

1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
6  
7

FILED

SEP 13 2002

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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

\* \* \*

11 In the Matter of the Accusation of ) No. H-8052 SF  
12 )  
13 HOFMANN CONSTRUCTION CO., ) STIPULATION AND AGREEMENT  
14 a California Corporation, )  
15 THOMAS ALOYSIUS WHALEN, JR., )  
16 MARGERY IRENE HAYWORTH, )  
17 BETTY LOU MANN and )  
DEBORAH DANESE GERMAN, )  
Respondents. )  
Respondents. )

18 It is hereby stipulated by and between Respondents  
19 HOFMANN CONSTRUCTION CO. ("HOFMANN"), a California corporation,  
20 THOMAS ALOYSIUS WHALEN, JR. ("WHALEN"), MARGERY IRENE HAYWORTH  
21 ("HAYWORTH"), BETTY LOU MANN ("MANN") and DEBORAH DANESE GERMAN  
22 ("GERMAN"), (hereinafter "Respondents"), individually and by and  
23 through Paul N. Dubrasich, Esq., attorney of record herein for  
24 Respondents, and the Complainant, acting by and through James L.  
25 Beaver, Counsel for the Department of Real Estate, as follows for  
26 the purpose of settling and disposing of the First Amended  
27

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

1 Accusation filed on July 2, 2002 in this matter (hereinafter "the  
2 Accusation"):

3 1. All issues which were to be contested and all  
4 evidence which was to be presented by Complainant and Respondents  
5 at a formal hearing on the Accusation, which hearing was to be  
6 held in accordance with the provisions of the Administrative  
7 Procedure Act (APA), shall instead and in place thereof be  
8 submitted solely on the basis of the provisions of this  
9 Stipulation and Agreement.

10 2. Respondents have received, read and understand the  
11 Statement to Respondent, the Discovery Provisions of the APA and  
12 the Accusation filed by the Department of Real Estate in this  
13 proceeding.

14 3. On July 11, 2002, Respondents each filed a Notice  
15 of Defense pursuant to Section 11505 of the Government Code for  
16 the purpose of requesting a hearing on the allegations in the  
17 Accusation. Respondents hereby freely and voluntarily withdraw  
18 said Notice of Defense. Respondents acknowledge that Respondents  
19 understand that by withdrawing said Notice of Defense Respondents  
20 will thereby waive Respondents' right to require the Commissioner  
21 to prove the allegations in the Accusation at a contested hearing  
22 held in accordance with the provisions of the APA and that  
23 Respondents will waive other rights afforded to Respondents in  
24 connection with the hearing such as the right to present evidence  
25 in defense of the allegations in the Accusation and the right to  
26 cross-examine witnesses.

27 ///

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

1                   4.    This Stipulation is based on the factual  
2   allegations contained in Paragraphs I through XX, XXII and XXIII  
3   in the Accusation, but not on the allegations of Paragraph XXI  
4   therein. In the interests of expediency and economy, Respondents  
5   choose not to contest the allegations contained in Paragraphs I  
6   through XX, XXII and XXIII in the Accusation, but to remain  
7   silent and understand that, as a result thereof, these factual  
8   allegations, without being admitted or denied, will serve as a  
9   prima facie basis for the disciplinary action stipulated to  
10   herein. The Real Estate Commissioner shall not be required to  
11   provide further evidence to prove said factual allegations.  
12   Respondents deny the allegations of Paragraph XXI therein.

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

23                   6.    This Stipulation and Agreement shall not  
24   constitute an estoppel, merger or bar to any further  
25   administrative or civil proceedings by the Department of Real  
26   Estate with respect to any matters which were not specifically  
27   alleged to be causes for accusation in this proceeding.

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following Determination of Issues shall be made:

I

The acts and omissions of Respondents as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondents under the following provisions of the California Business and Professions Code (hereinafter "the Code") and/or Chapter 6, Title 10, California Code of Regulations (hereinafter "the Regulations"):

(a) as to Paragraphs XIV and XV and Respondents HOFMANN and WHALEN under Section 11012 of the Code and subsections (c) and (e) of Section 2800 of the Regulations in conjunction with Section 10177(d) of the Code;

(b) as to Paragraphs XVII and XVIII and all Respondents under Sections 11013.2 and 11012 of the Code, subsections (a) and (c) of Section 2791 of the Regulations, and subsections (c), (d) and (e) of Section 2800 of the Regulations in conjunction with Section 10177(d) of the Code;

(c) as to Paragraphs XIX and XX and Respondents HOFMANN and WHALEN under Sections 11013.2 and 11012 of the Code, and subsections (c), (d) and (e) of Section 2800 of the Regulations in conjunction with Section 10177(d) of the Code; and

(d) as to Paragraph XXIII and Respondent WHALEN under Section 10177(g) and/or Section 10177(h) of the Code and Section

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

1 10159.2 of the Code in conjunction with Section 10177(d) of the  
2 Code.

3 ORDER

4 I

5 (a) All licenses and licensing rights of Respondent  
6 HOFMANN CONSTRUCTION CO. under the Real Estate Law are revoked;  
7 provided, however, a restricted corporate real estate broker  
8 license shall be issued to said Respondent pursuant to Section  
9 10156.5 of the Business and Professions Code if, within 90 days  
10 from the effective date of the Decision entered pursuant to this  
11 Order:

12 1. Respondent makes application for the restricted  
13 license and pays to the Department of Real Estate the appropriate  
14 fee therefor; and

15 2. Respondent provides proof satisfactory to the Real  
16 Estate Commissioner that Respondent has, separately or jointly with  
17 the other four Respondents, WHALEN, HAYWORTH, MANN and GERMAN, paid  
18 restitution in the total sum of \$5,000.00 to purchasers Samuel and  
19 Deborah Corbin.

20 (b) Any restricted real estate license issued to  
21 Respondent pursuant to this Decision shall be suspended for a  
22 period of ninety (90) days from the date of issuance of said  
23 restricted license; provided however, that if Respondent petitions,  
24 said suspension (or a portion thereof) shall be stayed upon  
25 condition that Respondent pays a monetary penalty pursuant to  
26 Section 10175.2 of the Code at the rate of \$100.00 for each day of  
27 the suspension for a total monetary penalty of \$9,000.00, and upon  
DRE No. H-8052 SF HOFMANN CONSTRUCTION CO. et al.

1 condition that no further cause for disciplinary action against the  
2 real estate license of Respondent occurs within two years from the  
3 effective date of the Decision in this matter. Any stay granted  
4 pursuant to this paragraph shall be subject to the following terms:

5 1. Said monetary penalty payment shall be in the form  
6 of a cashier's check or certified check made payable to the  
7 Recovery Account of the Real Estate Fund. Said check must be  
8 received by the Department prior to the effective date of the  
9 Decision in this matter.

