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FILED
OCT-6 1992
DEPARTMENT OF REAL ESTATE
BY *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-22262 LA
JAMES PHILLIP KNELL,)
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On December 11, 1985, a Decision after reconsideration was rendered herein, revoking the real estate broker license of Respondent, JAMES PHILLIP KNELL, (hereinafter "Respondent"), effective December 13, 1985. Said Decision granted Respondent the right to a restricted real estate broker license which was issued on January 30, 1986.

On June 25, 1991, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has

1 demonstrated to my satisfaction that grounds do not presently
2 exist to deny the issuance of an unrestricted real estate
3 broker license to Respondent.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's
5 petition for reinstatement is granted and that an
6 unrestricted real estate broker license be issued to
7 Respondent, if Respondent satisfies the following conditions
8 within twelve (12) months from the date of this Order:

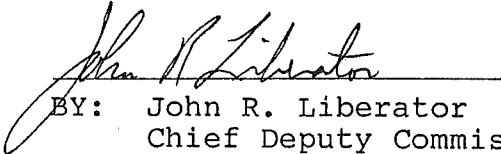
9 1. Submittal of a completed application and
10 payment of the fee for a real estate broker license; and

11 2. Submittal of evidence satisfactory to the Real
12 Estate Commissioner that Respondent has since his present
13 restricted license was renewed on or about January 30, 1990
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate
16 Law for renewal of a real estate license.

17 This Order shall become effective immediately.

18 DATED: October 5, 1992.

19
20 CLARK WALLACE
21 Real Estate Commissioner

22 
23 BY: John R. Liberator
24 Chief Deputy Commissioner

25
26
27 cc: James P. Knell
1208 Bel Air Drive
Santa Barbara, CA 93105

FILED

DEC 13 1985

DEPARTMENT OF REAL ESTATE

By *Laura B. Cline*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	No. H-22262 LA
	)	
JAMES PHILLIP KNELL, aka	)	L-35241
James Knell, aka Jim Knell,	)	
	)	
Respondent.	)	

DECISION AFTER RECONSIDERATION

On October 20, 1985, a Decision was rendered herein by the Real Estate Commissioner which revoked respondent's real estate broker license. Said Decision is to become effective on December 13, 1985.

On November 8, 1985, respondent petitioned for reconsideration of said Decision. I have considered the petition of respondent and have concluded that he has presented good cause for reconsideration of the Decision of October 20, 1985.

I have reconsidered the Decision and have determined that it would not be against the public interest to allow respondent to engage in acts for which a real estate license is required under a restricted real estate broker license. The

1 order of the Decision of October 20, 1985, is modified to read as
2 follows:

3 The real estate broker license together with all of the
4 other license rights held by respondent under the Real Estate Law
5 are hereby revoked, provided, however, a restricted real estate
6 broker license shall be issued to respondent pursuant to Section
7 10156.5 of the Business and Professions Code if respondent makes
8 application therefor and pays to the Department of Real Estate
9 the appropriate fee for said license within (90) days from
10 the effective date of this decision.

11 The restricted license issued to respondent shall be
12 subject to all the provisions of Section 10156.7 of the Business
13 and Professions Code and to the following limitations, conditions
14 and restrictions imposed under the authority of Section 10156.6
15 of said Code.

16 A. Said restricted license may be suspended
17 prior to hearing by order of the Real Estate
18 Commissioner in the event of respondent's
19 conviction or plea of nolo contendere to a crime
20 which bears a significant relation to respondent's
21 fitness or capacity as a real estate licensee.

22 B. Said restricted license may be suspended
23 prior to hearing by order of the Real Estate
24 Commissioner on evidence satisfactory to the
25 Commissioner that respondent has violated pro-
26 visions of the California Real Estate Law, the
27 Subdivided Lands Law, regulations of the Real

1 Estate Commissioner or conditions attaching to
2 the restricted license.

3 C. Respondent shall not be eligible to apply
4 for the issuance of an unrestricted real estate
5 license nor the removal of any of the conditions,
6 limitations or restrictions attaching to the
7 restricted license until one year has elapsed
8 from the date of issuance of the restricted license
9 to respondent.

10 D. Respondent shall report in writing to the
11 Department of Real Estate as the Real Estate
12 Commissioner shall direct by the decision herein
13 or by separate written order issued while the
14 restricted license is in effect, such information
15 concerning respondent's activities for which a real
16 estate license is required as the Commissioner shall
17 deem to be appropriate to protect the public
18 interest. Such reports may include but are not
19 limited to periodic independent accountings of
20 trust funds in the custody and control of respon-
21 dent and periodic summaries of salient information
22 concerning each real estate transaction in which
23 the respondent engaged during the period covered
24 by such report.

25 E. Respondent shall within nine months from
26 the effective date of the decision present evidence
27 satisfactory to the Real Estate Commissioner that

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

14 As hereby modified and amended, the Decision of
15 October 20, 1985, shall become effective at 12 o'clock noon on
16 December 13, 1985.

17 IT IS SO ORDERED December 11, 1985.

18 JAMES A. EDMONDS, JR.
19 Real Estate Commissioner

20 By: John R. Liberator
21 JOHN R. LIBERATOR
22 Chief Deputy Commissioner
23
24
25
26
27

File #14

(SPACE BELOW FOR FILING STAMP ONLY)

CARPELLO & TOLEY
ATTORNEYS AT LAW
831 STATE STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 564-2444
OR
(805) 963-3121

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DEC 23 1985

DEPT. OF REAL ESTATE
LES

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

JAMES PHILLIP KNELL,	)	NO. 90359
	)	
Petitioner,	)	APPLICATION FOR CONTINUANCE
	)	OF ORDER TO SHOW CAUSE AND
vs.	)	FOR MODIFICATION OF STAY
	)	ORDER; DECLARATION OF
DEPARTMENT OF REAL ESTATE,	)	MICHAEL W. McCANN
	)	
	)	Date: January 2, 1986
Respondent.	)	Time: 9:00 a.m.
	)	Dept: 41

On December 12, 1985, petitioner JAMES PHILLIP KNELL (hereinafter "KNELL") filed a Petition for Writ of Mandate in this court, requesting that respondent's October 25, 1985, Decision revoking KNELL's real estate broker's license be set aside. In KNELL's petition, this court was informed that on November 6, 1985, KNELL had filed a Petition for Reconsideration with the Department of Real Estate, asking that the October 25, 1985, Decision be vacated.

