and Professions Code section 10151, et seq.) and minimum standards continuously maintained (Business and Professions Code sections 10153.4 and 10170, et seq.). The effect of licensure is to assure the public that the person holding the license is not only qualified but also possesses the moral character and standards, and professional competency required in furthering the state's constitutional interest in public health, safety, morals and welfare.

This places a burden not merely on the state but also upon each licensee to responsibly conduct all affairs associated with licensure. In this regard, it is a Department licensee who, in the responsible conduct of activities, furthers public confidence in licensure.

A. Michael Ted McKendree

Respondent Michael Ted McKendree has engaged in unlawful, inexcusable, and unmitigated conduct which compels revocation of his licensure by the Department. He took advantage of his trusted position with clients, his parents, and his family; he abused the privileges of his licensure; he engaged in multiple acts of moral turpitude.

Mindful of the significance moral character plays in the professional practice of real estate, Respondent Michael Ted McKendree has displayed by his conduct a character lacking in judgment, restraint, prudence, and probity.

Accordingly, giving due consideration to the facts and circumstances underlying the Accusation, the circumstances in aggravation and mitigation, the public interest will be adversely affected by the continued issuance of a Department license to Respondent Michael Ted McKendree.

B. Glenn Dale McKendree

Respondent Glenn Dale McKendree deliberately engaged in the practice of real estate without appropriate supervision. Operating her business, she employed her son who, at times, engaged in conduct warranting both licensure and appropriate supervision. She facilitated his errant conduct and continuously deceived her employing broker regarding her son's true status with American Mortgage. She took advantage of her trusted position with Barbieri and, thereby, abused the privileges of her licensure; she engaged in conduct involving moral turpitude. Moral character is as important a qualification in the practice of real estate as knowledge, training, skill and experience.

Accordingly, giving due consideration to the facts and circumstances underlying the Accusation and the circumstances in aggravation and mitigation, the public interest will be adversely affected by the continued issuance of a Department license to Respondent Glenn Dale McKendree.

C. Mack Ray McKendree

Respondent Mack Ray McKendree, despite his evident probity, is, simply put, incompetent as a real estate broker. Despite his years of licensure, it is abundantly evident that he lacked the appropriate experience, knowledge or training to undertake licensed activities as an independent broker.

The objective of this proceeding is to protect the public, the profession, maintain professional integrity and competency, its high standards, and preserve public confidence in the real estate profession and its professionals.

The key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from him. Mephram v. State Bar (1986) 42 Cal.3d 943, 948; In the Matter of Rodriguez (1993) 2 Cal. State Bar Ct. Rptr. 480, 501.

Respondent Mack Ray McKendree's interest in licensure as a broker with its attendant independence (Business and Professions Code section 10131, et seq.) must yield to the interest of the

public in light of his clear lack of competent underlying experience and misconduct; on the other hand, his brief tenure as a broker was unknowingly marred by a defalcating son, employed by a devoted mother who was improperly supervised by her own broker, Barbieri. Assuming responsibility for his agent's conduct,<sup>8</sup> Mack undertook commendable and responsible efforts to make the victims of his son's conduct whole. Such responsibility, personal integrity, and evidence of moral character are not easily ignored by this tribunal; nevertheless, such virtues do not compel his continued licensure as a real estate broker where he displays utter incompetence in his ability to discharge the duties, functions, obligations, and responsibilities of such licensure.

A remaining determination is whether Mack should possess a real estate salesperson license and whether such license should be restricted. As aforesaid, it is the degree of disciplinary recommendation that poses a key concern to this tribunal. Mephram, supra; Rodriguez, supra. Mack, while licensed as a real estate salesperson, had no history of disciplinary conduct with the Department. This lack of disciplinary history is not particularly surprising when balanced with his lack of engaging in licensed activities. Ordinarily when this tribunal considers issuing a restricted real estate salesperson license to a licensee who has had his or her broker license revoked or salesperson license disciplined, it is done with the intent that continuing to engage in licensed activities, under supervision, will effect particular and further rehabilitation. Mack, never having truly engaged in licensed activities as a salesperson, lacks the evident motivation or interest inviting such disciplinary consideration.

