

FILED
JUL 13 2007

DEPARTMENT OF REAL ESTATE

By Jean Dumot

BEFORE THE DEPARTMENT OF REAL ESTATE
OF THE STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-7947 SF
FREDERICK LEA KELTNER,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On September 25, 2001, a Decision was rendered herein revoking the real estate broker license of Respondent effective November 16, 2001, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on November 16, 2001, and Respondent has operated as a restricted licensee since that time.

On April 14, 2005, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

1 The burden of proving rehabilitation rests with the
2 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
3 petitioner is required to show greater proof of honesty and
4 integrity than an applicant for first time licensure. The proof
5 must be sufficient to overcome the prior adverse judgment on the
6 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
7 395).

8 I have considered Respondent's petition and the
9 evidence and arguments in support thereof. Respondent has failed
10 to demonstrate to my satisfaction that Respondent has undergone
11 sufficient rehabilitation to warrant the reinstatement of
12 Respondent's real estate broker license.

13 The Department has developed criteria in Section 2911
14 of Title 10, California Code of Regulations ("Regulations") to
15 assist in evaluating the rehabilitation of an applicant for
16 reinstatement of a license. Among the criteria relevant in this
17 proceeding are:

18 Section 2911(h). Stability of family life and
19 fulfillment of parental and familial responsibilities subsequent
20 to the conviction or conduct that is the basis for denial of the
21 agency action sought.

22 During Respondent's April 12, 2007 telephone interview
23 with the Deputy Commissioner assigned to review Respondent's
24 petition, Respondent stated that in 2006 Respondent's 17-year
25 marriage was dissolved and Respondent moved from Northern
26 California to Southern California with Respondent's nine year old
27 son. Dissolution of the marriage was pending at the time

1 Respondent filed the petition April 14, 2005. Respondent's family
2 life has been in transition during the pendency of Respondent's
3 petition.

4 Section 2911(j). Discharge of, or bona fide efforts
5 toward discharging, adjudicated debts or monetary obligations to
6 others.

7 A federal tax lien against Respondent in the amount of
8 \$11,571.00 was recorded in Santa Clara County, California, on
9 November 4, 1996, and another federal tax lien against Respondent
10 in the sum of \$9,024.00 was so recorded January 24, 1997. During
11 Respondent's June 29, 2005 telephone interview with the Deputy
12 Commissioner assigned to review Respondent's petition, Respondent
13 acknowledged that he had outstanding tax liens, and stated he was
14 then trying to resolve these obligations.

15 On January 9, 2006, in the United States Bankruptcy
16 Court, Northern District of California, Case No. 05-57483, a
17 discharge was entered on Respondent's October 12, 2005 petition
18 under Chapter 7 of the Bankruptcy Code.

19 On June 16, 2006, in the United States Bankruptcy
20 Court, Northern District of California, Adversary Proceeding No.
21 06-05014, Citibank (South Dakota) N. A. obtained a non-
22 dischargeable stipulated judgment against Respondent in the sum
23 of \$5,000.00.

24 During Respondent's May 23, 2007 telephone interview
25 with the Deputy Commissioner assigned to review Respondent's
26 petition, Respondent stated that the tax liens had been
27 discharged in the Chapter 7 bankruptcy proceedings, but was

1 unable to substantiate the payment or other discharge of these
2 obligations. Respondent was also unable to substantiate the
3 payment of the non-dischargeable \$5,000.00 judgment in favor of
4 Citibank.

5 Respondent has failed to demonstrate payment or
6 discharge of Respondent's adjudicated debts and monetary
7 obligations.

8 Section 2911(k). Correction of business practices
9 resulting in injury to others or with the potential to cause such
10 injury.