On December 14, 1985, KNELL's attorneys received notice that the Department of Real Estate had reconsidered its earlier decision and by order dated December 11, 1985, vacated the order revoking KNELL's broker's license and ordered that KNELL be

1 issued a restricted broker's license. A copy of the Department
2 of Real Estate's Decision After Reconsideration is attached hereto
3 as Exhibit "A" and incorporated herein by this reference. KNELL
4 has decided to acquiesce in the Department's most recent decision
5 and has already submitted his application for issuance of a
6 restricted real estate broker's license.

7 In order to accommodate the Department of Real Estate's
8 internal administrative requirements, and at the request of the
9 Department of Real Estate, KNELL files this application requesting
10 that the stay order issued by this court on December 12, 1985,
11 be modified to provide that the stay remain in effect until
12 January 30, 1986. KNELL similarly requests that the order to
13 show cause presently set for January 2, 1986, in Department 41
14 of this court be continued to January 30, 1986, at the same time
15 and place.

16 KNELL further requests that the order issued by the court
17 pursuant to this application require that both parties notify
18 the court as soon as a restricted broker's license has been
19 issued to KNELL, accompanied by a stipulation signed by both
20 parties taking the order to show cause set for January 30, 1986,
21 off calendar and dismissing KNELL's petition for writ of mandate.

22 KNELL requests that, in the event he is not issued a
23 restricted real estate broker's license prior to January 30,
24 1986, the order to show cause hearing should go forward and, if
25 appropriate, the order staying the Department's revocation of
26 his broker's license be continued in effect.

27 Dated: December 20, 1985.

CAPPELLO & FOLEY

By

Michael W. McCann

Michael W. McCann

Attorneys for Petitioner

DECLARATION OF MICHAEL W. McCANN

I, MICHAEL W. McCANN, declare as follows:

1. I am an associate in the law firm of Cappello & Foley, attorneys for Petitioner JAMES KNELL herein.

2. On December 14, 1985, I received a copy of a "Decision After Reconsideration" from the Department of Real Estate, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference. Pursuant to that decision, the Department of Real Estate has reconsidered its earlier order revoking KNELL's real estate broker's license and has now agreed to issue to him a restricted real estate broker's license.

3. KNELL has submitted his application for the restricted real estate broker's license, and the appropriate fee, by mail on or about December 17, 1985.

4. On December 19, 1985, I received a phone call from Marilyn Mosher, the Department of Real Estate attorney who has handled this matter on behalf of the Department since its inception. Ms. Mosher informed me that, in order for the Department's licensing division to expedite issuance of the restricted license, the stay order issued by the Ventura County Superior Court and presently in effect must be modified. In particular, the order needs to be modified to provide a date certain for its expiration. According to Ms. Mosher, an expiration date for the stay order of January 30, 1986, will provide the Department with sufficient time to issue the restricted license and would be an acceptable expiration date.

5. It is necessary to protect KNELL from any administrative

1 error whereby this court's stay order would expire and the
2 Department of Real Estate had not yet issued his restricted real
3 estate broker's license. In order to satisfy the concerns of
4 both parties, it would be appropriate to continue the order to
5 show cause hearing presently set in this court for January 2,
6 1986, to January 30, 1986, with a concurrent order that the
7 court's stay order issued on December 12, 1985, remain in effect
8 until January 30, 1986.

9 6. It would also be appropriate for this court to order
10 that both parties notify this court when a restricted real
11 estate broker's license has been issued to KNELL and that both
12 parties deliver to this court a stipulation taking the January 30,
13 1986, order to show cause off calendar and dismissing KNELL's
14 petition for writ of mandate.

15 7. In the event a restricted real estate broker's license
16 has not been issued to KNELL prior to January 30, 1986, then the
17 order to show cause hearing should go forward for a determination
18 whether the court's stay order should remain in effect.

19 I declare under penalty of perjury that the foregoing is
20 true and correct of my own personal knowledge, and that this
21 declaration is executed at Santa Barbara, California, on
22 December 20, 1985.

23
24 
25 MICHAEL W. McCANN

CAPPELLO & FOLEY
ATTORNEYS AT LAW
831 STATE STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 564-2444
OR
(805) 966-3121

FILED

DEC 12 1985

RICHARD D. DEAN, County Clerk

By _____
Deputy County Clerk

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

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DEC 13 1985
DEPT. OF REAL ESTATE
FILES

90359

JAMES PHILLIP KNELL,) NO.
Petitioner,)
vs.)
DEPARTMENT OF REAL ESTATE,)
Respondent.)

PETITION FOR WRIT OF MANDATE
AND REQUEST FOR STAY;
DECLARATION OF DIANA HAMBLIN
RECEIVED
Department of Real Estate

DEC 13 1985

L.A.D.O. - Legal

Petitioner respectfully represents:

1. Petitioner is an individual licensed as a real estate broker by the State of California.

2. Respondent DEPARTMENT OF REAL ESTATE is an administrative agency with jurisdiction over the affairs of all real estate broker and salesperson licensees in the State of California.

