

1 sufficient rehabilitation to warrant the reinstatement of
2 Respondent's real estate broker license.

3 The burden of proving rehabilitation rests with the
4 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
5 petitioner is required to show greater proof of honesty and
6 integrity than an applicant for first time licensure. The proof
7 must be sufficient to overcome the prior adverse judgment on the
8 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
9 395).

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

15 Section 2911(k). Correction of business practices
16 resulting in injury to others or with the potential to cause such
17 injury.

18 (1) The Decision of October 15, 2003, herein
19 disciplined Respondent's license pursuant to the provisions of
20 Sections 10145, 10145(d), 10177(d), 10229(a), 10232(e),
21 10232.2(c), 10232.25(a), 10232.4(a), 10233(a), and 10240 of the
22 California Business and Professions Code (herein "Code") and
23 Sections 2832(a), 2831, 2831.2, 2832.1, and 2846.5(a) of Chapter
24 6, Title 10, California Code of Regulations (herein
25 "Regulations"), on the grounds that, in course of Respondent's
26 threshold and multi-lender mortgage loan brokerage and trust fund
27 handling activities:

1 (a) Respondent used a bank account for trust funds
2 that had not been properly designated, mixed trust funds
3 belonging to multiple beneficiaries in an interest-bearing
4 account, failed to maintain conforming columnar records, failed
5 to perform required monthly trust account reconciliations, and
6 had a \$4,766.22 trust fund shortage as of November 18, 2002;

7 (b) Respondent failed to timely provide the Department
8 the required notices of multi-lender activity and threshold
9 status, annual CPA trust account reviews of Respondent's
10 financial statements, annual business activity reports, and
11 quarterly trust fund status reports; and

12 (c) Respondent failed to provide lender-purchaser and
13 borrower disclosure statements, and have proper written servicing
14 agreements with investors

15 (2) On March 28, 2006, the Department conducted an
16 audit of Respondent's threshold and multi-lender mortgage loan
17 brokerage and trust fund handling activities for the period from
18 January 1, 2005 through December 31, 2005. The audit disclosed
19 that during that period:

20 (a) Respondent failed to maintain conforming columnar
21 and separate records, failed to perform required monthly trust
22 account reconciliations, and had a \$46.58 trust fund shortage as
23 of December 31, 2005;

24 (b) Respondent failed to have proper written servicing
25 agreements with investors;

26 (c) Respondent failed to obtain signed statements of
27 investor qualifications from each investor for each loan

1 negotiated by Respondent in violation of Section 10238(f) of the
2 Code;

3 (d) Respondent failed to timely disburse mortgage loan
4 payoffs to investors in compliance with Section 10231.1 of the
5 Code;

6 (e) Respondent failed to comply with the mortgage loan
7 disclosure statement requirements of Section 10240 of the Code;

8 (f) Respondent failed to have a written broker -
9 salesperson relationship agreement with a licensed salesperson
10 employed by Respondent.

11 (3) On December 20, 1006, in Case No. H-9818 SF, now
12 pending before the Department, an Accusation was filed, based on
13 the findings of the audit described above, alleging violation by
14 Respondent of Sections 10145, 10231.1, 10240, 10241, 10238(f),
15 10238(k), and 10177(d) of the Code and Sections 2726, 2831,
16 2831.1, 2831.2 of the Regulations.

17 Since Respondent has not established that Respondent
18 has complied with Section 2911(k) of Chapter 6, Title 10,
19 California Code of Regulations, I am not satisfied that
20 Respondent is sufficiently rehabilitated to receive a real estate
21 broker license.

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

25 ///

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27 ///

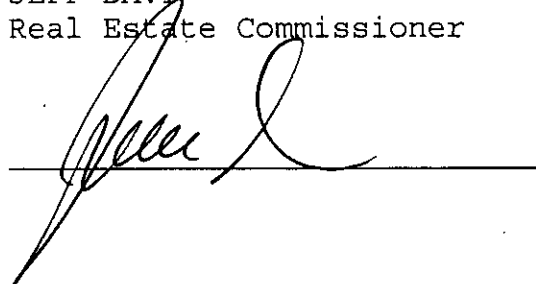
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This Order shall become effective at 12 o'clock

noon MAR 16 2007

DATED: 2-14, 2007.