11 Respondent's license discipline resulted from business
12 practices resulting in injury to others or with the potential to
13 cause such injury. On September 25, 2001, a Decision was rendered
14 in H-7947 SF revoking Respondent's broker license with the right
15 to a restricted broker license. The Decision became effective
16 November 16, 2001. Respondent's broker license was disciplined
17 pursuant to the provisions of Sections 10176(e) and 10176(g) of
18 the Code and Section 10177(d) of the Code in conjunction with
19 Sections 10145 and 10146 of the Code and Sections 2831.1, 2831.2,
20 2832(a), 2832.1, 2835 and 2972 of the Regulations on the grounds
21 that: (a) Respondent deposited trust funds consisting of credit
22 report and appraisal fees into a bank account that was not
23 maintained in the name of Respondent as trustee; Respondent
24 caused the balance of trust funds held by Respondent in the bank
25 account to be reduced to an amount which was approximately
26 \$3,561.73 less than the aggregate liability of Respondents to all
27 owners of such funds, without the prior written consent of the

1 owners of such funds; (c) Respondent failed to keep a separate
2 record for each beneficiary or transaction, accounting therein
3 for all funds deposited into the bank account containing all
4 required information; (d) Respondent failed to reconcile, at
5 least once a month, the balance of all separate beneficiary or
6 transaction records for funds deposited into the bank account;
7 (e) Respondent commingled personal funds with trust funds
8 deposited into the bank account; and (f) Respondent received
9 advance fees, including a \$3500 advance fee, failed to maintain
10 the fees in a trust bank account, but instead expended the
11 advance fees for Respondent's own benefit without providing the
12 owners thereof the accounting mandated by statute and regulation.

13 On February 27, 2007, the Department conducted an
14 examination of Respondent's mortgage loan brokerage and trust
15 fund handling activities for the period from January 1, 2004
16 through December 31, 2006. The examination confirmed that
17 Respondent has not maintained a trust bank account since
18 Respondent's license was disciplined. This indicates that, rather
19 than correcting Respondent's trust fund handling and bookkeeping
20 practices in order to avoid violations, Respondent simply avoids
21 handling trust funds.

22 The examination also disclosed that in two (Adams and
23 Davis) of the fifteen transactions examined Respondent failed to
24 comply with Section 10240 of the Code by retaining on file for a
25 period of three years a true and correct copy of the Written
26 Disclosure Statement required by Section 10241 of the Code signed
27 by the borrowers and the broker. The examination disclosed that

1 in one transaction (Adams) Respondent failed to disclose to the
2 borrower a \$1,502.25 yield spread premium to be received by
3 Respondent in the transaction, and in two other transactions
4 (Cash and Smith) the amount of the yield spread premium to be
5 received by Respondent disclosed to the borrower was
6 substantially less than the yield spread premium actually
7 received by Respondent.

8 This indicates Respondent has not corrected
9 Respondent's business practices.

10 Section 2911(n). Change in attitude from that which
11 existed at the time of the conduct in question as evidenced by
12 any or all of the following: (1) Testimony of applicant; (2))
13 Evidence from family members, friends or other persons familiar
14 with applicant's previous conduct and with his subsequent
15 attitudes and behavioral patterns. (3) Evidence from probation or
16 parole officers or law enforcement officials competent to testify
17 as to applicant's social adjustments. (4) Evidence from
18 psychiatrists or other persons competent to testify with regard
19 to neuropsychiatric or emotional disturbances. (5) Absence of
20 subsequent felony or misdemeanor convictions that are reflective
21 of an inability to conform to societal rules when considered in
22 light of the conduct in question.

23 Other than stating that Respondent avoids handling
24 trust funds, Respondent has submitted no evidence demonstrating a
25 change in attitude from that which existed at the time of the
26 conduct resulting in license discipline. No testimony has been
27 submitted from family members, friends or other persons familiar

1 with applicant's previous conduct and with his subsequent
2 attitudes and behavioral patterns. Respondent has not submitted
3 evidence justifying the conclusion that there has been a
4 favorable change in his attitude.

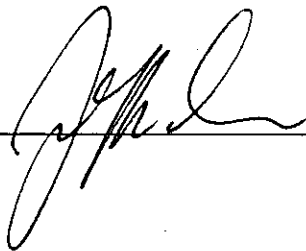
5 Since Respondent has not established that Respondent
6 has complied with Sections 2911(h), (j), (k) and (n) of Title 10,
7 California Code of Regulations, I am not satisfied that
8 Respondent is sufficiently rehabilitated to justify reinstatement
9 of Respondent's unrestricted real estate broker license.

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

13 This Order shall become effective at 12 o'clock
14 noon on AUG 03 2007, 2007.

15 DATED: 7-9, 2007.

16 JEFF DAVI
17 Real Estate Commissioner

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FILED
NOV 15 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

FREDERICK LEA KELTNER,

Respondent.