3. Under Sections 490 and 10177(b) of the Business & Professions Code, the DEPARTMENT OF REAL ESTATE has discretion to determine whether a ground exists for suspension or revocation of a real estate broker's license, and particularly whether petitioner's plea of guilty to one criminal count for violation of Title 18, U.S.C. §1014, 2(b) is sufficient grounds for

1 revocation of petitioner's real estate broker's license. Pursuant
2 to the above-referenced sections of the Business & Professions
3 Code, and §§11500-11528 of the Government Code, the DEPARTMENT OF
4 REAL ESTATE is required to hold a hearing and take evidence in
5 its proceedings for the determination of those facts.

6 4. On September 20, 1985, at the Office of Administrative
7 Hearings, located at 314 West First Street, Los Angeles,
8 California, a hearing was held to receive evidence on the issue
9 of whether a ground exists for suspension or revocation of the
10 real estate broker's license which petitioner then held and
11 which was then in full force and effect. Petitioner attended
12 the hearing and presented evidence and arguments through his
13 attorneys. On November 7, 1985, petitioner received the
14 DEPARTMENT OF REAL ESTATE's decision and order revoking peti-
15 tioner's real estate broker's license on the ground that
16 petitioner had been convicted of a crime of moral turpitude.

17 5. On November 6, 1985, petitioner mailed a Petition for
18 Reconsideration and for Leave to Present Further Evidence to
19 respondent. On November 13, 1985, petitioner received an Order
20 Staying Effective Date from respondent, staying the effective
21 date of its order of revocation until 12:00 noon on December 13,
22 1985.

23 6. On December 2, 1985, petitioner mailed a Memorandum
24 of Points and Authorities in Support of Petition for Reconsidera-
25 tion to respondent.

26 7. Respondent's order revoking petitioner's real estate
27 broker's license takes effect at noon on December 13, 1985.
28 If respondent denies petitioner's request for reconsideration,

1 petitioner's broker's license will be revoked before he has
2 notice of respondent's adverse decision and before petitioner
3 is able to file a petition for writ of mandate. In order to
4 protect petitioner from revocation of his broker's license pending
5 notification by respondent of its decision on petitioner's
6 petition for reconsideration, it is necessary that this court
7 issue an order staying the effective date of respondent's revo-
8 cation of petitioner's broker's license until this Petition for
9 Writ of Mandate is decided by this court or dismissed as moot.

10 8. Respondent's decision and order of revocation are
11 invalid because they are not supported by the weight of the
12 evidence presented at the hearing.

13 9. A verbatim transcript of the record of the hearing,
14 contained in the evidence received, has been ordered on
15 December 12, 1985. This transcript will be lodged with the court
16 in support of this petition as soon as it is received from
17 respondent.

18 10. Attached hereto as Exhibit "A" is a copy of the
19 Memorandum of Points and Authorities in Support of Petition for
20 Reconsideration currently pending before respondent. The argu-
21 ments set forth in Exhibit "A", which are incorporated herein
22 by this reference, show that the findings of fact and determina-
23 tions of law made by respondent were not supported by the
24 evidence.

25 11. As an incident of bringing and maintaining this
26 proceeding, petitioner has incurred attorneys' fees and costs
27 in an amount according to proof. The attorneys' fees and costs
28 are recoverable pursuant to Code of Civil Procedure §1028.5.

1 WHEREFORE, petitioner prays judgment as follows:

2 1. For an order restraining respondent from giving effect
3 to its order of October 25, 1985, revoking petitioner's real
4 estate broker's license, until further order of the court and
5 to show cause why operation of that order should not be stayed
6 pending the judgment in this proceeding;

7 2. For a peremptory writ of mandate directing respondent
8 to set aside its order of October 25, 1985, revoking petitioner's
9 real estate broker's license;

10 3. For reasonable attorneys' fees, in addition to any
11 other relief granted;

12 4. For costs of suit herein incurred; and

13 5. For such other and further relief as the court may
14 deem proper.

15 Dated: December 12, 1985.

16 CAPPELLO & FOLEY

17 By Michael W. McCann
18 Michael W. McCann
19 Attorneys for Petitioner

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DECLARATION OF DIANA HAMBLIN

I, DIANA HAMBLIN, declare as follows:

1. I am a paralegal employed in the law firm of Cappello & Foley, attorneys for petitioner herein.

2. On December 12, 1985, at 11:00 a.m. I notified respondent that this petition was being filed, and a request for stay being made, by telephoning Marilyn Mosher, Department of Real Estate attorney, at (213) 620-4790.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is made at Santa Barbara, California, on December 12, 1985.

Diana Hamblin
DIANA HAMBLIN

CAPPELLO & FOLEY
ATTORNEYS AT LAW
831 STATE STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 564-2444
OR
(805) 966-3121

Attorneys for Respondent

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
JAMES PHILLIP KNELL,)	No. H-22262 LA
aka James Knell, aka)	
Jim Knell,)	L-35241
Respondent.)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR RECONSIDERATION

I

INTRODUCTION

This matter concerns real estate broker license revocation proceedings against respondent JAMES KNELL arising out of certain loan transactions with which he was involved in the last quarter of 1980. For reasons not relevant hereto, JAMES KNELL was not criminally prosecuted for this conduct until four and one-half years later in February of 1985. On February 25, 1985 JAMES KNELL pled guilty to one count of making false statements in loan appli-

1 cations to real estate lenders in 1980.

2 This circumstance, whereby JAMES KNELL was not criminally
3 prosecuted until almost five years after the conduct occurred has
4 placed JAMES KNELL in a unique situation. Although he has been
5 making continous substantial efforts to mitigate the consequences
6 of the conduct since 1980, his actual conviction for the conduct
7 occurred only nine months ago.