JEFF DAVIS
Real Estate Commissioner



1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
DEC - 5 2003

DEPARTMENT OF REAL ESTATE

By Lauriel J. Zinn

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	DRE No. H-8349 SF
12 LOIS CAMILLE MOWAT,)	OAH No. N-2003030959
13 Respondent.)	<u>STIPULATION AND AGREEMENT</u>
14)	

15 It is hereby stipulated by and between Respondent LOIS
16 CAMILLE MOWAT, individually and by and through Stein & Lubin,
17 LLP, Lauren M. Raskin, Esq., attorneys of record herein for
18 Respondent, and the Complainant, acting by and through James L.
19 Beaver, Counsel for the Department of Real Estate (herein "the
20 Department"), as follows for the purpose of settling and
21 disposing of the Accusation filed on March 8, 2003 in this matter
22 (herein "the Accusation"):

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondents
25 at a formal hearing on the Accusation, which hearing was to be
26

27 DRE No. H-8349 SF

LOIS CAMILLE MOWAT

1 held in accordance with the provisions of the Administrative
2 Procedure Act (APA), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement.

5 2. Respondent has received, read and understands the
6 Statement to Respondent, the Discovery Provisions of the APA and
7 the Accusation filed by the Department in this proceeding.

8 3. On March 18, 2003, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that Respondent
13 understands that by withdrawing said Notice of Defense Respondent
14 will thereby waive Respondent's right to require the Real Estate
15 Commissioner (herein "the Commissioner") to prove the allegations
16 in the Accusation at a contested hearing held in accordance with
17 the provisions of the APA and that Respondent will waive other
18 rights afforded to Respondent in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interests of
23 expediency and economy, Respondent chooses not to contest these
24 allegations, but to remain silent and understands that, as a
25 result thereof, these factual allegations, without being admitted
26

27 DRE No. H-8349 SF

LOIS CAMILLE MOWAT

1 or denied, will serve as a prima facie basis for the disciplinary
2 action stipulated to herein. The Real Estate Commissioner shall
3 not be required to provide further evidence to prove said factual
4 allegations.

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

16 6. The Order or any subsequent Order of the Real
17 Estate Commissioner made pursuant to this Stipulation and
18 Agreement in Settlement shall not constitute an estoppel,
19 merger or bar to any further administrative or civil
20 proceedings by the Department of Real Estate with respect to
21 any matters which were not specifically alleged to be causes
22 for accusation in this proceeding. This Stipulation and
23 Agreement shall constitute an estoppel, merger and bar to any
24 further administrative or civil proceedings by the Department
25 with respect to any events which were specifically alleged to
26

1 be causes for accusation in this proceeding.

2 7. Respondent understands that the Commissioner may
3 charge said Respondent for:

4 (a) costs in the amount of \$1,708.10 of the audit
5 conducted pursuant to Section 10148 of the Business and
6 Professions Code that resulted in the determination that
7 Respondent committed the violations described in Paragraph I of
8 the Determination of Issues, below; and

9 (b) the costs, not to exceed \$1,708.10, of any audit
10 conducted pursuant to Section 10148 of the Business and
11 Professions Code to determine if Respondent has corrected the
12 violations described in Paragraph I of the Determination of
13 Issues, below.

14 DETERMINATION OF ISSUES

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

19 I

20
21 The acts and omissions of Respondent LOIS CAMILLE MOWAT
22 as described in the Accusation are grounds for the suspension or
23 revocation of the licenses and license rights of Respondent under
24 the following provisions of the California Business and
25 Professions Code (herein "the Code") and/or the provisions of
26 Chapter 6, Title 10, California Code of Regulations (herein "the

27 DRE No. H-8349 SF

LOIS CAMILLE MOWAT

1 Regulations"):

2 (a) As to Paragraph VI(a) under Section 10145 of the
3 Code and Section 2832(a) of the Regulations in conjunction with
4 Section 10177(d) of the Code;

5 (b) As to Paragraph VI(b) under Section 10145(d) of
6 the Code in conjunction with Section 10177(d) of the Code;

7 (c) As to Paragraph VI(c) under Section 10145 of the
8 Code and Section 2831 of the Regulations in conjunction with
9 Section 10177(d) of the Code;

10 (d) As to Paragraph VI(d) under Section 10145 of the
11 Code and Section 2831.2 of the Regulations in conjunction with
12 Section 10177(d) of the Code;

13 (e) As to Paragraph VI(e) under Section 10145 of the
14 Code and Section 2832.1 of the Regulations in conjunction with
15 Section 10177(d) of the Code;

16 (f) As to Paragraph VII(b) under Section 10232(e) of
17 the Code in conjunction with Section 10177(d) of the Code;

