

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
OCT 27 2004

DEPARTMENT OF REAL ESTATE

By *Kathleen Centenas*

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

12 * * *

13 In the Matter of the Accusation of)
14 MONUMENT MORTGAGE, INC. and) NO. H-8783 SF
15 WILLIAM EWING VANARSDDEL,) STIPULATION AND AGREEMENT
16 Respondents.)
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18 It is hereby stipulated by and between MONUMENT
19 MORTGAGE, INC. and WILLIAM EWING VANARSDDEL (hereafter
20 Respondents), represented by Gregory A. Rougeau, Attorney at
21 Law, Manasian & Rougeau, LLP, and the Complainant, acting by
22 and through Deidre L. Johnson, Counsel for the Department of
23 Real Estate, as follows for the purpose of settling and
24 disposing the Accusation filed on May 18, 2004 in this matter:

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

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. Respondents have each received, read and understand
6 the Statement to Respondent, and the Discovery Provisions of the
7 APA filed by the Department of Real Estate in this proceeding.

8 3. On June 4 and June 14, 2004, Respondents filed
9 their Notices of Defense pursuant to Section 11505 of the
10 Government Code for the purpose of requesting a hearing on the
11 allegations in the Accusation. Respondents hereby freely and
12 voluntarily withdraw said Notices of Defense. Respondents
13 acknowledge that they each understand that by withdrawing each
14 Notice of Defense they will each thereby waive their rights to
15 require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA, and that they will each waive other rights
18 afforded to them in connection with the hearing such as the right
19 to present evidence in defense of the allegations in the
20 Accusation and the right to cross-examine witnesses.

21 4. Respondents, pursuant to the limitations set forth
22 below, hereby admit that the factual allegations pertaining to
23 them in Paragraphs I through VI of the Accusation filed in this
24 proceeding are true and correct and the Real Estate Commissioner
25 shall not be required to provide further evidence of such
26 allegations.

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1 5. Without admitting the truth of the allegations
2 contained in the rest of the Accusation as to each Respondent,
3 Respondents stipulate that they will not interpose a defense
4 thereto. This Stipulation is based on the factual allegations
5 contained in the Accusation as found below. In the interests of
6 expedience and economy, Respondents each choose not to contest
7 the allegations that pertain to them, but to remain silent, and
8 understand that, as a result thereof, these factual allegations,
9 without being admitted or denied, will serve as a basis for the
10 disciplinary action stipulated to herein. The Real Estate
11 Commissioner shall not be required to provide further evidence to
12 prove said factual allegations.

13 6. Respondents have received, read and understand the
14 "Notice Concerning Costs of Audits." Respondent MONUMENT
15 MORTGAGE, INC. understands, by agreeing to this Stipulation and
16 Agreement, and after the findings set forth below in the
17 "Determination of Issues" become final, that the Commissioner may
18 charge Respondent MONUMENT MORTGAGE, INC. for the costs of the
19 following audits that have been and may be conducted pursuant to
20 Section 10148 of the Business and Professions Code:

- 21 (a) Audit #OK-02-0149 dated September 30, 2003:
22 Not more than \$5,446;
- 23 (b) Future follow-up audit: Not more than
24 \$6,000.00.

25 7. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as
27 his decision in this matter thereby imposing the penalty and

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1 constitute grounds for disciplinary action under the provisions
2 of Section 10177(d) of the Code.

3 II

4 The acts and/or omissions of Respondent WILLIAM EWING
5 VANARSDDEL as stipulated above violate Section 2725 of the
6 Regulations, and constitute grounds for disciplinary action under
7 the provisions of Sections 10177(d) and 10177(h) of the Code.

8 * * *

9 ORDER

10 I

- 11 A. All real estate license(s) and license rights of Respondents
12 MONUMENT MORTGAGE, INC. and WILLIAM EWING VANARSDDEL are
13 revoked.
- 14 B. A restricted real estate broker corporation license shall be
15 issued to Respondent MONUMENT MORTGAGE, INC., and a
16 restricted real estate broker license shall be issued to
17 Respondent WILLIAM EWING VANARSDDEL pursuant to Section
18 10156.6 of the Code, if they each make application therefor
19 and pay to the Department the appropriate fee for each
20 license within ninety (90) days of the effective date of the
21 Order.
- 22 C. The restricted licenses issued to Respondents shall be
23 subject to all of the provisions of Section 10156.7 of the
24 Business and Professions Code and to the following conditions
25 and limitations imposed under authority of Section 10156.6 of
26 said Code:

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- 1) Respondent WILLIAM EWING VANARSDDEL shall, prior to and as
a condition of the issuance of said restricted broker
license, submit proof satisfactory to the Commissioner of
having taken and completed 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 from an approved
continuing education course provider. Said course may
have been completed within one hundred and twenty (120)
days prior to the effective date of the order herein.
- 2) The restricted licenses issued to Respondents may each be
suspended prior to hearing by Order of the Real Estate
Commissioner in the event of each Respondent's conviction
or plea of nolo contendere to a crime which bears a
substantial relationship to that Respondent's fitness or
capacity as a real estate licensee.
- 3) The restricted licenses issued to Respondents may each be
suspended prior to hearing by Order of the Real estate
Commissioner on evidence satisfactory to the Commissioner
that Respondents have violated provisions of the
California Real Estate Law, the Subdivided Lands Law,
Regulations of the Real Estate Commissioner or conditions
attaching to the restricted license.
- 4) Respondents shall each not be eligible to apply for the
issuance of an unrestricted real estate license, nor the
removal of any of the conditions of the restricted

1 license, until two (2) years have elapsed from the
2 effective date of this Order.

3 5) Pursuant to Section 10148 of the Business and Professions
4 Code, Respondent MONUMENT MORTGAGE, INC. shall pay the
5 Commissioner's reasonable costs for the following audits
6 as a result of the above found violations:

7 (a) Audit #OK-02-0149 dated September 30, 2003:
8 Not more than \$5,446;

9 (b) Future follow-up audit: Not more than
10 \$6,000.00.

11 In calculating the amount of the Commissioner's
12 reasonable costs for each audit, the Commissioner may use
13 the estimated average hourly salary for all Department
14 Audit Section personnel performing audits of real estate
15 brokers, and shall include an allocation for travel time
16 to and from the auditor's place of work. Respondent
17 MONUMENT MORTGAGE, INC. shall pay such costs within
18 sixty (60) days of receiving an invoice from the
19 Commissioner detailing the activities performed during
20 each audit and the amount of time spent performing those
21 activities. The Commissioner may suspend the restricted
22 license issued to Respondent MONUMENT MORTGAGE, INC.
23 pending a hearing held in accordance with Section 11500,
24 et seq., of the Government Code, if payment is not timely
25 made as provided for herein, or as provided for in a
26 subsequent agreement between Respondent and the
27 Commissioner. The suspensions shall remain in effect

1 until payment is made in full for each audit or until
2 Respondent enters into an agreement satisfactory to the
3 Commissioner to provide for payment, or until a decision
4 providing otherwise is adopted following a hearing held
5 pursuant to this condition.

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

- 21 7) Respondent WILLIAM EWING VANARSDDEL shall, within six (6)
22 months from the effective date of this Decision, take and
23 pass the Professional Responsibility Examination
24 administered by the Department including the payment of
25 the appropriate examination fee. If Respondent fails to
26 satisfy this condition, the Commissioner may order

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suspension of the restricted license until Respondent passes the examination.

8) Within sixty (60) days of the Department's request therefor, Respondents MONUMENT MORTGAGE, INC. and WILLIAM EWING VANARSDEL shall produce and make available the books, accounts, and records requested by Department Audit Section personnel for audit, review, inspection and copying by a designated representative of the Real Estate Commissioner during regular business hours.

August 3, 2004
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, 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, 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


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1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

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8/2/04


DATED



MONUMENT MORTGAGE, INC.
Respondent
By HARRY R. KRAATZ

02 Aug 2004

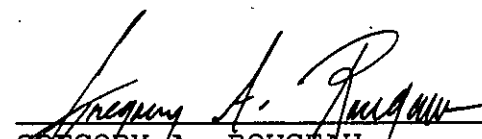
DATED



WILLIAM EWING VANARSDER
Respondent

APPROVED AS TO FORM:
8/2/04

DATED



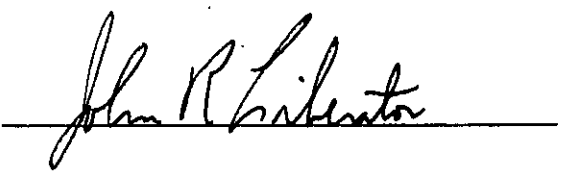
GREGORY A. ROUGEAU
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on November 16, 2004.