10 2. The Commissioner may, if a final subsequent  
11 determination is made, after hearing or upon stipulation, that  
12 cause for disciplinary action occurred during the two (2) year  
13 period following the effective date of the Decision in this matter,  
14 vacate and set aside the stay and order the immediate execution of  
15 all or any part of the stayed suspension, in which event the  
16 Respondent shall not be entitled to any repayment nor credit,  
17 prorated or otherwise, for money paid to the Department under the  
18 terms of this Order.

19 3. If Respondent fails to pay the monetary penalty in  
20 accordance with the terms and conditions of the Decision, the  
21 Commissioner may, without a hearing, order the immediate execution  
22 of all or any part of the stayed suspension in which event the  
23 Respondent shall not be entitled to any repayment nor credit,  
24 prorated or otherwise, for money paid to the Department under the  
25 terms of the Decision.

26 4. If Respondent pays the monetary penalty and if no  
27 order vacating the stay is made pursuant to Paragraph (2), above,

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

1 the stay granted pursuant to this Decision shall become permanent.

2 (c) The restricted license issued to Respondent shall  
3 be subject to all of the provisions of Section 10156.7 of the  
4 Business and Professions Code and to the following limitations,  
5 conditions and restrictions imposed under authority of Section  
6 10156.6 of that Code:

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

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

18 3. Respondent shall not be eligible to apply for the  
19 issuance of an unrestricted real estate license nor for the  
20 removal of any of the conditions, limitations or restrictions of  
21 a restricted license until two (2) years have elapsed from the  
22 effective date of this Decision.

23 II

24 (a) All licenses and licensing rights of Respondent  
25 THOMAS ALOYSIUS WHALEN, Jr. under the Real Estate Law are revoked;  
26 provided, however, a restricted real estate broker license shall  
27 be issued to said Respondent pursuant to Section 10156.5 of the

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

1 Business and Professions Code if, within 90 days from the  
2 effective date of the Decision entered pursuant to this Order:

3 1. Respondent makes application for the restricted  
4 license and pays to the Department of Real Estate the appropriate  
5 fee therefor; and

6 2. Respondent provides proof satisfactory to the Real  
7 Estate Commissioner that Respondent has, separately or jointly with  
8 the other four Respondents, paid restitution in the total sum of  
9 \$5,000.00 to purchasers Samuel and Deborah Corbin.

10 (b) The restricted license issued to Respondent shall  
11 be subject to all of the provisions of Section 10156.7 of the  
12 Business and Professions Code and to the following limitations,  
13 conditions and restrictions imposed under authority of Section  
14 10156.6 of that Code:

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

20 2. The restricted license issued to Respondent may be  
21 suspended prior to hearing by Order of the Real Estate Commissioner  
22 on evidence satisfactory to the Commissioner that Respondent has  
23 violated provisions of the California Real Estate Law, the  
24 Subdivided Lands Law, Regulations of the Real Estate Commissioner  
25 or conditions attaching to the restricted license.

26 3. Respondent shall not be eligible to apply for the  
27 issuance of an unrestricted real estate license nor for the



1 removal of any of the conditions, limitations or restrictions of  
2 a restricted license until two (2) years have elapsed from the  
3 effective date of this Decision.

4 4. Respondent shall, within nine months from the  
5 effective date of the Decision, present evidence satisfactory to  
6 the Real Estate Commissioner that Respondent has, since the most  
7 recent issuance of an original or renewal real estate license,  
8 taken and successfully completed the continuing education  
9 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
10 for renewal of a real estate license. If Respondent fails to  
11 satisfy this condition, the Commissioner may order the suspension  
12 of the restricted license until the Respondent presents such  
13 evidence. The Commissioner shall afford Respondent the  
14 opportunity for a hearing pursuant to the Administrative  
15 Procedure Act to present such evidence.

16 5. Respondent shall, within six (6) months from the  
17 issuance of the restricted license, take and pass the  
18 Professional Responsibility Examination administered by the  
19 Department including the payment of the appropriate examination  
20 fee. If Respondent fails to satisfy this condition, the  
21 Commissioner may order the suspension of the restricted license  
22 until Respondent passes the examination.

23 III

24 All licenses and licensing rights of Respondent MARGERY  
25 IRENE HAYWORTH under the Real Estate Law are suspended for a  
26 period of sixty (60) days, provided, however, said suspension  
27 shall be stayed upon condition that:

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

(a) prior to the effective date of the Decision  
entered pursuant to this Order Respondent provides proof  
satisfactory to the Real Estate Commissioner that Respondent has,  
separately or jointly with the other four Respondents, paid  
restitution in the total sum of \$5,000.00 to purchasers Samuel  
and Deborah Corbin.

(b) No final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action against Respondent occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his or her discretion, vacate and set aside the stay order, and order the execution of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid under the terms of this Decision.

(c). If no further cause for disciplinary action against  
the real estate license of Respondent occurs within two (2) years  
from the effective date of the Decision, then the stay hereby  
granted shall become permanent.

## IV

All licenses and licensing rights of Respondent BETTY LOU MANN under the Real Estate Law are suspended for a period of sixty (60) days, provided, however, said suspension shall be stayed upon condition that:

(a) prior to the effective date of the Decision  
entered pursuant to this Order Respondent provides proof  
satisfactory to the Real Estate Commissioner that Respondent has,

DRE No. H-8052 SF HOFMANN CONSTRUCTION CO. et al.

1 separately or jointly with the other four Respondents, paid  
2 restitution in the total sum of \$5,000.00 to purchasers Samuel  
3 and Deborah Corbin.

4 (b) No final subsequent determination be made, after  
5 hearing or upon stipulation, that cause for disciplinary action  
6 against Respondent occurred within two (2) years of the effective  
7 date of this Decision. Should such a determination be made, the  
8 Commissioner may, in his or her discretion, vacate and set aside  
9 the stay order, and order the execution of all or any part of the  
10 stayed suspension, in which event the Respondent shall not be  
11 entitled to any repayment nor credit, prorated or otherwise, for  
12 money paid under the terms of this Decision.

13 (c) If no further cause for disciplinary action  
14 against the real estate license of Respondent occurs within two  
15 (2) years from the effective date of the Decision, then the stay  
16 hereby granted shall become permanent.

17 V

18 All licenses and licensing rights of Respondent DEBORAH  
19 DANESE GERMAN under the Real Estate Law are suspended for a  
20 period of sixty (60) days, provided, however, said suspension  
21 shall be stayed upon condition that:

22 (a) prior to the effective date of the Decision  
23 entered pursuant to this Order Respondent provides proof  
24 satisfactory to the Real Estate Commissioner that Respondent has,  
25 separately or jointly with the other four Respondents, paid  
26 restitution in the total sum of \$5,000.00 to purchasers Samuel  
27 and Deborah Corbin.