Accordingly, giving due consideration to the facts and circumstances underlying the Accusation and the circumstances in aggravation and mitigation, the public interest will be adversely affected by the continued issuance of a real estate license to Respondent Mack Ray McKendree. (Cf. In the Matter of Lazarus (1991) 1 Cal. State Bar Ct. Rptr. 387, 402).

D. Ronald James Barbieri

Respondent Ronald James Barbieri poses a particularly difficult problem for this tribunal.

He was deceived by Glenn who successfully orchestrated a practice independent of his supervision. Barbieri, on the other hand, while not wholly responsible for the deceit perpetrated on

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<sup>8</sup> Such civil responsibility does not extend to disciplinary culpability. Business and Professions Code §10179; California Real Estate Loans v. Wallace (1993) 18 Cal.App.4th 1575, 1581.

him,<sup>9</sup> bears sole responsibility for the lack of appropriate supervision and some responsibility for not undertaking a more active role in reviewing Glenn's records, books, files, and related documents. Despite Barbieri's protestations of having done so, it is evident that his supervision was both nominal and cursory. His wife, Meier, candidly notes that Barbieri lacks proficiency in bookkeeping, financial records and analysis. This similar lack of appropriate supervision has been repeated by his current and ongoing role as employing broker for his wife.

Barbieri, unlike Glenn or Michael, has engaged in no conduct of moral turpitude. Nevertheless, he has engaged in conduct which, not unlike Mack, demonstrates his incompetence born, no doubt, of a failure to properly maintain familiarity with the Real Estate Law and the legislative efforts since his original licensure to professionalize the industry. Unlike Mack, deference is owed Barbieri who has long and successfully functioned as a real estate licensee without disciplinary incident. Further, he displayed a candor, insight, and remorse demonstrating a regard for rehabilitation. On the other hand, his efforts at rehabilitation are both recent and, still involved in the supervisory employment of his wife, compel closer scrutiny by the Department in meeting its constitutional and statutory mandate to protect the public. In keeping with this tribunal's interest towards public protection and the rehabilitation of an errant broker, a balance serving both interests, when evident, compels a discipline particularly tailored to effect the nonpunitive aspects of Department disciplinary proceedings.

Accordingly, giving due consideration to the facts and circumstances underlying the Accusation and the circumstances in aggravation and mitigation, the public interest will not be adversely affected by the issuance of a properly conditioned real estate salesperson license to him. (Cf. In the Matter of Lazarus (1991) 1 Cal. State Bar Ct. Rptr. 387, 402).<sup>10</sup>

#### ORDER

#### I

All license and licensing rights issued to Respondent Michael Ted McKendree (License No. 01163030) by the Department of Real Estate are revoked.

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<sup>9</sup> See Business and Professions Code §10179; and Wallace, supra.

<sup>10</sup> Notwithstanding the adverse findings, determinations and order relative to Respondent Ronald James Barbieri, it is evident that he possesses, with the support of his wife, the ability to undertake and establish rehabilitation sufficient to warrant relicensure as a real estate broker. He is urged to consult with his counsel and immediately undertake such efforts.

II

All license and licensing rights issued to Respondent Glenn Dale Ted McKendree (License No. 00875236) by the Department of Real Estate are revoked.

III

All license and licensing rights issued to Respondent Mack Ray McKendree (License No. 00844453) by the Department of Real Estate are revoked.