IT IS SO ORDERED August 27, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner



FILED
JUN 30 2004

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contura

In the Matter of the Accusation of

MONUMENT MORTGAGE, INC., and
WILLIAM EWING VANARSDEL,

}

Case No. H-8783 SF

OAH No. N-2004060291

Respondents

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
THE ELIHU HARRIS STATE BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CA 94612**

on **AUGUST 3, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JUNE 29, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 Department of Real Estate
P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED
MAY 18 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MONUMENT MORTGAGE, INC., and) NO. H-8783 SF
13 WILLIAM EWING VANARSDEL,)
14 Respondents.) ACCUSATION

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for causes of
17 Accusation against MONUMENT MORTGAGE, INC., and WILLIAM EWING
18 VANARSDEL, is informed and alleges as follows:

19 PRELIMINARY ALLEGATIONS

20 I

21 Respondents MONUMENT MORTGAGE, INC., and WILLIAM EWING
22 VANARSDEL are presently licensed and/or have license rights under
23 the Real Estate Law, Part 1 of Division 4 of the California
24 Business and Professions Code (hereafter the Code).

25 II

26 The Complainant, LES R. BETTENCOURT, a Deputy Real
27 Estate Commissioner of the State of California, makes this

1 Accusation against Respondents in his official capacity and not
2 otherwise.

3 III

4 At all times herein mentioned, Respondent MONUMENT
5 MORTGAGE, INC., (hereafter MONUMENT) was and is licensed by the
6 State of California Department of Real Estate (hereafter
7 Department) as a real estate broker corporation, individually and
8 doing business as FINET.COM, HOMEWARD SOLUTIONS, and INTERLOAN.

9 IV

10 At all times herein mentioned, Respondent WILLIAM EWING
11 VANARSDEL (hereafter VANARSDEL) was and is licensed by the
12 Department as an individual real estate broker, and as the
13 designated broker officer of MONUMENT.

14 V

15 Whenever reference is made in an allegation herein to
16 an act or omission of MONUMENT, such allegation shall be deemed
17 to mean that MONUMENT or the officers, directors, employees,
18 agents and/or real estate licensees employed by or associated
19 with MONUMENT committed such act or omission while engaged in
20 the furtherance of the business or operations of the company and
21 while acting within the course and scope of their authority and
22 employment.

23 VI

24 Within the last three years, Respondent MONUMENT
25 engaged in the business of, acted in the capacity of, advertised,
26 or assumed to act as a real estate broker within the State of
27 California, including the operation and conduct of a mortgage

1 loan brokerage and mortgage loan banking business with the
2 public wherein borrowers and lenders were solicited for loans
3 secured directly or collaterally by liens on real property, and
4 wherein MONUMENT funded and/or brokered such loans, and wherein
5 such loans were arranged, negotiated, and consummated on behalf
6 of others, for or in expectation of compensation.

7 FIRST CAUSE OF ACTION

8 VII

9 Beginning in or about July of 2003, the Department
10 conducted an audit of the books and records of Respondent
11 MONUMENT for the time period of July 1, 2002 to March 31, 2003
12 (hereafter the audit period) as set forth in more detail in
13 Department Audit Report No. OK-02-0149, dated September 30,
14 2003, and all accompanying working papers and exhibits. During
15 the audit period, Respondent MONUMENT accepted or received
16 funds in trust from or on behalf of lenders and/or borrowers.

17 VIII

18 In connection with the audit, Respondent MONUMENT was
19 requested after reasonable notice from the Department to produce
20 specified records and documents executed or obtained by MONUMENT,
21 regarding transactions for which a real estate license is
22 required, for all bank accounts that handled trust funds during
23 the audit period, including but not limited to the following:
24 (1) bank statements, (2) records of trust funds received and
25 disbursed (accounting ledgers), (3) separate records for each
26 beneficiary, (4) cancelled checks, (5) bank signature cards, and
27 (6) five specified loan files pertaining to HOMEWARD SOLUTIONS

1 loans in five selected transactions that closed between August
2 and November of 2002.