8 At the license revocation hearing on September 20, 1985
9 evidence was presented through the testimony of four witnesses and
10 admission of declarations under penalty of perjury by three other
11 individuals. This evidence showed JAMES KNELL's continuous
12 efforts since 1980 towards mitigation and rehabilitation. The
13 Administrative Law Judge apparently only considered evidence of
14 mitigation and rehabilitation subsequent to JAMES KNELL's convic-
15 tion in February of 1985, ignoring the evidence on these issues
16 going back to the date of the conduct in 1980.

17 It is respectfully submitted that, under the circumstan-
18 ces as shown by the evidence in this case, the "Findings of Fact
19 and Determination of Issues" by the Administrative Law Judge are
20 not supported by the evidence and the Department of Real Estate's
21 Order revoking JAMES KNELL's broker's license should be vacated.

22 JAMES KNELL has done everything he could possibly do to
23 mitigate the consequences of his conduct which occurred five years
24 ago. In addition, in the past five years, JAMES KNELL has fully
25 rehabilitated himself under the criteria set forth by the
26 Department of Real Estate. It is respectfully submitted that the
27 Order Revoking his broker's license is a miscarriage of justice.
28 JAMES KNELL presents no threat to the public as a real estate

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1 broker and no action should be taken against his license.

2 II

3 FACTUAL BACKGROUND

4 At the September 20, 1985 hearing of this matter, JAMES
5 KNELL presented, in addition to his own testimony, testimony of
6 three other individuals who have known Mr. KNELL for at least the
7 past five years. In addition, declarations under penalty of per-
8 jury by three other individuals were also presented and were
9 received pursuant to stipulation. The only evidence presented by
10 the Department of Real Estate was a document establishing JAMES
11 KNELL's conviction in February of 1985 on one count in violation
12 of Title 18, United States Code Section 1014,2(b) for conduct
13 which occurred in 1980.

14 The facts established at the hearing are as follows: In
15 1980 two individuals by the name of Vernon Moenn and Rene Aries
16 embarked on a sophisticated and very complex fraudulent scheme.
17 Their scheme involved a no down payment purchase of residential
18 real estate, with the sellers taking back large unsecured purchase
19 money notes. Moenn and Aries would then refinance the property at
20 a value substantially higher than what they had purchased it for.
21 They would then pocket the money realized by the refinancing loan
22 and default on the purchase money note taken back by the sellers.

23 In order to accomplish the refinancing phase of this
24 scheme, Moenn and Aries needed a "qualifier" to fill out the refi-
25 nancing loan applications. Rene Aries approached JAMES KNELL,
26 explaining to him that he had the money for a down payment to
27 purchase a house in Santa Barbara but did not have a substantial
28 enough financial background to qualify for the loan. He asked

1 JAMES KNELL to take title to the property and apply for the loan
2 in his own name, and then transfer the property to Aries after the
3 loan had been funded. He offered to pay JAMES KNELL \$1,000 for
4 this transaction. JAMES KNELL had just recently obtained his
5 salesman's license and was new to the real estate business.

6 JAMES KNELL was completely unaware of the nature of the
7 scheme that Moenn and Aries were working or that any members of
8 the public, or any lending institutions, were being damaged by
9 this scheme. JAMES KNELL was an unwitting participant in the
10 scheme by Moenn and Aries and would not have cooperated had he
11 known the true nature and purpose of the scheme. The scheme was
12 so complex and sophisiticated that even an experienced real estate
13 licensee could easily have been deceived.

14 When JAMES KNELL became aware that he was involved in a
15 scheme that was being investigated by the Federal Bureau of
16 Investigation, he immediately contacted that agency's office in
17 Santa Barbara. JAMES KNELL voluntarily, and without any assuran-
18 ces of clemency, became involved in and cooperated with the
19 F.B.I.'s investigation of Moenn and Aries. As part of his
20 cooperation and involvement, James Knell successfully infiltrated
21 the conspiracy between Moenn and Aries and was instrumental in the
22 F.B.I.'s halting the scheme and bringing Moenn and Aries to
23 justice. James Knell did all of this voluntarily and at con-
24 siderable personal risk. At one point, the F.B.I. had advised Mr.
25 KNELL that his life might be in danger as a result of his
26 infiltration and investigation of a conspiracy. Nonetheless, he
27 cooperated fully.

28 When JAMES KNELL first realized the true nature of the

1 scheme that he had unwittingly become involved in, he was ashamed
2 and disgusted. Although he received only \$4,000 from Aries, he
3 has paid over \$28,000.00 out of his own pocket to those indivi-
4 duals who lost money in the loan transactions in which he was
5 involved. In addition to this making of restitution and his
6 cooperation with the F.B.I., JAMES KNELL cooperated with plain-
7 tiff's attorneys in civil litigation against Moenn and Aries.

8 Since 1980, JAMES KNELL has been very active and success-
9 ful in the real estate industry in Santa Barbara County, prin-
10 cipally in the area of syndication and management of large
11 commercial properties. He has made a concerted effort to avoid
12 any individuals or transactions involving even a hint of impropri-
13 ety. He routinely submits his real estate dealings to his attor-
14 neys for their review and advice. In sum, JAMES KNELL has made a
15 concerted and successful good faith effort to ensure that all of
16 his business practices have been beyond reproach since the con-
17 duct in 1980 which resulted in the February 25, 1985 conviction.

18 The individuals whose testimony and declarations were
19 received into evidence at the September 20, 1985 hearing all uni-
20 formly stated that, based on their own business experiences with
21 JAMES KNELL, they found him to be an honest and trustworthy real
22 estate broker whose business practices and attitude were of the
23 highest degree of integrity.

24 The criminal proceedings against JAMES KNELL were con-
25 ducted before the Honorable Manuel Real, Chief Judge of the
26 United States District Court, Central District of California.
27 Judge Real has a reputation for being a tough, no nonsense judge.
28 One of Judge Real's options in connection with the conditions of

1 probation that he imposed was to require JAMES KNELL to deliver a
2 "disclosure letter" regarding his criminal conviction to all of
3 his present and future business clients. After reviewing the cir-
4 cumstances surrounding JAMES KNELL's unwitting involvement in the
5 scheme by Moenn and Aries, and his efforts since that time in
6 1980, Judge Real determined that JAMES KNELL was not a threat to
7 the real estate investing public. Based on that determination,
8 Judge Real decided that a "disclosure letter" would not be
9 necessary.