IV

The real estate broker's license (License No. 00266460) and license rights previously issued to Respondent Ronald James Barbieri by the Department of Real Estate under the Real Estate Law are revoked; provided, however, Respondent shall be entitled to apply for and shall be issued a restricted real estate salesperson license pursuant to Business and Professions Code §§10156.5, 10156.6 and 10156.7 if he makes application therefor and pays to the Department the appropriate fee for said license within thirty (30) days from the effective date of the Decision herein. The restricted license issued to him shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:


- A. The restricted license shall be suspended for thirty (30) days following its issuance.
- B. The restricted license issued to him may be revoked following hearing by order of the Real Estate Commissioner (hereinafter "the Commissioner") in the event of his conviction or plea of nolo contendere to a crime which is substantially related to his fitness or capacity as a real estate licensee.
- C. Respondent shall, within one year from the effective date of this Decision, successfully complete a college level course, at an accredited institution in:
  1. Real Estate Practice as provided in Business and Professions Code §10153.2(a)(1)(A).
  2. Real Estate Office Administration as provided in Business and Professions Code §10153.2(a)(2)(H).



- D. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If he fails to satisfy this condition, the Commissioner shall order suspension of his license until he passes the examination.
- E. Respondent shall obey all laws, including provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Commissioner or conditions attaching to the restricted license.
- F. The restricted license issued to him may be suspended following hearing by order of the Commissioner on evidence satisfactory to the Commissioner that he has violated provisions of the California Real Estate Law, the Subdivided Lands Law, the Regulations of the Commissioner or conditions attaching to the restricted license.
- G. Respondent shall, within twelve months from the effective date of this Decision, present evidence satisfactory to the Commissioner that he has, since the most recent issuance of a 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.
- H. Respondent shall, at his own expense, report in writing to the Department as the Commissioner shall direct such information concerning his activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.
- I. Respondent shall neither open, maintain nor be a signatory on any trust fund account for which a license issued by the Department is required.
- J. Respondent shall submit with any application for license or employment under any employing real estate broker 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 which shall certify:

1. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  2. 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.
- K. Respondent shall, within 90 days of the effective date of this Decision, submit a copy of this Decision to his local board of realtors.

Dated: November 10, 1997



JAIME RENÉ ROMÁN  
Administrative Law Judge  
Office of Administrative Hearings

RECEIVED  
Dept. of Real Estate

FILED  
AUG 12 1997

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

CASHIER #2

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Accusation of  
MICHAEL TED MCKENDREE,  
MACK RAY MCKENDREE,  
GLENN DALE MCKENDREE, and  
RONALD JAMES BARBIERI,

}

Case No. H-7424 SF

OAH No. N-9702026

Respondent (s)

THIRD 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 \_\_\_\_\_

The Office of Administrative Hearings, 501 J Street, Suite 230,

Second Floor Hearing Rooms, Sacramento, California, 95814

on August 21 and August 22, 1997, at the hour of 9:00 AM,

or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: August 12, 1997

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

TO: FLAG SECTION

FROM: SACTO. LEGAL

FILED  
JUN 24 1997

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

*Shelly Ely*

In the Matter of the Accusation of

MICHAEL TED MCKENDREE,  
MACK RAY MCKENDREE,  
GLENN DALE MCKENDREE, and  
RONALD JAMES BARBIERI,

}

Case No. H-7424 SF

OAH No. N-9702026

*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 \_\_\_\_\_

The Office of Administrative Hearings, 501 J Street, Suite 230,

Second Floor Hearing Rooms, Sacramento, California, 95814

on August 12 and August 13, 1997, 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: June 24, 1997

By *Deidre L. Johnson*  
DEIDRE L. JOHNSON Counsel

TO: . . FLAG SECTION

FROM: SACTO. LEGAL

FILED  
APR 11 1997

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

MICHAEL TED MCKENDREE,  
MACK RAY MCKENDREE,  
GLENN DALE MCKENDREE, and  
RONALD JAMES BARBIERI,

}

Case No. H-7424 SF

OAH No. N-9702026

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 \_\_\_\_\_  
The Office of Administrative Hearings, 501 J Street, Suite 230,  
Second Floor Hearing Rooms, Sacramento, California 95814

on June 17, June 18, and June 19, 1997, 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: April 9, 1997

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

TO: FLAG SECTION  
FROM: SACTO. LEGAL

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of  
MICHAEL TED MCKENDREE,  
MACK RAY MCKENDREE,  
GLENN DALE MCKENDREE, and  
RONALD JAMES BARBIERI,  
Respondent