18 (g) As to Paragraph VII(c) under Section 10232.2(a) of
19 the Code and Section 2846.5(a) of the Regulations in conjunction
20 with Section 10177(d) of the Code;

21 (h) As to Paragraph VII(d) under Section 10232.2(c) of
22 the Code in conjunction with Section 10177(d) of the Code;

23 (i) As to Paragraph VII(e) under Section 10232.25(a)
24 of the Code in conjunction with Section 10177(d) of the Code; and

25 (j) As to Paragraph VIII(a) under Section 10232.4(a)

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

ORDER

I

A. All licenses and licensing rights of Respondent LOIS CAMILLE MOWAT under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and Professions Code if, within 90 days from the effective date of the Decision entered pursuant to this Order, the Respondent, prior to and as a condition of the issuance of said restricted license:

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

2. files with the Department each and every report required by Sections 10232.2(a), 10232.2(c) and 10232.25(a) of the Code that first became due after March 8, 2003.

3. submits proof satisfactory to the Commissioner of having taken and completed at an accredited institution the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Said course must have been completed within 120 days prior to the issuance of the restricted license; and

4. submits proof satisfactory to the Commissioner

1 that, as of a date not earlier than 120 days prior to the
2 effective date of the decision herein the balance of funds held
3 by Respondent in trust equals the aggregate liability of
4 Respondent to all owners of such funds.

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

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

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

23 3. Respondent shall not be eligible to apply for the
24 issuance of an unrestricted real estate license or for the
25 removal of any of the conditions, limitations or restrictions
26

1 of a restricted license until two (2) years have elapsed from
2 the effective date of this Decision.

3 4. Respondent shall, within 45 days of receiving an
4 invoice therefor from the Commissioner, pay the Commissioner's
5 costs in the amount of \$1,708.10 of the audit conducted
6 pursuant to Section 10148 of the Business and Professions Code
7 that resulted in the determination that Respondent committed
8 the violations described in Paragraph I of the Determination of
9 Issues, above. The Commissioner may suspend the restricted
10 license issued to respondent pending a hearing held in
11 accordance with Section 11500, et seq., of the Government Code,
12 if payment is not timely made as provided for herein, or as
13 provided for in a subsequent agreement between the Respondent
14 and the Commissioner. The suspension shall remain in effect
15 until payment is made in full or until Respondent enters into
16 an agreement satisfactory to the Commissioner to provide for
17 payment, or until a decision providing otherwise is adopted
18 following a hearing held pursuant to this condition.

19
20 5. Pursuant to Section 10148 of the Business and
21 Professions Code, Respondent shall pay the Commissioner's
22 reasonable cost, not to exceed \$1,708.10, for an audit to
23 determine if Respondent has corrected the trust fund
24 violation(s) found in paragraph I of the Determination of
25 Issues. In calculating the amount of the Commissioner's
26 reasonable cost, the Commissioner may use the estimated average

1 hourly salary for all persons performing audits of real estate
2 brokers, and shall include an allocation for travel time to and
3 from the auditor's place of work. Respondent shall pay such
4 cost within 45 days of receiving an invoice therefor from the
5 Commissioner detailing the activities performed during the
6 audit and the amount of time spent performing those activities.
7 The Commissioner may suspend the restricted license issued to
8 respondent pending a hearing held in accordance with Section
9 11500, et seq., of the Government Code, if payment is not
10 timely made as provided for herein, or as provided for in a
11 subsequent agreement between the Respondent and the
12 Commissioner. The suspension shall remain in effect until
13 payment is made in full or until Respondent enters into an
14 agreement satisfactory to the Commissioner to provide for
15 payment, or until a decision providing otherwise is adopted
16 following a hearing held pursuant to this condition.

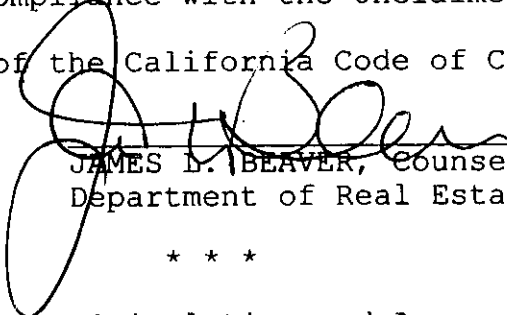
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18 6. Respondent shall, within six (6) months from the
19 issuance of the restricted license, take and pass the
20 Professional Responsibility Examination administered by the
21 Department, including the payment of the appropriate
22 examination fee.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