DRE No. H-8052 SF

HOFMANN CONSTRUCTION CO. et al.

(b) No final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action against Respondent occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his or her discretion, vacate and set aside the stay order, and order the execution of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid under the terms of this Decision.

(c) If no further cause for disciplinary action  
against the real estate license of Respondent occurs within two  
(2) years from the effective date of the Decision, then the stay  
hereby granted shall become permanent.

August 6, 2002  
DATED

JAMES L. BEAVER, Counsel  
Department of Real Estate

\* \* \*

I have read the Stipulation and Agreement and have  
discussed its terms with my attorney and its terms are understood  
by me and are agreeable and acceptable to me. I understand that I  
am waiving rights given to me by the California Administrative  
Procedure Act (including but not limited to Sections 11506,  
11508, 11509, and 11513 of the Government Code), and I willingly,  
intelligently, and voluntarily waive those rights, including the  
right of requiring the Commissioner to prove the allegations in  
the Accusation at a hearing at which I would have the right to  
cross-examine witnesses against me and to present evidence in  
defense and mitigation of the charges.

DRE No. H-8052 SF HOFMANN CONSTRUCTION CO. et al.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

7/29/02

HOFMANN CONSTRUCTION CO.

By Thomas A. Whalen  
THOMAS ALOYSIUS WHALEN, JR.  
Designated Officer - Broker

7/29/02  
DATED

Thomas A. Whalen  
THOMAS ALOYSIUS WHALEN, JR.  
Respondent

7-29-02  
DATED

Margery Irene Hayworth  
MARGERY IRENE HAYWORTH  
Respondent

7-28-02  
DATED

Betty Lou Mann  
BETTY LOU MANN  
Respondent

7-28-02  
DATED

Deborah Danese German  
DEBORAH DANESE GERMAN  
Respondent

\* \* \*

I have reviewed the Stipulation and Agreement as to  
form and content and have advised my clients accordingly.

August 1, 2002  
DATED

Susan M. Santerelli  
SUSAN M. SANTERELLI, ESQ.  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted by as my Decision in this matter and shall become  
effective at 12 o'clock noon on OCTOBER 4, 2002.

IT IS SO ORDERED August 23, 2002.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0425

FILED  
AUG 02 2000

DEPARTMENT OF REAL ESTATE

By Juan C. Lugo

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 JONG M. SHIM and )  
14 ANNA SAYOUNG HONG, )  
15 Respondents. )

NO. H-7805 SF

STIPULATION AND AGREEMENT  
AS TO ANNA SAYOUNG HONG

16 It is hereby stipulated by and between ANNA SAYOUNG  
17 HONG (Respondent), and the Complainant, acting by and through  
18 Deidre L. Johnson, Counsel for the Department of Real Estate,  
19 as follows for the purpose of settling and disposing of the  
20 Accusation filed on March 7, 2000:

21 1. All issues which were to be contested and all  
22 evidence which was to be presented by Complainant and Respondent  
23 at a formal hearing on the Accusation, which hearing was to be  
24 held in accordance with the provisions of the Administrative  
25 Procedure Act (APA), shall instead and in place thereof be  
26 submitted solely on the basis of the provisions of this  
27 Stipulation and Agreement.

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

5           3. On March 10, 2000, Respondent filed a Notice of  
6 Defense pursuant to Section 11505 of the Government Code for the  
7 purpose of requesting a hearing on the allegations in the  
8 Accusation. Respondent hereby freely and voluntarily withdraws  
9 said Notice of Defense. Respondent acknowledges that she  
10 understands that by withdrawing said Notice of Defense she will  
11 thereby waive the right to require the Commissioner to prove the  
12 allegations in the Accusation at a contested hearing held in  
13 accordance with the provisions of the APA, and that she will  
14 waive other rights afforded to her in connection with the hearing  
15 such as the right to present evidence in defense of the  
16 allegations in the Accusation and the right to cross-examine  
17 witnesses.

18           4. Respondent, pursuant to the limitations set forth  
19 below, hereby admits that the factual allegations set forth in  
20 the Accusation as to her are true and correct and the Real Estate  
21 Commissioner shall not be required to provide further evidence of  
22 such allegations.

23           5. It is understood by the parties that the Real  
24 Estate Commissioner may adopt the Stipulation and Agreement as  
25 the decision in this matter thereby imposing the penalties and  
26 sanctions on the real estate license and license rights of  
27 Respondents as set forth in the below "Order". In the event that

1 the Commissioner in her discretion does not adopt the Stipulation  
2 and Agreement, it shall be void and of no effect, and Respondent  
3 shall retain the right to a hearing and proceeding on the  
4 Accusation under all the provisions of the APA and shall not be  
5 bound by any admissions or waivers made herein.

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

12 DETERMINATION OF ISSUES

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

18 The acts and/or omissions of Respondent ANNA SAYOUNG  
19 HONG as stipulated in Paragraph 4 above, violate Section 10130 of  
20 the Business and Professions Code (the Code), and constitute  
21 grounds for disciplinary action under the provisions of  
22 Section 10177(d) of the Code.

23 ORDER

24 A. All real estate license(s) and license rights of  
25 Respondent ANNA SAYOUNG HONG are hereby revoked.

26 B. A restricted real estate salesperson license shall  
27 be issued to Respondent pursuant to Section 10156.6 of the Code



1 if she makes application therefor and pays to the Department of  
2 Real Estate the appropriate fee for said license within ninety  
3 (90) days from the effective date of the decision.

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

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

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

25 (3) Respondent shall not be eligible to apply  
26 for the issuance of an unrestricted real  
27 estate license, nor the removal of any of

1 the conditions of the restricted license,  
2 until one (1) year has elapsed from the  
3 effective date of this Decision.

4 (4) Respondent shall submit with any  
5 application for license under an employing  
6 broker, or any application for transfer to  
7 a new employing broker, a statement signed  
8 by the prospective employing real estate  
9 broker on a form approved by the Department  
10 of Real Estate which shall certify:

11 (a) That the employing broker has read the  
12 Decision of the Commissioner which  
13 granted the right to a restricted  
14 license; and

15 (b) That the employing broker will  
16 exercise close supervision over the  
17 performance by the restricted licensee  
18 relating to activities for which a  
19 real estate license is required.