) NO. H-7947 SF

) OAH NO. N-2001050083

ORDER DENYING RECONSIDERATION

On September 25, 2001, a Decision was rendered in the above-entitled matter. The Decision is to become effective November 16, 2001.

On October 17, 2001, Respondent petitioned for reconsideration of the Decision of September 25, 2001.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of September 25, 2001 and reconsideration is hereby denied.

IT IS HEREBY ORDERED November 15, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

FILED
OCT 17 2001

DEPARTMENT OF REAL ESTATE

By Shelly El

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
FREDERICK LEA KELTNER,) No. H-7947 SF
Respondent.)

ORDER STAYING EFFECTIVE DATE

On September 25, 2001, a Decision was rendered in the above-entitled matter to become effective October 17, 2001.

On October 17, 2001, Respondent petitioned for reconsideration of the Decision of September 25, 2001.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of September 25, 2001, shall become effective at 12 o'clock noon on November 16, 2001.

DATED: October 17, 2001

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

FILED
SEP 27 2001

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

* * *

In the Matter of the Application of)

FREDERICK LEA KELTNER,

Respondent.)

NO. H-7947 SF

OAH NO. N 2001050583

DECISION

The Proposed Decision dated August 27, 2001, 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 with the following addition:

Respondent shall, within 90 days of the effective date of this Decision and pursuant to condition 6. of the ORDER in the Proposed Decision, submit a plan to take and successfully complete, at an accredited institution, the following three-semester unit, or the quarter equivalent thereof, pre-license courses delineated in Section 10153.2 of the Business and Professions Code:

1. Mortgage loan brokering and lending.
2. Real estate office administration.

The above courses shall be completed within 12 months of the date of issuance of the restricted license issued pursuant to the ORDER in the Proposed Decision.

This Decision shall become effective at 12 o'clock noon on October 17, 2001.

DATED: September 25, 2001.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

FREDERICK LEA KELTNER

Respondent.

Case No. H-7947

OAH No. N2001050583

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on July 12, 2001 in Oakland, California.

David B. Seals, Counsel, represented the complainant Les R. Bettencourt.

Respondent Frederick Keltner appeared on his own behalf and was assisted by his wife Olga Keltner.

The matter was submitted on July 12, 2001. On July 19, 2001, the record was reopened following receipt of an ex parte communication (a copy of an article with a typewritten attachment) from respondent Keltner. Pursuant to Government Code section 11430.50, this ex parte communication was disclosed to opposing counsel David Seals by letter dated July 25, 2001, and opposing counsel was given 10 days to respond. In addition, a copy of the July 25 letter (with attachments) was marked as Exhibit L for identification and made a part of the record. On July 26, 2001, a telephone call was received from opposing counsel Seals in which he indicated that he did not wish to file a response. The matter was submitted on July 26, 2001.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made the Accusation in his official capacity as Deputy Real Estate Commissioner of the State of California.

2. At all times pertinent hereto, Frederick Lea Keltner (respondent), individually and doing business as Mortgage Resources, was licensed and had license rights as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). Respondent's license is scheduled to expire on February 20, 2002, unless renewed.

3. During all time periods relevant to this proceeding respondent engaged in activities on behalf of others for which a broker's license is required. Respondent, for or in the expectation of compensation, solicited borrowers or lenders for loans, negotiated loans, collected payments, or performed services for borrowers, lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity. (Bus. & Prof. Code, §10131, subd. (d).)¹

4. On April 17, 2000, the Department of Real Estate (Department) conducted an investigative audit of respondent's books and records for the period of August 1, 1997, through March 1, 2000. The audit covered the loan brokerage activities of respondent. The audit revealed that during the period covered by the audit respondent maintained the following bank account:

Cal Fed
1551 Saratoga Avenue
San Jose, California 95129
Account No. 012-410004-1
(Bank Account #1)

Bank Account #1 was used to collect trust funds. Deposits into the account consisted of credit report and appraisal fees related to mortgage loans. Disbursements included payments for credit reports and appraisals. Bank Account #1 was held under "Fredrick L. Keltner dba Mortgage Resources" with no indication that it was a designated trust account.

5. Respondent violated the requirements of section 2832, subdivision (a) of Title 10 of the California Code of Regulations by failing to deposit trust funds entrusted to him into a trust fund account in the name of respondent as trustee at a bank or other financial institution. (As previously noted, respondent deposited trust funds into Bank Accounts #1, which was not a designated trust account.)