10 When Judge Real heard that the Department of Real Estate
11 had ordered revocation of JAMES KNELL's license, he volunteered to
12 assist JAMES KNELL in his efforts to appeal the Department's
13 order. Attached hereto as Exhibit "A" is a copy of a letter writ-
14 ten by Judge Real to the Department.

15 The Department is respectfully requested to consider this
16 further evidence which, in the exercise of reasonable diligence,
17 could not have been presented at the hearing. The letter from
18 Judge Real, who presided over the criminal proceedings against
19 JAMES KNELL, shows that Judge Real considers JAMES KNELL to be
20 fully rehabilitated and not a threat to the real estate investing
21 public.

22 It should be noted that Judge Real volunteered to write
23 this letter. It would have been premature for JAMES KNELL to ask
24 Judge Real to write such a letter prior to the September 20, 1985
25 hearing.

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III
FINDINGS OF FACT AND DETERMINATION
OF ISSUES NOT SUPPORTED BY THE
EVIDENCE.

James Knell respectfully submits that Findings of Fact Nos. 5, 6, 7 and 8, as well as Determination of Issues 1 and 2, are not supported by the evidence. These Findings and Determinations are discussed below individually.

A. Finding of Fact No. 5.

In this finding, it is stated that JAMES KNELL was an "active participant" in a scheme which resulted in certain members of the public suffering financial losses. This finding is contrary to the evidence introduced by JAMES KNELL at the hearing. JAMES KNELL admittedly made false statements in applications to real estate lenders. However, the only evidence presented at the hearing unequivocally established that JAMES KNELL was not aware of the fraudulent scheme that Moenn and Aries were operating or that members of the public were suffering financial losses as a result of the scheme by these individuals.

JAMES KNELL obviously exercised poor judgment in agreeing to participate in the loan application phase of the scheme by Moenn and Aries. However, he was not an active participant in this scheme. He had no knowledge of the scheme or of the fact that members of the public were suffering financial losses.

In fact, the evidence shows that once JAMES KNELL became aware of the scheme, he was an active and essential participant with the F.B.I. in dismantling the scheme and bringing Moenn and Aries to justice.

1 B. Finding of Fact No. 6.

2 This finding states that "no mitigation to said criminal
3 conduct is found." Again, with all due respect to the
4 Administrative Law Judge, this finding is not supported by any
5 evidence and is in fact contradicted by the evidence introduced at
6 the hearing.

7 It was shown at the hearing that as soon as JAMES KNELL
8 realized that he had unwittingly become involved in the criminal
9 scheme by Moenn and Aries, he voluntarily cooperated with the
10 F.B.I.'s investigation at substantial risk to his own personal
11 safety. In fact, his cooperation was instrumental in breaking up
12 the scheme and bringing Moenn and Aries to justice.

13 In addition, the evidence presented at the hearing showed
14 that JAMES KNELL has paid over \$28,000.00 out of his own pocket to
15 reimburse those individuals who were damaged by the loan transac-
16 tions. The evidence presented further establishes that JAMES
17 KNELL cooperated in the civil proceedings brought by those who had
18 suffered damages in the transactions in which JAMES KNELL was
19 involved.

20 Contrary to Finding No. 6, JAMES KNELL made a strong and
21 uncontroverted showing of significant steps he has taken over the
22 last five years to mitigate the circumstances of his conduct in
23 1980.

24 C. Finding of Fact No. 7.

25 This finding correctly sets forth some of the evidence
26 presented by JAMES KNELL concerning his rehabilitation.
27 Paragraphs (A) through (D) of Finding No. 7 are correct but
28 incomplete. There was also strong evidence presented at the

1 hearing of the emotional impact on JAMES KNELL in 1981 when he
2 realized he had been drawn into the scheme perpetrated by Moenn
3 and Aries. He was ashamed and disgusted. From that date forward,
4 he has embarked on a conscious effort to ensure that all of his
5 business transactions are conducted with the highest degree of
6 integrity. In addition to his own personal resolve in this
7 regard, JAMES KNELL now routinely submits his proposed business
8 transactions to his attorney for review to ensure both their lega-
9 lity and their integrity. The evidence presented at the hearing,
10 in addition to that recited in the Administrative Law Judge's
11 Findings, shows substantial rehabilitation by JAMES KNELL over the
12 past five years under the criteria set forth in Regulation 2912
13 (Real Estate Form 574), especially subparagraphs (g) (correction
14 of business practices), (h) (new and different social and business
15 relationships), and (i) (change in attitude).

16 These are significant areas of rehabilitation in which
17 JAMES KNELL has made a concerted and continuous effort for the
18 past five years. The evidence presented at the hearing clearly
19 warranted findings in these areas as well. There was no contrac-
20 tual evidence presented.

21 D. Finding of Fact No. 8.

22 This finding states that ". . . Respondent's record of
23 rehabilitation . . . is a start towards complete rehabilitation.
24 However, the time from the conduct set forth in Findings 4 and 5,
25 to the present time is insufficient to allow a record of clear and
26 convincing rehabilitation."

27 This finding is clearly erroneous. The time from the
28 conduct set forth in Findings 4 and 5 is five years. Due to the

1 unique fact that JAMES KNELL was not criminally prosecuted until
2 four and one-half years after the conduct in question, the
3 Administrative Law Judge mistakenly used the date of conviction as
4 the starting point for an analysis of JAMES KNELL's efforts
5 towards rehabilitation. Focusing on only the seven-month period
6 preceding the hearing date, the Judge found an insufficient record
7 of clear and convincing rehabilitation.