20 (5) Respondent's original real estate  
21 salesperson license was issued subject to  
22 the provisions of Section 10153.4 of the  
23 Business and Professions Code, and the  
24 restricted real estate salesperson license  
25 issued to Respondent shall be similarly  
26 limited, to wit: Respondent shall, within  
27 eighteen (18) months of the issuance of

1 Respondent's original real estate  
2 salesperson license under the provisions of  
3 Section 10153.4 of the Business and  
4 Professions Code, submit evidence  
5 satisfactory to the Commissioner of  
6 successful completion, at an accredited  
7 institution, of two of the courses listed  
8 in Section 10153.2, other than real estate  
9 principles, advanced legal aspects of real  
10 estate, advanced real estate finance or  
11 advanced real estate appraisal. If  
12 Respondent fails to present satisfactory  
13 evidence of successful completion of said  
14 courses, the restricted license shall be  
15 automatically suspended effective eighteen  
16 (18) months after issuance of Respondent's  
17 original real estate salesperson license.  
18 Said suspension shall not be lifted until  
19 Respondent has submitted the required  
20 evidence of course completion and the  
21 Commissioner has given written notice to  
22 the Respondent of lifting the suspension.

- 23 (6) Respondent shall, within six (6) months  
24 from the effective date of this Decision,  
25 take and pass the Professional  
26 Responsibility Examination administered by  
27 the Department including the payment of the

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

7  
8 June 27, 2000  
9 DATED

10 Deidre L. Johnson  
11 DEIDRE L. JOHNSON  
12 Counsel for the Complainant

13 \* \* \*

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

25 6/23/00  
26 DATED

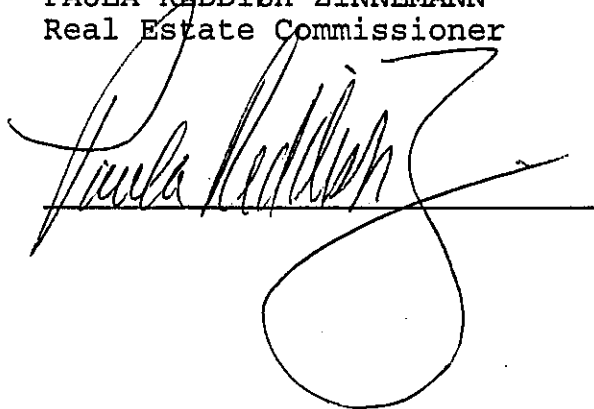
27 Anna Sayoung Hong  
ANNA SAYOUNG HONG  
Respondent

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and shall become effective at 12 o'clock  
noon on August 22, 2000.

IT IS SO ORDERED July 7, 2000.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish Zinnemann", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

1 JAMES L. BEAVER, Real Estate Counsel  
2 California State Bar No. 60543  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000

6 Telephone: (916) 227-0789  
7 -or- (916) 227-0788 (Direct)

FILED  
JUL - 2 2002

DEPARTMENT OF REAL ESTATE

By *Laurie L. Z...*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-8052 SF  
12 )  
13 HOFMANN CONSTRUCTION CO., ) FIRST AMENDED ACCUSATION  
14 a California Corporation, )  
15 THOMAS ALOYSIUS WHALEN, JR., )  
16 MARGERY IRENE HAYWORTH, )  
BETTY LOU MANN and )  
DEBORAH DANESE GERMAN, )  
Respondents. )

17 The Complainant, Les R. Bettencourt, a Deputy Real  
18 Estate Commissioner of the State of California, as and for  
19 Accusation against HOFMANN CONSTRUCTION CO., a California  
20 corporation, THOMAS ALOYSIUS WHALEN, JR., MARGERY IRENE HAYWORTH,  
21 BETTY LOU MANN and DEBORAH DANESE GERMAN, (hereinafter  
22 "Respondents"), is informed and alleges as follows:

23 I

24 The Complainant, Les R. Bettencourt, a Deputy Real  
25 Estate Commissioner of the State of California, makes this  
26 Accusation in his official capacity.  
27

II

At all times herein mentioned, Respondents were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code").

III

At all times herein mentioned, Respondent HOFMANN CONSTRUCTION CO., (hereinafter "HOFMANN") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent THOMAS ALOYSIUS WHALEN, JR. (hereinafter "WHALEN") as designated officer-broker of Respondent HOFMANN to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, Respondent WHALEN was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondent HOFMANN. As said designated officer-broker, Respondent WHALEN was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent HOFMANN for which a license is required.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent HOFMANN, such allegation shall be deemed to mean that the officers, directors,

1 employees, agents and real estate licensees employed by or  
2 associated with Respondent HOFMANN committed such act or omission  
3 while engaged in the furtherance of the business or operations of  
4 Respondent HOFMANN and while acting within the course and scope of  
5 their corporate authority and employment.

6 VI

7 At all times herein mentioned:

8 (a) Respondent MARGERY IRENE HAYWORTH (hereinafter  
9 "HAYWORTH") was licensed by the Department as a real estate  
10 broker, and was employed as a sales agent by Respondent HOFMANN;  
11 and

12 (b) Respondents BETTY LOU MANN (hereinafter "MANN") and  
13 DEBORAH DANESE GERMAN (hereinafter "GERMAN") were and now are  
14 licensed by the Department as real estate salespersons in the  
15 employ of Respondent HOFMANN.

16 VII

17 At all times herein mentioned, Respondents HOFMANN and  
18 WHALEN, and Respondents HAYWORTH, MANN and GERMAN acting on behalf  
19 of Respondents HOFMANN and WHALEN, engaged in the business of,  
20 acted in the capacity of, advertised, or assumed to act as real  
21 estate brokers within the State of California within the meaning  
22 of Sections 10131(a) of the Code, including the operation and  
23 conduct of a real estate brokerage business with the public  
24 wherein, on behalf of others, for compensation or in expectation  
25 of compensation, Respondents sold and offered to sell, solicited  
26 prospective sellers and purchasers of, and negotiated the purchase  
27 and sale of real property.



VIII

At all times mentioned herein, Respondents were the owners and/or subdividers and/or the agents of the owners and/or subdividers of subdivided lands, as defined in Section 11000 of the Code, located in Contra Costa County, California, identified as follows:

(a) Tract No. 7372 "The Vintage Unit 7 aka The Willows" (hereinafter "the Willows"), consisting of 110 lots on 25.01 acres at Vintage Parkway and Big Break Road on Highway 4 approximately 2.5 miles from the City of Brentwood, California, and identified in the records of the Department under File Number 030904 SA;

(b) Tract No. 7363 "Discovery Bay aka 'Balboa Cove'" (hereinafter "Balboa Cove"), consisting of 55 lots on 27.73 acres at Newport Drive and Clipper Drive approximately 3 miles from Byron, California, and identified in the records of the Department under File Number 031546 SA;

(c) Subdivision No. 7140 (hereinafter "No. 7140"), consisting of 26 lots on 10.54 acres at Newport Drive and Newport Lane within the community of Discovery Bay, and identified in the records of the Department under File Number 037146 SA; and

(d) Subdivision 8167, Discovery Bay West Village I - Unit 4 "Kensington" (hereinafter "Kensington") consisting of 71 lots on 16.35 acres at Point of Timber Road and Bixler Road, approximately four miles east of Brentwood, and identified in the records of the Department under File Number 103207 SA.