6. As of March 1, 2000, the adjusted bank balance for Bank Account #1 was \$92.70 (broker funds). The trust fund accountability was \$3,654.43, resulting in a shortage of at least \$3,561.73 in Bank Account #1. The Department auditor determined the shortage resulted from a disbursement of funds (\$3,500.00) from Bank Account #1 to respondent on February 12, 1999, plus \$61.73 in earned interest that was owed to individuals or entities that were beneficiaries of Bank Account #1.

¹ Respondent primarily acts as a third party originator (loan packager) submitting potential loans to institutional lenders. As part of this process respondent assesses the credit qualifications of the potential borrower and the value of the property to be purchased and/or mortgaged. The applicant bears the cost of this assessment by paying a credit report fee and an appraisal fee. During the time period at issue in the subject proceeding, these fees were paid directly to respondent, who was then responsible for paying the credit report agency or appraiser, as appropriate. The fees collected by respondent were thus subject to the requirements of Business and Professions Code section 10145.

7. Respondent's trust records indicate that he collected \$3,500.00 from Loren Kroeker on August 11, 1997, for a credit check and appraisal fee. No credit report or appraisal was ever ordered during the course of respondent's representation of Kroeker. The trust funds remained in Bank Account #1 until February 12, 1999, when respondent wrote a check from Bank Account #1 to his company business account for \$3,500.00. The funds were deposited into respondent's general account and used for business expenses. Respondent did not obtain a written consent from Kroeker authorizing this disbursement to respondent prior to transferring the trust funds.

8. Between 1997 and 1999 trust funds were collected from at least five individuals or entities and deposited into Bank Account #1, an interest bearing account. The interest earned on the trust funds between 1997 and 2000 was \$61.73. This interest was never allocated or disbursed to the five beneficiaries. Thus, all five beneficiaries were owed money (earned interest) from Bank Account #1 at the time of the audit.

9. Respondent failed to get the prior written consent of each owner of funds in Bank Account #1 to reduce the trust account balance below the existing aggregate trust fund liability, as required by section 2832.1 of Title 10 of the California Code of Regulations.

10. The audit additionally revealed that respondent failed to maintain separate records for each beneficiary or transaction, accounting for all funds received, deposited and disbursed in Bank Account #1 as required by section 2831.1 of Title 10 of the California Code of Regulations.

11. In addition respondent failed to reconcile the balances of all separate beneficiary or transaction records to the ending balance of a control record of all trust funds received and disbursed at least once a month, in violation of section 2831.2 of Title 10 of the California Code of Regulations.

12. Respondent also violated the requirements of section 2835 of Title 10 of the California Code of Regulations by commingling his personal funds with the trust funds.

13. Credit report and appraisal fees are advance fees received by the broker for services to be performed on behalf of the person (principal) supplying the fee.² (Bus. & Prof. Code, § 10026.) These fees are trust funds and are required to be deposited into a trust account. Funds may be withdrawn only when expended for the benefit of the principal and a verified accounting of the trust funds must be provided to the principal each quarter. (Bus. &

² As a general rule an advance fee may only be collected pursuant to an advance fee agreement approved by the Department. (Bus. & Prof. Code, § 10085.) However, collection of a fee for a credit report or an appraisal is exempt from the advance fee agreement requirement. If funds in excess of the actual cost of the credit report and/or appraisal are collected, the difference must be refunded to the principal unless there is an approved advance fee agreement that covers the excess.

Prof. Code, § 10146.) The \$3,500.00 paid by Kroeker to respondent represented an advance fee. The \$3,500.00 advance fee was never deposited into a trust account, it was not expended for a credit report or appraisal but was instead transferred to respondent's personal business account, and respondent did not provide Kroeker with verified accountings as required by Business and Professions Code section 10146.

14. Respondent maintains he believed he had authorization from Kroeker to retain the \$3,500.00 as a cancellation fee when he transferred the funds. He explains that between 1997 and 1999 Kroeker primarily worked with one of respondent's agents, Kim Barrow, in an unsuccessful attempt to obtain a commercial loan for Kroeker's business property. In early 1999 Barrow represented to respondent that Kroeker had orally authorized respondent to keep the \$3,500.00 as a cancellation fee for time and effort expended to try to obtain financing. Respondent had no reason to doubt this representation since it was consistent with previous statements made to him by Kroeker that he would be compensated for his services.³ Respondent also points out that Kroeker subsequently authorized him to retain the cancellation fee in writing in or around January 2001. Respondent credibly denies any attempt to defraud Kroeker.