Case No. H-7424 SF  
OAH No. N-9702026

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 The Office of Administrative Hearings, World Savings Tower, 1970 Broadway, Second Floor, Oakland, California 94612

on April 9, 1997, at the hour of 10:00 AM; on April 10, 1997, at the hour of 9:00 AM; and on April 11, 1997, 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: February 24, 1997

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

TO: FLAG SECTION  
FROM: SACTO. LEGAL

FILED  
JAN - 3 1997

DEPARTMENT OF REAL ESTATE

1 DEIDRE L. JOHNSON, Counsel  
Department of Real Estate  
2 P. O. Box 187000  
Sacramento, California 95818-7000.

3  
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By Shelly Cruz

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
		)	NO. H-7424 SF
12	MICHAEL TED MCKENDREE,	)	
	MACK RAY MCKENDREE,	)	<u>ACCUSATION</u>
13	GLENN DALE MCKENDREE, and	)	
	RONALD JAMES BARBIERI,	)	
14		)	
	Respondents.	)	
15		)	

16 The Complainant, Les R. Bettencourt, a Deputy Real  
17 Estate Commissioner of the State of California, for causes of  
18 Accusation against MICHAEL TED MCKENDREE, MACK RAY MCKENDREE,  
19 GLENN DALE MCKENDREE, and RONALD JAMES BARBIERI, is informed and  
20 alleges as follows:

21 PRELIMINARY ALLEGATIONS

22 I

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

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II

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2 Respondents MICHAEL TED MCKENDREE, MACK RAY MCKENDREE,  
3 GLENN DALE MCKENDREE, and RONALD JAMES BARBIERI are presently  
4 licensed and/or have license rights under the Real Estate Law,  
5 Part 1 of Division 4 of the California Business and Professions  
6 Code (hereafter the Code).

7 III

8 At all times herein mentioned, Respondent MACK RAY  
9 MCKENDREE (hereafter MACK SR.) was and is licensed by the  
10 Department of Real Estate (hereafter the Department) as a real  
11 estate broker, individually and doing business as ADVANCED  
12 MORTGAGE and California Realty Group.

13 IV

14 At all times herein mentioned, Respondent RONALD JAMES  
15 BARBIERI (hereafter BARBIERI) was and is licensed by the  
16 Department of Real Estate (hereafter the Department) as an  
17 individual real estate broker. At all times herein mentioned  
18 until cancellation on October 4, 1994, he was also licensed to do  
19 business as AMERICAN MORTGAGE COMPANY. At no time herein was  
20 BARBIERI licensed to do business under the name of Premiere  
21 Property Management.

22 V

23 At all times herein mentioned, Respondent MICHAEL TED  
24 MCKENDREE (hereafter MACK JR.) was and is licensed by the  
25 Department as a real estate salesperson in the employ of MACK SR.

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VI

At all times herein mentioned, Respondent GLENN DALE MCKENDREE (hereafter GLENN) was and is licensed by the Department as a real estate salesperson. At all times herein mentioned until termination on October 4, 1994, she was so licensed in the employ of BARBIERI.

VII

At all times herein mentioned, MACK SR. and BARBIERI, individually, and doing business under their respective fictitious business names of ADVANCED MORTGAGE and AMERICAN MORTGAGE COMPANY engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers within the State of California, for or in expectation of compensation, including the operation and conduct of mortgage loan brokerage businesses with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, consummated, and/or serviced on behalf of others, and wherein secured promissory notes evidencing such loans were sold, exchanged and/or assigned on behalf of others.

Within the three years last past, BARBIERI also engaged in the business of and acted in the capacity of a real estate broker in California within the meaning of Section 10131(b) of the Code, acting on behalf of others for or in expectation of compensation, wherein BARBIERI leased or rented, offered to lease or rent, solicited prospective tenants, and/or collected rents on, and managed certain real property.