///

///

IX

Between on or about October 4, 1991 and on or about January 24, 2001, Respondents HOFMANN and WHALEN applied to the Department for final subdivision public reports for the Willows, Balboa Cove, No. 7140 and Kensington subdivisions, and in support of these applications for final public reports, Respondents HOFMANN and WHALEN submitted public report questionnaires and additional supporting documents and information.

X

In each of these applications, in order to induce the Department to issue the final public reports, Respondents HOFMANN and WHALEN represented that no portion of these subdivisions were subject to a blanket encumbrance, and that no portion of these subdivision would be subject to any blanket encumbrance at the time of any sale or lease under authority of the final public report.

XI

In the application for the Kensington final public report, in order to induce the Department to issue the Kensington final public report, Respondents HOFMANN and WHALEN:

(a) submitted proposed purchase and sale agreements and buyer's and sellers escrow instructions in exemplar form and represented to the Department that the written agreements and buyer's and sellers escrow instructions used by Respondents in each and every sale by Respondents of lots in the Subdivision under authority of the final public report would conform in all material respects to the exemplar sales agreement and buyer's and

1 sellers escrow instructions;

2 (b) represented that no purchase money bond, purchase  
3 money letter of credit, or purchase money set-aside has been or  
4 would be submitted;

5 (c) represented that the entire sum of funds paid or  
6 advanced by or on behalf of any purchaser of any lot being sold  
7 under authority of the final public report would be deposited and  
8 retained in a neutral escrow depository, in compliance with  
9 Section 11013.4(a) of the Code, at the Concord, California, branch  
10 of First American Title Guaranty Company until the entire sum of  
11 money is released to the purchaser or until fee title to the lots  
12 is conveyed to the purchaser free and clear of any blanket  
13 encumbrances.

14 XII

15 Between on or about October 4, 1991 and on or about  
16 January 24, 2001, on or about the dates tabulated below, in  
17 reliance upon the representations and assurances described, the  
18 Department issued original final public reports to Respondents  
19 HOFMANN and WHALEN:

20	<u>SUBDIVISION</u>	<u>DATE ISSUED</u>	<u>FILE NO.</u>
21	(a) The Willows	October 21, 1991	030904 SA F00
22	(b) Balboa Cove	August 7, 1991	031546 SA F00
23	(c) No. 7140	October 21, 1999	037146 SA F00
24	(d) Kensington	January 21, 2001	103207 SA F00

25 XIII

26 Each of these original final subdivision public reports  
27 states in part that the subdivider must comply with the provisions

1 of Business and Professions Code Sections 11013 and 11013.4(a) by  
2 depositing and retaining all purchase money received from any  
3 purchaser in an escrow depository until legal title free of  
4 blanket encumbrances is delivered to the purchaser. None of these  
5 public reports have ever been amended or modified in any respect  
6 material to these proceedings.

7 XIV

8 On or about the dates tabulated below, Respondents  
9 HOFMANN and WHALEN caused, suffered and permitted each of the  
10 subdivisions identified above to become, and, thereafter during  
11 sales conducted under authority of the public reports to remain,  
12 subject to blanket encumbrances in the form of the following deeds  
13 of trust:

	<u>SUBDIVISION</u>	<u>DATE</u>	<u>LENDER</u>	<u>AMOUNT</u>
14	(a) The Willows	10/9/92	1st Interstate Bank	\$35,000,000
15			of California	
16	(b) The Willows	4/22/93	1st Interstate Bank	\$40,000,000;
17			of California	
18	(c) Balboa Cove	4/20/93	1st Interstate Bank	\$40,000,000;
19			of California;	
20	(d) No. 7140	7/30/99	Wells Fargo Bank	\$10,000,000
21	(e) Kensington	3/19/01	Wells Fargo Bank	\$10,000,000
22				

23 XV

24 In course of the acts and omissions described in  
25 Paragraph XIV, above, Respondents HOFMANN and WHALEN violated  
26 Section 11012 of the Code and Sections 2800(c) and 2800(e) of  
27 Chapter 6, Title 10, California Code of Regulations (hereinafter

1 "the Regulations") by effecting a material change in the setup of  
2 the offering of interests in the subdivisions, after such setup  
3 was submitted to the Department in the applications for final  
4 public reports, without first notifying the Department in writing  
5 of such material change.

6 XVI

7 Between on or about March 16, 2001 and on or about  
8 February 6, 2002, in course of the activities and events described  
9 above, in each of the transactions tabulated below, Respondents  
10 offered for sale, negotiated for sale, and/or sold lots in  
11 Kensington under authority of the Kensington final public report:

	<u>PURCHASER'S</u>	<u>LOT</u>	<u>DEPOSITED AT</u>	<u>CLOSE OF</u>
	<u>NAME(S)</u>		<u>WELLS FARGO</u>	<u>ESCROW</u>
13	(1) Samuel Corbin	46	\$13,050	Cancelled
14	Deborah Corbin			
15	(2) Richard Robinson	57	\$15,250	11/20/01
	Deborah Hope			
16	(3) Donald Baptista	55	\$ 9,850	11/9/01
17	Michele Baptista			
18	(4) Paul Sparks	52	\$17,800	10/31/01
19	(5) William Yearman	54	\$18,130	10/31/01
	Karin Alexander			
20	(6) Jeff Smits	62/5	\$4,505	Cancelled
21	Cynthia Smits			

22 XVII

23 In course of each of the transactions tabulated in  
24 Paragraph XVI, above, Respondents:

25 (a) solicited and obtained the execution by purchasers  
26 of written agreements for the purchase of lots which: (1) differed  
27 materially from the exemplar sales agreement submitted by

1 Respondents for the Kensington subdivision, (2) violated the  
2 provisions of Code of Civil Procedure Section 1298, and (3) failed  
3 to comply with the requirements of subsections (a) and (c) of  
4 Section 2791 of the Regulations; and

5 (b) caused the portion, tabulated above, of the funds  
6 paid or advanced by purchasers of lots in the subdivision to be  
7 deposited into a bank account maintained by Respondents at Wells  
8 Fargo Bank, and failed to deposit such funds into a neutral escrow  
9 depository at the Concord, California, branch of First American  
10 Title Guaranty Company, or any other neutral escrow depository;

#### 11 XVIII

12 In course of the acts and omissions described in  
13 Paragraph XVII, above, Respondents violated Sections 11013.2 of  
14 the Code and Respondents also violated Section 11012 of the Code  
15 and Sections 2791(a), 2791(c), 2800(c), 2800(d) and 2800(e) of the  
16 Regulations by effecting material changes in the setup of the  
17 offering of interests in the subdivisions, after such setup was  
18 submitted to the Department in the applications for final public  
19 reports, without first notifying the Department in writing of such  
20 material change.