8 This finding ignores all of the evidence presented
9 showing JAMES KNELL's rehabilitation effort since 1981 when he
10 became aware that he had been unwittingly drawn into a criminal
11 conspiracy by Moenn and Aries. The last quarter of 1980 is the
12 time frame in which JAMES KNELL's conduct occurred and an analysis
13 of his rehabilitation should consider his efforts in that regard
14 for the entire period of time that has elapsed since then, not
15 just the period of time from his conviction in February of 1985.
16 In effect, JAMES KNELL is losing the benefit of four and one-half
17 years of conscious efforts to rehabilitate himself because of the
18 unexplained delay by the Government in prosecuting his case.
19 JAMES KNELL is entitled to credit for the past five years of
20 efforts he has made. When the evidence of these efforts for the
21 past five years is considered, it is clear that JAMES KNELL has a
22 clear and convincing record of complete rehabilitation.

23 E. Determination of Issues.

24 Determination Nos. I and II state that cause exists for
25 revocation of JAMES KNELL's broker's license in order to protect
26 the public. These determinations are unsupported by any evidence
27 in the record.

28 As is shown above, the conduct for which JAMES KNELL was

1 convicted in February of 1985 actually occurred in 1980. Since
2 1980, JAMES KNELL has rehabilitated himself and has done
3 everything possible to mitigate the circumstances of his conduct,
4 including the payment of over \$28,000.00 out of his own pocket as
5 restitution.

6 The purpose of the administrative proceedings relating to
7 licensing privileges is to protect the public, not to punish the
8 licensee. (Camacho v. Yude (1979) 95 Cal.App.3d 161, 165.) JAMES
9 KNELL has already been severely punished. He has experienced the
10 shame and guilt of his involvement with Moenn and Aries since 1981.
11 He has paid over \$28,000 out of his own pocket. Finally, he is
12 being criminally punished.

13 Based on his efforts to rehabilitate himself and mitigate
14 the circumstances of his conduct, JAMES KNELL is not a threat to
15 the public. Judge Real has already determined this to be the case
16 when he declined to require JAMES KNELL to distribute "disclosure
17 letters" to his business clients. Since JAMES KNELL is not a
18 threat to the public, revocation of his license can only be a
19 punitive act. In addition to being inappropriate, it is not
20 necessary in light of the severe punishment that JAMES KNELL has
21 suffered for the past five years.

22 As a result of being duped into becoming an unwitting
23 member of Moenn and Aries' scheme, JAMES KNELL is acutely aware of
24 the need for both caution and integrity in his business practices.
25 Over the past five years JAMES KNELL has developed a real estate
26 practice with the highest credentials for integrity, honesty and
27 dependability. JAMES KNELL's experience in 1980 has made him a
28 better person and a better real estate broker. His record shows a

1 complete rehabilitation from the person who allowed himself to be
2 a pawn in the fraudulent scheme by Moenn and Aries. It would be
3 a miscarriage of justice to revoke JAMES KNELL's license.

4 WHEREFORE, based on the foregoing Points and Authorities,
5 it is respectfully submitted that the Department of Real Estate's
6 October 20, 1985 Order revoking James Knell's license should be
7 vacated and an Order that no action be taken against said license
8 be entered instead.

9 DATED: December 5, 1985.

11 Respectfully submitted,
12 CAPPELLO & FOLEY

13
14
15 BY Michael W. McCann
16 MICHAEL W. McCANN

17 831 State Street
18 Santa Barbara, CA 93101
19 (805) 564-2444

20 Attorneys for Respondent
21 JAMES KNELL
22
23
24
25
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27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF
MANUEL L. REAL
CHIEF JUDGE

TELEPHONE:
688-5267

November 25, 1985

James A. Edmonds, Jr.
Commissioner
Department of Real Estate
State of California
107 S. Broadway
Los Angeles, CA 90012

Dear Commissioner Edmonds:

Re: James Knell
Case Nos. H-22262-LA
L-35241

James Knell is presently requesting reconsideration of the recent revocation of his real estate license.

I am writing on behalf of Mr. Knell to urge that the license not be revoked.

Mr. Knell pleaded guilty to making false statements in a loan application. Although the conviction dates from February 25, 1985 it should be noted that the events leading to that conviction occurred in 1980.

After the investigation by the probation office, I placed Mr. Knell on probation with the obligation to complete 2,500 hours of community service during his probationary period. In contrast to his co-defendant, Mr. Knell has fulfilled his obligation enthusiastically and has tried in every way to prove the genuineness of his rehabilitation.

Mr. Knell has also reported regularly to me to monitor his progress. My observation has been, both at the time of sentencing and now, that Mr. Knell had accepted responsibility for his misconduct before I sentenced him. That was the main reason for the kind of sentence I imposed on him.

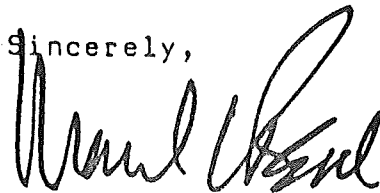
During his probation I was requested to review Mr. Knell's conduct and his plan for employment. That involved a

EXHIBIT "A"

determination as to whether I would require Mr. Knell to make disclosure of his probationary status to his clients. I felt that because of his five years of rehabilitation and his attitude toward his profession that disclosure would not be necessary. It was my feeling that Mr. Knell was not a risk to his clients by reason of his past conduct and that Mr. Knell's crime was situational and would not recur.

I recommend most strongly that his real estate license not be revoked.

Sincerely,

A handwritten signature in dark ink, appearing to read "Manuel L. Real". The signature is fluid and cursive, with the first name "Manuel" being more prominent than the last name "Real".