25 7. Respondent shall, within nine months from the
26 effective date of the Decision, present evidence satisfactory

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

11 8. The sum of \$4,228.50, representing interest
12 earned on trust funds deposited in the interest - bearing
13 account described in Paragraph VI(b) of the Accusation, and not
14 Respondent's own funds, shall be retained by Respondent in a
15 trust bank account until such time as said sum shall be
16 disbursed to the owners of the trust funds whereon such
17 interest accrued or surrendered by Respondent to the California
18 State Controller in compliance with the Unclaimed Property Law,
19 Section 1500 et seq. of the California Code of Civil Procedure.

20 Nov 12, 2003
21 DATED

22 
23 JAMES D. BEAVER, Counsel
24 Department of Real Estate

25 * * *

26 I have read the Stipulation and Agreement and have
27 discussed its terms with my attorney and its terms are understood
by me and are agreeable and acceptable to me. I understand that I

DRE No. H-8349 SF

LOIS CAMILLE MOWAT

1 am waiving rights given to me by the California Administrative
2 Procedure Act (including but not limited to Sections 11506,
3 11508, 11509, and 11513 of the Government Code), and I willingly,
4 intelligently, and voluntarily waive those rights, including the
5 right of requiring the Commissioner to prove the allegations in
6 the Accusation at a hearing at which I would have the right to
7 cross-examine witnesses against me and to present evidence in
8 defense and mitigation of the charges.

9 Oct. 29, 2003
10 DATED

Lois Camille Mowat
10 LOIS CAMILLE MOWAT
Respondent

11 * * *

12 I have reviewed the Stipulation and Agreement as to
13 form and content and have advised my client accordingly.

14 Nov. 6, 2003
15 DATED

STEIN & LUBIN
Attorneys for Respondent

16 By Lauren M. Raskin
17 Lauren M. Raskin, Esq.

18 * * *

19 The foregoing Stipulation and Agreement is hereby
20 adopted by me as my Decision in this matter and shall become
21 effective at 12 o'clock noon on DECEMBER 26, 2003.

22 IT IS SO ORDERED November 24, 2003.

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 Paula Reddish
26

27 DRE No. H-8349 SF

LOIS CAMILLE MOWAT

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 23 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

LOIS CAMILLE MOWAT,

Case No. H-8349 SF

OAH No. N-2003030959

Respondent

FIRST AMENDED
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, CA 94612 on THURSDAY, OCTOBER 2, 2003, 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: JUNE 23, 2003

DEPARTMENT OF REAL ESTATE

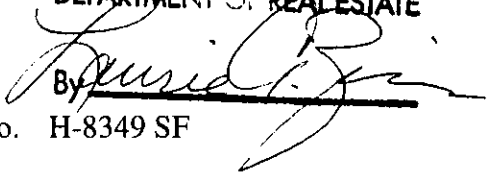
By: 
JAMES L. BEAVER, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

APR - 9 2003

DEPARTMENT OF REAL ESTATE

By 

Case No. H-8349 SF

OAH No. N-2003030959

In the Matter of the Accusation of

LOIS CAMILLE MOWAT,

}
}

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

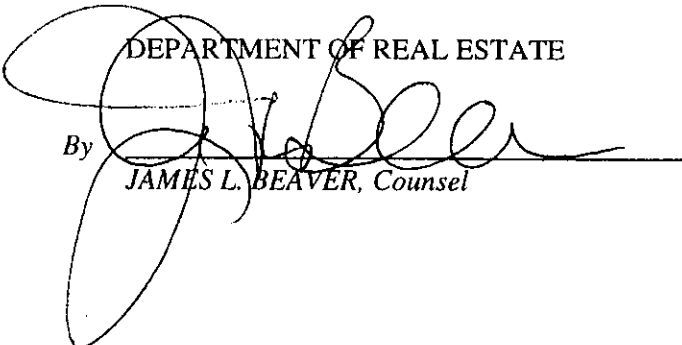
You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on MONDAY, AUGUST 18, 2003, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation 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: APRIL 9, 2003

DEPARTMENT OF REAL ESTATE
By 
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 -or- (916) 227-0788 (Direct)

FILED
MAR - 8 2003

DEPARTMENT OF REAL ESTATE

By Laurie G. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 LOIS CAMILLE MOWAT,) No. H-8349 SF
13 Respondent.) ACCUSATION
14)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against LOIS CAMILLE MOWAT (hereinafter
18 "Respondent"), is informed and alleges as follows:

19 I

20 The Complainant, Les R. Bettencourt, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

24 At all times herein mentioned, Respondent was and now
25 is licensed and/or has license rights under the Real Estate Law
26 (Part 1 of Division 4 of the Business and Professions Code)
27 (hereinafter "the Code") as a real estate broker.