#### 21 XIX

22 In course of each of the transactions tabulated in  
23 Paragraph XVI, above, Respondents HOFMANN and WHALEN:

24 (a) used buyers and sellers escrow instructions which  
25 differed materially from the exemplar buyers and sellers escrow  
26 instructions submitted by Respondents to the Department for the  
27 Kensington subdivision; and

1 (d) caused, suffered and permitted, on or about the  
2 "close of escrow" dates tabulated above, the Robinson/Hope,  
3 Baptista, Sparks and Yearman/Alexander escrows to close, grant  
4 deeds conveying title to the property to the purchasers to be  
5 recorded with the county recorder, and the entire sum of the  
6 purchasers' purchase money to be released from escrow to or for  
7 Respondents, without first obtaining a proper release of the  
8 blanket encumbrance identified in Paragraph XIV(e), above.

9 XX

10 In course of the acts and omissions described in  
11 Paragraph XIX, above, Respondents HOFMANN and WHALEN violated  
12 Sections 11013.2 of the Code and Respondents HOFMANN and WHALEN  
13 also violated Section 11012 of the Code and Sections 2800(c),  
14 2800(d) and 2800(e) of the Regulations by effecting material  
15 changes in the setup of the offering of interests in the  
16 subdivisions, after such setup was submitted to the Department in  
17 the applications for final public reports, without first notifying  
18 the Department in writing of such material change.

19 XXI

20 In course of each of the transactions tabulated in  
21 Paragraph XVI, above,

22 (a) Respondents HOFMANN, MANN and GERMAN violated  
23 Section 11018.1(a) of the Code in conjunction with Section 2795.1  
24 of the Regulations in that Respondents HOFMANN, MANN and GERMAN  
25 failed to obtain a receipt from the purchaser for the Kensington  
26 final public report; and

27 (b) Respondent HOFMANN failed to keep a record in

1 columnar form in compliance with the requirements of Section 2831  
2 of the Regulations of trust funds accepted or received by  
3 salespersons employed by Respondent HOFMANN from or on behalf of  
4 purchasers and sellers and others in connection with the real  
5 estate brokerage activities described in Paragraph VII, above.

6 XXII

7 For the purpose of calculating the period of any  
8 applicable statute of limitations in this proceeding pursuant to  
9 the provisions of Section 11021 of the Code, in the Robinson/Hope,  
10 Baptista, Sparks and Yearman/Alexander transactions described in  
11 Paragraph XVI, above, the property was sold in violation of  
12 Sections 11012 and 11013.2 of the Code and Sections 2791 and 2800  
13 of the Regulations as described in Paragraphs XIV, XV, and XVII  
14 through XX, inclusive, above.

15 XXIII

16 Respondent WHALEN failed to exercise reasonable  
17 supervision over the acts of Respondent HOFMANN in such a manner  
18 as to cause, suffer and permit the acts and omissions of  
19 Respondents described in Paragraphs XIV, XV, and XVII through XXI,  
20 inclusive, above, to occur.

21 XXIV

22 The acts and omissions of Respondents described above  
23 constitute cause for the suspension or revocation of the licenses  
24 and license rights of Respondents under the following provisions  
25 of the Code and/or the Regulations:

26 (a) as to Paragraphs XIV and XV, above, and Respondents  
27 HOFMANN and WHALEN under Section 11012 of the Code and subsections



1 (c) and (e) of Section 2800 of the Regulations in conjunction with  
2 Section 10177(d) of the Code;

3 (b) as to Paragraphs XVII and XVIII, above, and all  
4 Respondents under Sections 11013.2 and 11012 of the Code,  
5 subsections (a) and (c) of Section 2791 of the Regulations, and  
6 subsections (c), (d) and (e) of Section 2800 of the Regulations in  
7 conjunction with Section 10177(d) of the Code;

8 (c) as to Paragraphs XIX and XX, above, and Respondents  
9 HOFMANN and WHALEN under Sections 11013.2 and 11012 of the Code,  
10 and subsections (c), (d) and (e) of Section 2800 of the  
11 Regulations in conjunction with Section 10177(d) of the Code;


12 (d) as to Paragraph XXI(a), above, and Respondents  
13 HOFMANN, MANN and GERMAN under Section 11018.1(a) of the Code, and  
14 Section 2795.1 of the Regulations in conjunction with Section  
15 10177(d) of the Code;

16 (e) as to Paragraph XXI(b), above, and Respondent  
17 HOFMANN under Section 10145 of the Code and Section 2831 of the  
18 Regulations in conjunction with Section 10177(d) of the Code; and

19 (f) as to Paragraph XXIII, above and Respondent WHALEN  
20 under Section 10177(g) and/or Section 10177(h) of the Code and  
21 Section 10159.2 of the Code in conjunction with Section 10177(d)  
22 of the Code.

23 WHEREFORE, Complainant prays that a hearing be conducted  
24 on the allegations of this Accusation and that upon proof thereof  
25 a decision be rendered imposing disciplinary action against all  
26 licenses and license rights of Respondents under the Real Estate  
27 Law (Part 1 of Division 4 of the Business and Professions Code)

1 and for such other and further relief as may be proper under other  
2 applicable provisions of law.

3   
4 Charles W. Koenig for  
5 Les R. Bettencourt  
6 Deputy Real Estate Commissioner

7 Dated at Sacramento, California

8 this 1st day of July, 2002.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED

MAR 26 2002

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

DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*  
HOFMANN CONSTRUCTION CO.,  
a California Corporation,  
THOMAS ALOYSIUS WHALEN, JR.,  
MARGERY IRENE HAYWORTH,  
BETTY LOU MANN, and  
DEBORAH DANESE GERMAN,

*Respondents*

Case No. H-8052 SF

OAH No. N-2002030211

**NOTICE OF HEARING ON ACCUSATION**

***To the above named respondents:***

***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, CA 94612** on **JULY 22 THROUGH 24, 2002**, 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.