3 IX

4 Beginning in or about September of 2003, and continuing
5 to the present, MONUMENT has failed to retain and make available
6 for examination and inspection by a designated representative of
7 the Commissioner of the Department complete records as described
8 in Paragraph VIII above, including but not limited to complete
9 records for all trust funds received and disbursed, complete
10 bank statements, and the five specified loan files. The records
11 produced by Respondent MONUMENT were not sufficient to conduct an
12 audit of the business, and were not sufficient to determine the
13 accountability of MONUMENT for trust funds belonging to others at
14 any time during the audit period.

15 X

16 Based on the limited records produced, the trust funds
17 accepted or received by Respondent MONUMENT during the audit
18 period were deposited or caused to be deposited from time to time
19 into approximately three bank accounts at Wells Fargo Bank in
20 San Francisco, California, as follows:

21 (a) Bank Account #1: Account No. 475-8371462, in the
22 name of "MMI DISBURSEMENT CLEARING," used for
23 deposits of transfers from Bank Account #2 below,
24 and disbursements to MONUMENT and to other
25 lenders/investors;

26 (b) Bank Account #2: Account No. 475-8371488, in the
27 name of "MMI PAYMENT CLEARING," used for deposits

1 of borrower payments and other deposits, and
2 disbursements to Bank Account #1 above, and to an
3 unknown MONUMENT account; and

4 (c) Trust Account #1: Account No. 418-5565753, in the
5 name of "MONUMENT MORTGAGE, INC. TRUSTEE FOR GATEWAY
6 BANK," used for unknown purposes.

7 XI

8 In connection with the receipt and disbursement of
9 trust funds as above alleged, Respondent MONUMENT:

- 10 (a) As to Bank Account #1 and Bank Account #2, failed to
11 deposit trust funds into one or more trust accounts
12 in the name of Respondent MONUMENT as trustee at a
13 bank or other financial institution pursuant to
14 Section 10145 of the Code and Section 2832 of Title
15 10, California Code of Regulations (hereafter the
16 Regulations);
- 17 (b) Failed to maintain a written control record of all
18 trust funds received and disbursed for Bank
19 Account #1; and failed to maintain a written control
20 record for Bank Account #2 containing all information
21 required by Section 2831 of the Regulations; and
- 22 (c) Authorized or permitted withdrawals to be made from
23 Bank Account #1 and Bank Account #2 upon the
24 signature(s) of unlicensed persons without being duly
25 bonded with the requisite fidelity bond insurance
26 coverage to have such authorization, and/or upon the
27 signature(s) of licensed persons without specific

1 written authorization from Respondent VANARSDDEL,
2 pursuant to Section 2834 of the Regulations.

3 XII

4 The acts and/or omissions of Respondent MONUMENT as
5 alleged above constitute grounds for disciplinary action under
6 the following provisions:

7 (a) As to Paragraphs VIII and IX, under Section 10148
8 of the Code in conjunction with Section 10177(d)
9 of the Code;

10 (b) As to Paragraphs X and XI(a), under Section 10145
11 of the Code and Section 2832 of the Regulations in
12 conjunction with Section 10177(d) of the Code;

13 (c) As to Paragraph XI(b), under Section 2831 of the
14 Regulations in conjunction with Section 10177(d)
15 of the Code; and

16 (d) As to Paragraph XI(c), under Section 2834 of the
17 Regulations in conjunction with Section 10177(d)
18 of the Code.

19 SECOND CAUSE OF ACTION

20 XIII


21 At all times mentioned herein, Respondent VANARSDDEL
22 failed to exercise reasonable supervision and control of the
23 activities of MONUMENT for which a real estate license is
24 required. In particular, VANARSDDEL caused, permitted, and/or
25 ratified the conduct described above, and/or failed to take
26 reasonable steps to implement effective supervision that would
27 have prevented it, including but not limited to: (a) the

1 establishment of policies, rules, procedures, and systems to
2 review, oversee, inspect and manage the business including but
3 not limited to the handling of trust funds, trust fund records
4 and bank accounts; and (b) the establishment of systems for
5 monitoring compliance with such policies, rules, procedures,
6 and systems, to ensure compliance by the company with the Real
7 Estate Law.

8 XIV

9 The acts and/or omissions of Respondent VANARSDDEL as
10 alleged above constitute grounds for disciplinary action under
11 the provisions of Section 10177(h) of the Code and Section 2725
12 of the Regulations.

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

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23 
24 LES R. BETTENCOURT
25 Deputy Real Estate Commissioner

26 Dated at Oakland, California,
27 this 7th day of April, 2004.