15. Kroeker testified at hearing that he does not object to the fee because he is aware that respondent and his staff expended substantial time and energy trying to obtain a loan on his behalf. However, Kroeker also testified that he does not recall being advised of or authorizing a cancellation fee in 1999 (although he did acknowledge that he probably told respondent that he would be compensated for his services). He also testified that he did not receive an accounting of how the \$3,500.00 was expended until January 2001.

16. Respondent has been a real broker for over 16 years. He has no prior discipline against his real estate broker license. Respondent's real estate broker license is important to him since he supports his family through his loan brokerage business. In order to avoid the type of problems that resulted in the subject proceeding respondent now has loan applicants write their checks directly to the credit report agency and/or appraiser. He is also willing to comply with any reasonable restrictions on his broker license in order to retain his license.

LEGAL CONCLUSIONS

1. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations section 2832, subdivision (a) by reason of the matters set forth in Findings 4 and 5.

³ Respondent estimates he realized approximately an \$800.00 profit from the Kroeker transaction. He paid \$1,788.00 to Barrow as a commission and expended approximately \$1,000.00 to cover business costs, including the cost of a preliminary appraisal, a credit report, copying, Fed Ex, postage, telephone calls and faxes.

2. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations section 2832.1 by reason of the matters set forth in Finding 9.

3. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations section 2831.1 by reason of the matters set forth in Finding 10.

4. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations section 2831.2 by reason of the matters set forth in Finding 11.

5. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code section 10145 and Title 10, California Code of Regulations section 2835 by reason of the matters set forth in Findings 7 and 12.

6. Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 10177, subdivision (d) in conjunction with Business and Professions Code sections 10176, subdivisions (e) and (g) and 10146 and Title 10, California Code of Regulations section 2972 by reason of the matters set forth in Findings 12 and 13.

7. The evidence demonstrated that during the audit period respondent's trust fund records were not maintained in compliance with applicable law and that he improperly transferred trust funds into his personal account. In mitigation, respondent believed he had authorization to use the trust funds and lacked any intent to defraud the loan applicant. In addition, respondent has also changed his practices so that now loan applicants pay the credit report agency and/or appraiser directly. It must also be noted that respondent has been a real estate broker for 16 years and there has been no prior discipline against his license. He also expresses a willingness to do whatever is necessary to retain his license. After considering all of the evidence, it is determined that it would not be against the public interest to permit respondent to continue to hold a broker license upon appropriate terms and conditions.

ORDER

All real estate licenses and licensing rights issued to respondent Frederick Lea Keltner under the Real Estate Law are revoked pursuant to Legal Conclusions 1 through 6, jointly and individually; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fees for the restricted license within 90 days from the effective date of this Decision. The restricted

license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted licenses issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
4. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondents' activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to, periodic independent accounting of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction in which Respondent engaged during the period covered by the report.

5. 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 Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until respondent passes the examination.

6. Within ninety (90) days of the effective date of this decision, Respondent shall submit to the Department for its prior approval, an appropriate program of remedial education, which program must be approved by the Department. The remedial education program shall include coursework in trust fund accounting and record keeping and mortgage lending, including commercial lending. The exact number of hours and specific content of the program shall be determined by the Department or its designee. Respondent shall successfully complete the remedial education program and may be required to pass an examination(s) administered by the Department or its designee related to the program's content. Respondent shall pay all costs of the remedial education program. The period of probation will be extended, if necessary, until such remedial education is completed. Continuing education courses used for the renewal of licensure will not be used for remedial education.
7. Respondent shall not be eligible to apply for the issuance of unrestricted real estate licenses nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

DATED: 8/27/01


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 08 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

FREDERICK LEA KELTNER

By Shelly Ely

Case No. H-7947 SF

OAH No. N2001050583

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 THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on THURSDAY--JULY 12, 2001, at the hour of 9:00 A.M., 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: JUNE 8, 2001

By

Larry Alamas
DAVID B. SEALS,

Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
APR 16 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12
13 In the Matter of the Accusation of)
14 FREDERICK LEA KELTNER,)
15 Respondent.)