1 III

2 At all times herein mentioned, Respondent engaged in
3 the business of, acted in the capacity of, advertised, or
4 assumed to act as a real estate broker within the State of
5 California within the meaning of Sections 10131(d) and 10131(e)
6 of the Code, including the operation and conduct of a mortgage
7 loan brokerage business with the public wherein, on behalf of
8 others, for compensation or in expectation of compensation,
9 Respondent solicited lenders and borrowers for loans secured
10 directly or collaterally by liens on real property, wherein
11 Respondent arranged, negotiated, processed, and consummated such
12 loans, and wherein Respondent serviced and collected payments on
13 such loans.

14 IV

15 At all times mentioned herein Respondent was and now
16 is a real estate broker:

17 (a) Meeting the "threshold" criteria of subdivisions
18 (a) and (b) of Section 10232; and

19 (b) Meeting the "multi-lender" criteria of Section
20 10229 of the Code, in that at all times mentioned herein
21 Respondent offered to sell and sold notes subject to Section
22 10229 of the Code secured directly by an interest in the same
23 real property or undivided interests in notes secured directly
24 by real property equivalent to a series transaction.

25 ///

26 ///

27 ///

1 V

2 In so acting as a real estate broker, as described in
3 Paragraphs III and IV, inclusive, above, Respondent accepted or
4 received funds in trust (hereinafter "trust funds") from or on
5 behalf of lenders or investors, borrowers, and others in
6 connection with the solicitation, negotiation, processing, and
7 consummation of mortgage loan investments by Respondent, and in
8 connection with the servicing and collection of payments on such
9 loans by Respondent, and Respondent deposited or caused such
10 funds to be deposited into one or more bank accounts
11 (hereinafter "trust fund accounts") maintained by Respondent for
12 the handling of trust funds, including but not necessarily
13 limited to the "Lois C. Mowat Real Estate Financing' account,
14 account number 027-0046162 (hereinafter "Bank Account #1"),
15 maintained by Respondent at the Orinda, California, branch of
16 Wells Fargo Bank.

17 VI

18 Between on or about January 1, 2002 and on or about
19 December 31, 2002, in connection with the collection and
20 disbursement of said trust funds, Respondent:

21 (a) Failed to place trust funds entrusted to
22 Respondent into the hands of a principal on whose behalf the
23 funds were received, into a neutral escrow depository, or into a
24 trust fund account in the name of Respondent as trustee at a
25 bank or other financial institution, in that Respondent
26 deposited such funds into Bank Account #1, which account was not
27 maintained in the name of Respondent as trustee as required by

1 Section 10145 of the Code and Section 2832(a) of Chapter 6,
2 Title 10, California Code of Regulations (hereinafter "the
3 Regulations");

4 (b) Deposited and maintained funds belonging to
5 several different principals in Bank Account #1, an interest
6 bearing account, thereby failing to keep funds in the interest-
7 bearing account belonging to each principal separate and apart
8 from funds belonging to other persons for whom Respondent held
9 funds in trust, in violation of the provisions of Section
10 10145(d) of the Code;

11 (c) Failed to keep a columnar record in chronological
12 sequence of all trust funds deposited into and/or disbursed from
13 Bank Account #1, in violation of Section 2831 of the
14 Regulations;

15 (d) Failed to reconcile, at least once a month, the
16 balance of all separate beneficiary or transaction records with
17 the record of all trust funds received into and disbursed from
18 Bank Account #1 as required by Section 2831.2 of the
19 Regulations; and

20 (e) Caused, suffered or permitted the balance of
21 funds in Bank Account #1 to be reduced to an amount which, as of
22 November 18, 2002, was approximately \$4,766.22 less than the
23 aggregate liability of Respondents to all owners of such funds,
24 without the prior written consent of the owners of such funds.