1 FIRST CAUSE OF ACTION

2 (Respondents MACK JR. and BARBIERI only)

3 VIII

4 Commencing in or before August of 1993, MACK JR. was  
5 legally licensed in the employ of MACK SR. as alleged in Paragraph  
6 V above, and also became employed by or associated as a real  
7 estate salesperson with BARBIERI. MACK JR.'s activities with  
8 BARBIERI and AMERICAN MORTGAGE COMPANY included, but were not  
9 limited to, the solicitation of private investors and the  
10 negotiation, selling, exchanging, and/or assigning of promissory  
11 notes secured by deeds of trust and/or assignments of deeds of  
12 trust to real property on behalf of others.

13 IX

14 BARBIERI failed to notify the Department of his  
15 employment of MACK JR. within five days of employment pursuant to  
16 Section 2752 of Title 10, California Code of Regulations  
17 (hereafter the Regulations).

18 X

19 Thereafter, MACK JR. performed the above activities for  
20 AMERICAN MORTGAGE COMPANY for which a real estate license is  
21 required, including but not limited to the following:

22

23 INVESTOR	PROPERTY	LOAN AMOUNT	DATE RECORDED
24 Doellstedt, 25 Trustee RWM Co. Profit Sharing Trust	Sunset Parkway, Novato	\$50,000	7/5/94
26 Doellstedt, 27 Trustee	Rocca Drive, Fairfax	\$75,000	7/5/94

1	Doellstedt, Trustee	Mission Blvd., Santa Rosa	\$75,000	6/29/94
2	Doellstedt, Trustee	Grove Street, Healdsburg	\$50,000	6/29/94
3	Doellstedt, Trustee	Jefferson Street, Cloverdate	\$60,000	6/29/94

XI

The above acts and/or omissions of MACK JR. constitute grounds for disciplinary action under the provisions of Section 10137 of the Code.

XII

The acts and/or omissions of BARBIERI alleged in Paragraph IX above violated Section 2752 of the Regulations and constitute grounds for disciplinary action under Section 10177(d) of the Code. The acts and/or omissions alleged in Paragraphs VIII and X above constitute grounds for disciplinary action under the provisions of Section 10137 of the Code.

SECOND CAUSE OF ACTION

(Respondent MACK JR. only)

XIII

In connection with the sale, exchange and assignment of each of the loans set forth in Paragraph X above (except the Rocca Drive loan), Respondent MACK JR. directly or indirectly, expressly or impliedly, represented to Werner Doellstedt, Trustee of the Richmond Wholesale Meat Company Profit Sharing Trust (hereafter the RWM Trust), and his wife Jeanne Doellstedt, Profit Sharing Committee member, that:

- (1) he was duly employed by AMERICAN MORTGAGE COMPANY;



1 of her signature to each of the assignments of the above notes and  
2 deeds of trust; and that he planned to and did continue to pay or  
3 arranged the payment of monthly borrower payments on each  
4 investment to Pearson as though she were still the owner of each  
5 note and deed of trust; and that he did not tender any  
6 consideration to Pearson for the sale, exchange or assignment of  
7 each of the above investments, but instead converted such  
8 consideration to his own uses and purposes.

9 XV

10 The above acts and/or omissions of MACK JR. constitute  
11 grounds for disciplinary action under the provisions of Sections  
12 10176(a), 10176(c), 10176(e), and 10176(i) of the Code, or, in the  
13 alternative, Section 10177(j) of the Code.

14 THIRD CAUSE OF ACTION

15 (Respondent MACK SR. only)

16 XVI

17 From in or about June of 1995 through about December of  
18 1995, the Department conducted an audit of the books and records  
19 of MACK SR. In acting as a mortgage loan broker as alleged above,  
20 individually and doing business as ADVANCED MORTGAGE and  
21 California Realty Group, Respondent accepted or received funds in  
22 trust payable to and for delivery to third parties and/or title or  
23 escrow companies, and did not maintain a trust account.