NO. H-7947 SF
ACCUSATION

16
17 The Complainant, Les R. Bettencourt, a Deputy Real
18 Estate Commissioner of the State of California for cause of
19 Accusation against FREDERICK LEA KELTNER (hereinafter
20 "Respondent"), is informed and alleges as follows:

21
22 FIRST CAUSE OF ACCUSATION

23 I

24 The Complainant, Les R. Bettencourt, a Deputy Real
25 Estate Commissioner of the State of California; makes this
26 Accusation against Respondent in his official capacity.

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II

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code") as a real estate broker dba Mortgage Resources.

III

At various times mentioned herein, Respondent 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, within the meaning of Section 10131(d) of the Code by soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

IV

That at all times mentioned herein, Respondent accepted or received funds in trust (hereafter trust funds) from and on behalf of his principals placing them in accounts and at times thereafter made disbursements of such funds.

V

On or about April 17, 2000, an investigative audit was conducted by the Department of the records and bank records of Respondent for the period from August 1, 1997 to March 1, 2000, as said records related to his activities as a real estate broker described above.

///

1 VI

2 Respondent maintained an account, into which trust
3 funds were placed at Cal Fed, 1551 Saratoga Ave., San Jose, CA
4 95129, Acct. #012-410004-1. The account was not designated as a
5 trust account.

6 VII

7 The adjusted balance of the account as of March 1,
8 2000, was Ninety-Two and 70/100 Dollars (\$92.70), the minimum
9 trust fund accountability for the account as of March 1, 2000,
10 was Three Thousand Five Hundred Sixty-One and 73/100 Dollars
11 (\$3,561.73) plus Broker Funds of Ninety-Two and 70/100 Dollars
12 (\$92.70). Therefore, Respondent, as of March 1, 2000, had a
13 trust fund shortage of Three Thousand Five Hundred Sixty-One and
14 73/100 Dollars (\$3,561.73).

15 VIII

16 The minimum shortage was caused by a possible
17 unauthorized disbursement for the benefit of Respondent
18 (\$3,500.00) and (\$61.73) was unidentified.

19 IX

20 Respondent caused the disbursement of trust funds from
21 the account without the written consent of every principal who
22 was an owner of the funds, causing the balance of the funds in
23 the account to be an amount less than the existing aggregate
24 trust fund liability of Respondent to all owners of said funds in
25 violation of Section 10145 of the Code and Section 2832.1 of
26 Title 10, California Code of Regulations (hereinafter the
27 "Regulations").

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X

Respondent failed to maintain adequate beneficiary records in the account in violation of Section 2831.1 of the Regulations.

XI

Respondent failed to reconcile on a monthly basis the control record to the total balance of the beneficiary records or total accountability in the account in violation of Section 2831.2 of the Regulations.

XII

The acts and/or omissions of Respondent described above are grounds for the suspension or revocation of Respondent's licenses and license rights under Section 10145 of the Code and Sections 2831.1, 2831.2, and 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

XIII

There is hereby incorporated in this Second, separate and distinct, Cause of Accusation all of the allegations contained in Paragraphs I through XII of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIV

On or about August 10, 1997, Respondent deposited \$3,500.00 of "advanced fees" into the account referred to above and received from Loren Kroeker to be used to unidentified but

1 anticipated expenses to be incurred by Respondent in seeking a
2 loan and appraisal report for Kroeker.

3 XV

4 On or about February 12, 1999 the \$3,500 referred to in
5 Paragraph XIV above were transferred to Respondent's nontrust
6 business account without Kroeker's knowledge nor an accounting of
7 how the \$3,500 was expended.

8 XVI

9 The acts and/or omissions of Respondent described in
10 Paragraphs XIII through XV above are grounds for the suspension
11 or revocation of Respondent's licenses and license rights under
12 Sections 10146 and 10176(e), (g), and (I) of the Code and Section
13 2972 of the Regulations in conjunction with Section 10177(d) of
14 the Code.

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

22 
23 LES R. BETTENCOURT
24 Deputy Real Estate Commissioner

25 ~~Dated at Oakland, California,~~
26 this 22nd day of March, 2001.