Manuel L. Real
Chief Judge

CAPPELLO & FOLEY
ATTORNEYS AT LAW
831 STATE STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 564-2444
OR
(805) 966-3121

FILED

DEC 12 1985

RICHARD D. DEAN, County Clerk

By _____
Deputy County Clerk

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

JAMES PHILLIP KNELL,
Petitioner,
vs.
DEPARTMENT OF REAL ESTATE,
Respondent.

NO.

90359

ORDER STAYING EFFECT
OF OCTOBER 25, 1985
DECISION OF DEPARTMENT
OF REAL ESTATE

Good cause appearing,

IT IS ORDERED that operation of the decision of respondent made on October 25, 1985, in the matter entitled, In the Matter of the Accusation of James Phillip Knell, No. H-22262 LA, be stayed pending further orders of this court;

IT IS FURTHER ORDERED that respondent appear on JAN. 2, 1986 1986, at 9 a.m., or as soon thereafter as the matter may be heard, in ~~a~~ courtroom ~~to be assigned~~ ⁴ of the above-entitled court, located at 800 South Victoria, Ventura, California, and then and there show cause why the stay should not be continued pending the judgment in the above-entitled proceeding and until a notice of appeal from the judgment has been filed or until

1 the time for filing such notice has expired. This ORDER is made
2 with the consent of the DEPARTMENT OF REAL ESTATE AND is without
3 Dated: Dec. 12, 1985

4 
JUDGE OF THE SUPERIOR COURT

CAPPELLO & FOLEY
ATTORNEYS AT LAW
831 STATE STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 564-2444
OR
(805) 966-3121

FILED

DEC 12 1985

RICHARD D. DEAN, County Clerk

By _____
Deputy County Clerk

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

JAMES PHILLIP KNELL,
Petitioner,
vs.
DEPARTMENT OF REAL ESTATE,
Respondent.

NO.

90359

NOTICE OF APPLICATION
FOR WRIT OF MANDATE

TO DEPARTMENT OF REAL ESTATE:

NOTICE IS HEREBY GIVEN that on 1-30-86, 1986, at 9 a.m.
or as soon thereafter as the matter may be heard, in ~~a~~ courtroom 41
L.S. ~~to be assigned~~ in the above-entitled court, located at 800 South
Victoria, Ventura, California, petitioner will apply to the court
for a writ commanding you to set aside your decision made
October 25, 1985, in the matter entitled, In the Matter of the
Accusation of James Phillip Knell, No. H-22262 LA. The applica-
tion will be based on this notice, the verified petition, a copy
of which is attached to this notice, a transcript of the
September 20, 1985, hearing which has been ordered and will be
lodged upon receipt, and such other and further matters that the

1 court deems appropriate.

2 Dated: December 12, 1985.

3 CAPPELLO & FOLEY

4
5 By Michael W. McCann
6 Michael W. McCann
7 Attorneys for Petitioner
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SACTO.
Filing

FILED

NOV 13 1985

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of	)	No. H-22262 LA
	)	
JAMES PHILLIP KNELL,	)	L-35241
aka James Knell, aka	)	
Jim Knell,	)	
	)	
Respondent.	)	
	)	

ORDER STAYING EFFECTIVE DATE

On October 20, 1985, a Decision was rendered in the above-entitled matter to become effective November 14, 1985.

IT IS HEREBY ORDERED that the effective date of the Decision of October 20, 1985 is stayed for a period of 29 days

The Decision of October 20, 1985, shall become effective at 12 o'clock noon on December 13, 1985.

DATED: 11/13/85

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *[Signature]*
ROBERT ARNOLD
Assistant Commissioner

sent to 2209

BEFORE THE DEPARTMENT OF REAL ESTATE

FILED

STATE OF CALIFORNIA

OCT 25 1985

DEPARTMENT OF REAL ESTATE
BY B. Kiedersholt

In the Matter of the Accusation of)

JAMES PHILLIP KNELL,
aka James Knell, aka
Jim Knell,

Respondent.

No. H- 22262 LA

L- 35241

DECISION

The Proposed Decision dated October 2, 1985
of the Administrative Law Judge of the Office of Administrative
Hearings, is hereby adopted as the Decision of the Real Estate
Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real
estate licenses on grounds of (the conviction of a crime/~~knowingly~~
~~making xxx false statements of fact xxx required xxx revealed xxx an~~
~~application xxx for license~~).

The right to reinstatement of a revoked real estate
license or to the reduction of a suspension is controlled by
Section 11522 of the Government Code. A copy of Section 11522
and a copy of the Commissioner's Criteria of Rehabilitation
are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock
noon on November 14, 1985.

IT IS SO ORDERED

October 20, 1985

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of	)	
	)	
JAMES PHILLIP KNELL,	)	No. H-22262 LA
aka James Knell, aka	)	
Jim Knell,	)	
	)	L-35241
Respondent.	)	
_____	)	

PROPOSED DECISION

This matter came on regularly for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on September 20, 1985. Marilyn L. Mosher, Counsel, represented the complainant. Respondent appeared in person and was represented by Michael W. McCann, Attorney at Law. Oral and documentary evidence and evidence by way of official notice and stipulation was received and the matter was then argued and submitted. The Administrative Law Judge now finds facts, determines and orders:

FINDINGS OF FACT

RE: JURISDICTION

1

The complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, brought subject Accusation in his official capacity.

2

(A) James Phillip Knell, aka James Knell, aka Jim Knell, respondent herein, is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

(B) At all times herein mentioned, respondent was licensed by the Department of Real Estate of the State of California as a real estate broker.

All pre-hearing jurisdictional requirements have been met. Jurisdiction for this proceeding does exist.

FINDINGS OF FACT

RE: ACCUSATION

(A) On February 25, 1985, in the United States District Court of Central District of California, respondent was convicted on his plea of guilty of violating Title 18, U.S.C., Section 1014, 2(b) (Making False Statements and Causing Others to Make False Statements in Loan Applications) a felony.