24 XVII

25 At least for the period of 1994 through May of 1995,  
26 Respondent failed to maintain a record of all trust funds received  
27

1 but not placed in the broker's trust account as required by  
2 Section 2831(a)(6) of the Regulations.

3 XVIII

4 Respondent and ADVANCED MORTGAGE, through his agent or  
5 employee MACK JR., negotiated the sale of a loan to Pearson on or  
6 about April 4, 1994, evidenced by a note secured by a deed of  
7 trust to real property at 1315 Lombardt Lane, Santa Rosa.  
8 Respondent MACK SR. failed to prepare and deliver or cause to be  
9 delivered to Pearson a written lender/purchaser disclosure  
10 statement as required by Section 10232.4 of the Code prior to  
11 Pearson becoming obligated to make the loan or purchase, and/or  
12 failed to retain copies of such statements with the records of the  
13 company.

14 XIX

15 In connection with the audit, MACK SR. was requested to  
16 produce all documents executed or obtained by him regarding  
17 transactions for which a real estate license is required for about  
18 a three year period preceding the audit, including but not limited  
19 to loan transaction files. Beginning in or about June of 1995,  
20 and continuing through the present, MACK SR. has failed to retain  
21 and make available for examination and inspection by a designated  
22 representative of the Commissioner of the Department complete  
23 records as described above, including but not limited to deeds of  
24 trust, assignments of deeds of trust, lender/purchaser disclosure  
25 statements and/or appraisals regarding certain loan or note sale  
26 transactions.

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The acts and/or omissions of MACK SR. as alleged above violate Sections 10232.4 and 10148 of the Code, and Section 2831(a)(6) of the Regulations, and constitute grounds for disciplinary action under the provisions of Section 10177(d) of the Code.

FOURTH CAUSE OF ACTION

(Respondent BARBIERI only)

XXI

In or about December of 1995, the Department conducted an audit of the books and records of BARBIERI. In acting as a mortgage loan broker as alleged above, individually and doing business as AMERICAN MORTGAGE COMPANY, and/or in acting as a property management company doing business as Premiere Property Management, Respondent accepted or received funds in trust. The trust funds accepted or received by Respondent were deposited or caused to be deposited from time to time into a trust account maintained by Respondent in the name of "Premiere Property Management Trust," account number 010-031210 at Exchange Bank, Santa Rosa, California.

XXII

It was ascertained by the audit that as of November 30, 1995, Respondent had a trust fund liability of approximately \$11,040.93, and had an adjusted bank balance of \$12,358.64. Respondent was unable to determine the ownership of the remaining overage of \$1,317.71 in the account.

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XXIII

The excess funds in the trust account alleged above constitute an unexplained trust account overage, for which Respondent failed to maintain a separate record including but not limited to a separate subsidiary ledger pursuant to Section 2833(d) of the Regulations.

XXIV

In connection with the collection and disbursement of the trust funds, Respondent:

(1) Failed to deposit trust funds into a trust fund bank account in the name of the licensed real estate broker as trustee in conformance with Section 2830 of the Regulations.

(2) Failed to reconcile and maintain a record of reconciliation of the above separate records with the control record of all trust funds received at least once a month as required by Section 2831.2 of the Regulations.

XXV

The acts and/or omissions of BARBIERI alleged above constitute grounds for disciplinary action under the following provisions:

(1) As to Paragraph XXIII, under Section 2831(a)(6) of the Regulations in conjunction with Section 10177(d) of the Code.

(2) As to Paragraph XXIV(1), under Section 10145 of the Code and Section 2830 of the Regulations in conjunction with Section 10177(d) of the Code.

(3) As to Paragraph XXIV(2), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code.



1 (4) As to Paragraphs IV and XXI, under Section 2731 of  
2 the Regulations in conjunction with Section 10177(d) of the Code.