*Dated:* MARCH 26, 2002

DEPARTMENT OF REAL ESTATE

By

*JAMES L. BEAVER*  
JAMES L. BEAVER, Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)  
2 DEPARTMENT OF REAL ESTATE  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000  
5 Telephone: (916) 227-0789  
6 (916) 227-0788 (Direct)  
7

FILED  
FEB - 7 2002

DEPARTMENT OF REAL ESTATE

By *Laurel P. Jain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

No.: H-8052 SF

12 HOFMANN CONSTRUCTION CO., )

ACCUSATION

13 a California Corporation, )

14 THOMAS ALOYSIUS WHALEN, JR., )

MARGERY IRENE HAYWORTH, )

15 BETTY LOU MANN, and )

DEBORAH DANESE GERMAN, )

16 Respondents. )

17 The Complainant, Les R. Bettencourt, a Deputy Real  
18 Estate Commissioner of the State of California, as and for an  
19 Accusation against HOFMANN CONSTRUCTION CO., a California  
20 corporation, THOMAS ALOYSIUS WHALEN, JR., MARGERY IRENE  
21 HAYWORTH, BETTY LOU MANN and DEBORAH DANESE GERMAN, (hereinafter  
22 "Respondents"), is informed and alleges as follows:

23 I

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

27 ///

1  
2 II

3 At all times herein mentioned, Respondents were and  
4 now are licensed and/or have license rights under the Real  
5 Estate Law (Part 1 of Division 4 of the Business and Professions  
6 Code) (hereinafter "the Code").

7 III

8 At all times herein mentioned, Respondent HOFMANN  
9 CONSTRUCTION CO. (hereinafter "HOFMANN") was and now is licensed  
10 by the Department of Real Estate of the State of California  
11 (hereinafter "the Department") as a corporate real estate broker  
12 by and through Respondent THOMAS ALOYSIUS WHALEN, JR.  
13 (hereinafter "WHALEN") as designated officer-broker of  
14 Respondent HOFMANN to qualify said corporation and to act for  
15 said corporation as a real estate broker.

16 IV

17 At all times herein mentioned, Respondent WHALEN was  
18 and now is licensed by the Department as a real estate broker,  
19 individually and as designated officer-broker of Respondent  
20 HOFMANN. As said designated officer-broker, Respondent WHALEN  
21 was at all times mentioned herein responsible pursuant to  
22 Section 10159.2 of the Code for the supervision of the  
23 activities of the officers, agents, real estate licensees and  
24 employees of Respondent HOFMANN for which a license is required.

25 V

26 Whenever reference is made in an allegation in this  
27 Accusation to an act or omission of Respondent HOFMANN, such  
allegation shall be deemed to mean that the officers, directors,

1 employees, agents and real estate licensees employed by or  
2 associated with Respondent HOFMANN committed such act or  
3 omission while engaged in the furtherance of the business or  
4 operations of Respondent HOFMANN and while acting within the  
5 course and scope of their corporate authority and employment.  
6

7 VI

8 At all times herein mentioned:

9 (a) Respondent MARGERY IRENE HAYWORTH (hereinafter  
10 "HAYWORTH") was licensed by the Department as a real estate  
11 broker, and was employed as a sales agent by Respondent HOFMANN;  
12 and

13 (b) Respondents BETTY LOU MANN (hereinafter "MANN")  
14 and DEBORAH DANESE GERMAN (hereinafter "GERMAN") were and now  
15 are licensed by the Department as real estate salespersons in  
16 the employ of Respondent HOFMANN.

17 VII

18 At all times herein mentioned, Respondents HOFMANN and  
19 WHALEN, and Respondents HAYWORTH, MANN and GERMAN acting on  
20 behalf of Respondents HOFMANN and WHALEN, engaged in the  
21 business of, acted in the capacity of, advertised, or assumed to  
22 act as real estate brokers within the State of California within  
23 the meaning of Sections 10131(a) of the Code, including the  
24 operation and conduct of a real estate brokerage business with  
25 the public wherein, on behalf of others, for compensation or in  
26 expectation of compensation, Respondents sold and offered to  
27 sell, solicited prospective sellers and purchasers of, and  
negotiated the purchase and sale of real property.

1  
2 VIII

3 At all times mentioned herein, Respondents were the  
4 owners and/or subdividers and/or the agents of the owners and/or  
5 subdividers of subdivided lands as defined in Section 11000 of  
6 the Code.

7 IX

8 Said subdivided lands, known as or commonly called  
9 Subdivision 8167, Discovery Bay West Village I - Unit 4  
10 "Kensington" (hereinafter "the Subdivision") contains 71 lots on  
11 approximately 16.35 acres at Point of Timber Road and Bixler  
12 Road, in Contra Costa County, California, approximately four  
13 miles east of Brentwood, and is identified in the records of the  
14 Department under the Department's File Number 103207 SA.

15 X

16 From on or about October 24, 2000 through on or about  
17 January 24, 2001, in File Number 103207 SA F00, Respondents  
18 HOFMANN and WHALEN applied to the Department for a final  
19 subdivision public report (hereinafter "the final public  
20 report") authorizing Respondents to offer for sale, negotiate  
21 the sale and sell lots in the Subdivision, and, in support of  
22 this application for a final public report, Respondents HOFMANN  
23 and WHALEN submitted a public report questionnaire and  
24 additional supporting documents and information.

25 XI

26 In course of said application, in order to induce the  
27 Department to issue the final public report, Respondents HOFMANN  
and WHALEN:

1 (a) Submitted a proposed purchase and sale agreement  
2 in exemplar form (hereinafter "the exemplar sales agreement"),  
3 and represented to the Department that the written agreements  
4 used by Respondents in each and every sale by Respondents of  
5 lots in the Subdivision under authority of the final public  
6 report would conform in all material respects to the exemplar  
7 sales agreement; and

8 (b) Represented that the entire sum of funds paid or  
9 advanced by or on behalf of any purchaser of any lot being sold  
10 under authority of the final public report would be deposited  
11 and retained in a neutral escrow depository, in compliance with  
12 Section 11013.4(a) of the Code, at the Concord, California,  
13 branch of First American Title Guaranty Company until the entire  
14 sum of money is released to the purchaser or until fee title to  
15 the lots is conveyed to the purchaser free and clear of any  
16 blanket encumbrances.