25 ///

26 ///

27 ///

1 VII

2 Within the three-year period immediately preceding the
3 filing of this Accusation, in course of the activities described
4 in Paragraphs III through V, above, Respondent, while meeting
5 "multi-lender" broker and "threshold" broker criteria, as
6 described in Paragraph IV, above, entirely failed to file or
7 cause to be filed with the Department any:

8 (a) Notice required by Section 10229(a) of the Code
9 of transactions subject to Section 10229 of the Code conducted
10 by Respondent;

11 (b) Notice required by Section 10232(e) of the Code
12 that Respondent meets the threshold criteria of subdivisions (a)
13 and (b) of Section 10232;

14 (c) Annual report required by Section 10232.2(a) of
15 the Code and Section 2846.5(a) of the Regulations of a review of
16 Respondent's trust fund financial statements by an independent
17 public accountant for any fiscal year;

18 (d) Annual report required by Section 10232.2(c) of
19 the Code of the business conducted by Respondent while engaged
20 in activities described in subdivisions (d) and (e) of Section
21 10131 of the Code for any fiscal year; and

22 (e) Quarterly trust fund status report required by
23 Section 10232.25(a) of the Code for any calendar quarter.

24 VIII

25 Within the three-year period immediately preceding the
26 filing of this Accusation, in course of the activities described
27 in Paragraphs III and IV, above, Respondent:

1 (a) Failed to provide lenders and/or purchasers the
2 statement required by Section 10232.4(a) of the Code; and

3 (b) Failed to comply with the requirements of Section
4 10233(a) of the Code, in that Respondent undertook to service
5 promissory notes secured directly or collaterally by liens on
6 real property without first obtaining written servicing
7 agreements that satisfy the requirements of subdivision (j) of
8 Section 10229 of the Code and include authorization to service
9 such promissory notes.

10 IX

11 Within the three-year period immediately preceding the
12 filing of this Accusation, in course of the activities described
13 in Paragraphs III and IV, above, Respondent failed to comply
14 with Section 10240 of the Code, in that Respondent:

15 (a) Failed to obtain the signature of the borrowers
16 on the statement required by Section 10240 (hereinafter "Written
17 Disclosure Statement");

18 (b) Failed to deliver a copy of the required Written
19 Disclosure Statement to the borrowers; and/or

20 (c) Failed to retain on file for a period of three
21 years a true and correct copy of the required Written Disclosure
22 Statement signed by the borrowers.

23 X

24 The facts alleged above are grounds for the suspension
25 or revocation of the licenses and license rights of Respondent
26 under the following provisions of the Code and/or the
27 Regulations:

1 (a) As to Paragraph VI(a), under Section 10145 of the
2 Code and Section 2832(a) of the Regulations in conjunction with
3 Section 10177(d) of the Code;

4 (b) As to Paragraph VI(b), under Section 10145(d) of
5 the Code in conjunction with Section 10177(d) of the Code;

6 (c) As to Paragraph VI(c), under Section 10145 of the
7 Code and Section 2831 of the Regulations in conjunction with
8 Section 10177(d) of the Code;

9 (d) As to Paragraph VI(d), under Section 10145 of the
10 Code and Section 2831.2 of the Regulations in conjunction with
11 Section 10177(d) of the Code;

12 (e) As to Paragraph VI(e), under Section 10145 of the
13 Code and Section 2832.1 of the Regulations in conjunction with
14 Section 10177(d) of the Code;

15 (f) As to Paragraph VII(a), under Section 10229(a) of
16 the Code in conjunction with Section 10177(d) of the Code;

17 (g) As to Paragraph VII(b), under Section 10232(e) of
18 the Code in conjunction with Section 10177(d) of the Code;

19 (h) As to Paragraph VII(c), under Section 10232.2(a)
20 of the Code and Section 2846.5(a) of the Regulations in
21 conjunction with Section 10177(d) of the Code;

22 (i) As to Paragraph VII(d), under Section 10232.2(c)
23 of the Code in conjunction with Section 10177(d) of the Code;


24 (j) As to Paragraph VII(e), under Section 10232.25(a)
25 of the Code in conjunction with Section 10177(d) of the Code;

26 (k) As to Paragraph VIII(a), under Section 10232.4(a)
27 of the Code in conjunction with Section 10177(d) of the Code;

1 (1) As to Paragraph VIII(b), under Section 10233(a)
2 of the Code in conjunction with Section 10177(d) of the Code;
3 and

4 (m) As to Paragraph IX, under Section 10240 of the
5 Code in conjunction with Section 10177(d) of the Code.

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

13
14 
15 LES R. BETTENCOURT
Deputy Real Estate Commissioner

16 Dated at Oakland, California,
17 this 25th day of February, 2003.

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