3  
4 FIFTH CAUSE OF ACTION

5 (Respondents GLENN and MACK JR. only)

6 XXVI

7 In or about May of 1993, AMERICAN MORGAGE COMPANY  
8 originated and arranged a loan from AMERICAN MORTGAGE COMPANY to  
9 borrower Donald Duryee in the total sum of \$75,000. The loan was  
10 evidenced by a promissory note secured by a deed of trust to  
11 Duryee's real property located at 7 Rocca Drive, Fairfax,  
12 California (hereafter Rocca Drive).

13 XXVII

14 In or about August of 1993, MACK JR. sold and assigned  
15 the above Rocca Drive note and deed of trust to Pearson for the  
16 sum of \$75,000. The Assignment of Deed of Trust to Pearson was  
17 signed on behalf of AMERICAN MORTGAGE COMPANY by GLENN, and it was  
18 recorded on August 2, 1993.

19 XXVIII

20 In or about July of 1994, MACK JR. sold, exchanged  
21 and/or assigned the Rocca Drive note and deed of trust referred to  
22 in Paragraph XXVI above for a second time to RWM Trust for the sum  
23 of \$75,000 or comparable consideration. The Assignment of Deed of  
24 Trust to RWM Trust, was signed on behalf of AMERICAN MORTGAGE  
25 COMPANY by GLENN, and it was recorded on July 5, 1994.

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XXIX

At no time herein did MACK JR. and/or GLENN disclose to RWM Trust that they had already sold and assigned the above note and deed of trust to Pearson. At no time herein did MACK JR. and/or GLENN disclose to Pearson that they had resold her note and deed of trust to RWM Trust, or tender any consideration to Pearson in the transaction, and converted such consideration to their own uses and purposes.

XXX

The above acts and/or omissions of MACK JR. constitute grounds for disciplinary action under the provisions of Sections 10176(a), 10176(c), 10176(e), and 10176(i) of the Code, or, in the alternative, Section 10177(j) of the Code.

XXXI

The above acts and/or omissions of GLENN constitute grounds for disciplinary action under the provisions of Section 10177(j) of the Code.

SIXTH CAUSE OF ACTION

(Respondents MACK SR. and BARBIERI only)

XXXII

At all times above mentioned, MACK SR. and BARBIERI were each responsible for the supervision and control of the activities conducted on behalf of their respective companies and their respective agents and employees, and failed to so exercise reasonable supervision and control.

1 XXXIII

2 MACK SR. was negligent and/or incompetent in performing  
3 acts for which a real estate license is required, in that he knew  
4 or should have known all the facts set forth in the above  
5 allegations pertaining to him and to his company ADVANCED  
6 MORTGAGE, and to his employment of and supervision of MACK JR.,  
7 and in that he could have and should have taken steps to assure  
8 ADVANCED MORTGAGE's and MACK JR.'s full compliance with the Real  
9 Estate Law and failed to do so.

10 XXXIV

11 BARBIERI was negligent and/or incompetent in performing  
12 acts for which a real estate license is required, in that he knew  
13 or should have known all the facts set forth in the above  
14 allegations pertaining to him and to his companies AMERICAN  
15 MORTGAGE COMPANY, and/or Premiere Property Management, and to his  
16 employment of and supervision of MACK JR. and GLENN, and in that  
17 he could have and should have taken steps to assure the respective  
18 company's, MACK JR.'s and GLENN's full compliance with the Real  
19 Estate Law and failed to do so.

20 XXXV

21 The acts and/or omissions of MACK SR. and BARBIERI as  
22 alleged above constitute grounds for disciplinary action against  
23 each of them under the provisions of Sections 10177(g) and  
24 10177(h) of the Code.

25 WHEREFORE, Complainant prays that a hearing be conducted  
26 on the allegations of this Accusation and that upon proof thereof  
27 a decision be rendered imposing disciplinary action against all

1 licenses and license rights of Respondents, under the Real Estate  
2 Law (Part 1 of Division 4 of the Business and Professions Code)  
3 and for such other and further relief as may be proper under other  
4 provisions of law.

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6   
7 LES R. BETTENCOURT  
8 Deputy Real Estate Commissioner

9 Dated at San Francisco, California,  
10 this 16th day of December, 1996.

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