17 XII

18 On or about January 24, 2001, in File Number 103207 SA  
19 F00, in reliance upon the representations and assurances  
20 described in Paragraph XI, above, the Department issued the  
21 final public report to Respondents HOFMANN and WHALEN. At no  
22 time mentioned herein was the final public report amended,  
23 renewed or otherwise superseded. The final public report states  
24 in part:

25 ///

26 ///

27 ///



1 "Purchase Money Handling: The subdivider must  
2 deposit and retain all funds (purchase money)  
3 received from you in an escrow depository until  
4 legal title is delivered to you [Business and  
Professions Code Sections 11013 and  
11013.4(a)]"

5 XIII

6 Between on or about March 16, 2001 and on or about  
7 November 5, 2001, in course of the activities described in  
8 Paragraphs VII through IX, inclusive, above, in each of the  
9 transactions tabulated below, Respondents offered for sale,  
10 negotiated for sale, and/or sold lots in the Subdivision under  
11 authority of the final public report, and, in the course of each  
12 such transaction, Respondents:

13 (a) Solicited and obtained the execution by  
14 purchasers of written agreements for the purchase of lots in the  
15 Subdivision which differed materially from the exemplar sales  
16 agreement described in Paragraph XI(a), above, and failed to  
17 comply with the requirements of Sections 2791(a) of Chapter 6,  
18 Title 10, California Code of Regulations (hereinafter "the  
19 Regulations"); and

20 (b) Caused the portion, tabulated below, of the funds  
21 paid or advanced by purchasers of lots in the subdivision to be  
22 deposited into a bank account maintained by Respondents at Wells  
23 Fargo Bank, and failed to deposit such funds into a neutral  
24 escrow depository at the Concord, California, branch of First  
25 American Title Guaranty Company, or any other neutral escrow  
26 depository.

27 ///

TRANSACTIONS

	PURCHASER'S NAME(S)	LOT	DEPOSITED AT WELLS FARGO	DEPOSITED IN ESCROW
(1)	Samuel Corbin Deborah Corbin	46	\$13,050.00	\$5,000.00
(2)	Richard Robinson Deborah Hope	57	\$15,250.00	\$5,000.00
(3)	Donald Baptista Michele Baptista	55	\$9,850.00	\$5,000.00
(4)	Paul Sparks	52	\$17,800.00	\$5,000.00
(5)	William Yearman Karin Alexander	54	\$18,130.00	\$5,000.00
(6)	Jeff Smits Cynthia Smits	62/5	\$4,505.00	\$5,000.00

XIV

In committing the acts and omissions described in  
Paragraph XIII, above:

(a) Respondents effected a material change within the  
meaning of Section 2800(c) of the Regulations in purchase money  
handling procedures, and a material change within the meaning of  
Sections 2800(d) and 2800(d)(1) in the methods of marketing  
interests in the Subdivision;

(b) Respondent HOFMANN, as subdivider of the  
Subdivision, failed, within the meaning of subsection (e) of  
Section 2800 of the Regulations, to fulfill agreements and  
assurances to purchasers of subdivision interests given by  
Respondent HOFMANN to the Department in the application for the  
final public report;

///

1 (c) Respondents, after the setup of the offering of  
2 interests was submitted to the Department in the applications  
3 for the final public report, violated Section 11012 of the Code  
4 by knowingly changing the setup of the offering of interests in  
5 the Subdivision without first notifying the Department in  
6 writing of such intended change;

7 (d) Respondents willfully disregarded and Respondent  
8 HOFMANN violated the provisions of Sections 2791, 2800(c),  
9 2800(d) and 2800(e) of the Regulations; and

10 (e) Respondents violated the provisions of Sections  
11 11013.1, 11013.2 and/or 11013.4 of the Code.

12 XV

13 In course of each of the transactions described in  
14 Paragraph XIII, above, Respondents violated Section 11018.1(a)  
15 of the Code in conjunction with Section 2795.1 of the  
16 Regulations in that:

17 (a) Respondents HOFMANN, MANN and GERMAN failed to  
18 provide the purchasers with a copy of the final public report  
19 prior to the execution of a binding contract for the sale of a  
20 lot and/or to obtain a receipt from the purchaser for the final  
21 public report in a form and manner as set forth in Section  
22 2795.1 of the Regulations; and

23 (b) Respondent HOFMANN failed to retain such receipt  
24 for a period of three years; and/or to make such receipt  
25 available for inspection by the designated representative of the  
26 Commissioner.

27 ///

1  
2 XVI

3 In course of each of each of the transactions  
4 described in Paragraph XIII, above, Respondents HAYWORTH, MANN  
5 and GERMAN accepted or received funds in trust (hereinafter  
6 "trust funds") from or on behalf of purchasers and sellers and  
7 others in connection with the real estate brokerage activities  
8 described in Paragraph VII, above, but Respondent HOFMANN failed  
9 to keep a record in columnar form of such trust funds in  
10 accordance with the requirements of Section 2831 of the  
11 Regulations.

12 XVII

13 Respondent WHALEN failed to exercise reasonable  
14 supervision over the acts of Respondent HOFMANN in such a manner  
15 as to cause, suffer and permit the acts and omissions of  
16 Respondents described in Paragraphs XIII through XVI, inclusive,  
17 above, to occur.

18 XVIII

19 The facts alleged in Paragraphs XIII and XIV, above,  
20 constitute cause for the suspension or revocation of the  
21 licenses and license rights of Respondents HOFMANN, WHALEN,  
22 HAYWORTH, MANN, and GERMAN under the following provisions of the  
23 Code and/or the Regulations:

24 (a) As to Paragraph XIII and XIV(c), under Section  
25 11012 of the Code in conjunction with Section 10177(d) of the  
26 Code;

27 ///

///

1 (b) As to Paragraph XIII and XIV(d), under Sections  
2 2791, 2800(c), 2800(d), and 2800(e) of the Regulations in  
3 conjunction with Section 10177(d) of the Code; and  
4

5 (c) As to Paragraph XIII and XIV(e), under Sections  
6 11013.1, 11013.2 and/or 11013.4 of the Code in conjunction with  
7 Section 10177(d) of the Code.

8 XIX

9 The facts alleged in Paragraph XV, above, constitute  
10 cause for the suspension or revocation of the licenses and  
11 license rights of Respondents HOFMANN, MANN, and GERMAN under  
12 Section 11018.1(a) of the Code and Section 2795.1 of the  
13 Regulations in conjunction with Section 10177(d) of the Code.

14 XX

15 The facts alleged in Paragraph XVI, above, constitute  
16 cause for the suspension or revocation of the licenses and  
17 license rights of Respondent HOFMANN under Section 10145 of the  
18 Code and Section 2831 of the Regulations in conjunction with  
19 Section 10177(d) of the Code.

20 XXI

21 The facts alleged in Paragraph XVII above, constitute  
22 cause for the suspension or revocation of the licenses and  
23 license rights of Respondent WHALEN under Section 10177(g)  
24 and/or Section 10177(h) of the Code and Section 10159.2 of the  
25 Code in conjunction with Section 10177(d) of the Code.

26 ///

27 ///

///

1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents  
5 under the Real Estate Law (Part 1 of Division 4 of the Business  
6 and Professions Code), and for such other and further relief as  
7 may be proper under other provisions of law.  
8

9 

10 LES R. BETTENCOURT  
11 Deputy Real Estate Commissioner

12 Dated at Oakland, California,  
13 this 25th day of January, 2002.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27