(B) Said crime is a crime involving moral turpitude.

(C) Said crime is a crime which does bear a substantial relationship to the qualifications, functions or duties of a real estate licensee.

Certain of the circumstances of said crime, as established by the whole of the evidence and reasonable inferences therefrom, are as follows: Respondent, as an active participant in an illegal and corrupt (criminal) scheme, acted as a conduit in obtaining loan funds for the ultimate purchase of properties by others. In acting as a conduit respondent knowingly made materially false statements in applications for loans submitted to a Savings and Loan Association to induce said institution to make the loans. In consideration of said conduct respondent received a total of \$4000; \$1000 for each of four loans. As a result of said conduct certain members of the public suffered financial losses.

FINDINGS RE: MITIGATION

Considering the whole of the evidence and all reasonable inferences therefrom: no mitigation to said criminal conduct is found.

FINDINGS RE: REHABILITATION

(A) As a result of the conviction set forth in Finding 4(A) said Court set forth in said Finding further adjudged as follows: "that pursuant to (sic) Title 18, United State Code, Section 3651, the defendant shall be confined in a jail-type institution for the first twenty (20) days; said days are to be served on consecutive weekends from 8:00 A.M. Saturday to 6:00 P.M. Sunday, commencing March 9, 1985 to March 10, 1985 and thereafter until the jail-type sentence has been completed; the balance of the

jail-type sentence is suspended and the defendant is placed on probation for a period of five years on the condition that he obey all federal, state and local laws; comply with all rules and regulations of the probation officer; keep and maintain the orders of the Court with respect to the jail-type sentence imposed; devote 2,500 hours to a charitable organization as approved by the probation officer and shall report to this Court in person once every one hundred and twenty days as arranged by the probation officer."

(B) Respondent has commenced compliance with said "2500 hour" condition by providing service to the local YMCA. Respondent has met, or is meeting all other terms and conditions of probation.

(C) Respondent, at some potential risk to his person, did fully cooperate with the FBI (Federal Bureau of Investigation) toward the end of "breaking" the criminal scheme referred to in Finding 5.

(D) To date respondent has paid \$28,000 in restitution.

8

Respondent's record of rehabilitation, set forth in Finding 7 and set forth by the evidence, is a start toward complete rehabilitation. However, the time from the conduct set forth in Findings 4 and 5, to the present time is insufficient to allow a record of clear and convincing rehabilitation.

* * * * *

DETERMINATION OF ISSUES

I

Cause exists pursuant to Sections 490 and 10177(b) of the Business and Professions Code for suspension or revocation of all licenses and license rights of respondent under the Real Estate Law by reason of Finding 4.

II

The objective of an administrative proceeding relating to licensing privileges is to protect the public. Such proceedings are not for the primary purpose of punishing an individual. Camacho v. Youde (1979) 95 Cal.App.3d 161, 165. In light of said public interest and by reason of Determination I combined with Findings 7 and 8 the only reasonable order which can be made herein is the one which follows hereinafter.

* * * * *

ORDER

All licenses and license rights of respondent James Phillip Knell, aka James Knell, aka Jim Knell, under the Real Estate Law are hereby revoked.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter as a result of the hearing had before me on September 20, 1985, at Los Angeles, California, and recommend its adoption as the decision of the Real Estate Commissioner.

DATED: Oct 3, 1985


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:hk

San Diego

1 MARILYN L. MOSHER, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, California 90012
5 (213) 620-4790

JUN 25 1985

K. S. K. K. K.

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-22262 LA
12 JAMES PHILLIP KNELL,)
13 aka James Knell, aka) A C C U S A T I O N
14 Jim Knell,)
15 Respondent.)

16 The complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for cause of accusation
18 against JAMES PHILLIP KNELL, aka James Knell, aka Jim Knell,
19 alleges as follows:

20 I

21 The complainant, Thomas McCrady, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in his official capacity.

24 II

25 JAMES PHILLIP KNELL, aka James Knell, aka Jim Knell
26 (hereinafter referred to as respondent), is presently licensed
27 and/or has license rights under the Real Estate Law (Part 1 of

1 Division 4 of the Business and Professions Code).

2 III

3 At all times herein mentioned, respondent was licensed by
4 the Department of Real Estate of the State of California as a real
5 estate broker.

6 IV

7 On or about February 25, 1985, in the United States
8 District Court for the Central District of California, respondent
9 was convicted on his plea of guilty of violating Title 18, U.S.C.,
10 Section 1014, 2(b) (Making False Statements and Causing Others to
11 Make False Statements in Loan Applications), a felony and a crime
12 involving moral turpitude.

13 V

14 The crime of which respondent was convicted bears a
15 substantial relationship to the qualifications, functions or duties
16 of a real estate licensee.

17 VI

18 Respondent's criminal conviction, as alleged above, is
19 cause under Sections 490 and 10177(b) of the Business and
20 Professions Code for suspension or revocation of all licenses and
21 license rights of respondent under the Real Estate Law.

22 /

23 /

24 /

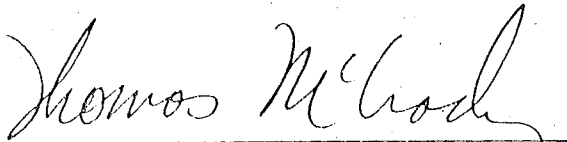
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1 WHEREFORE, complainant prays that a hearing be conducted
2 on the allegations of this Accusation and, that upon proof thereof,
3 a decision be rendered imposing disciplinary action against all
4 licenses and license rights of respondent JAMES PHILLIP KNELL, aka
5 James Knell, aka Jim Knell, under the Real Estate Law and for such
6 other and further relief as may be proper under other applicable
7 provisions of law.

8 Dated at Los Angeles, California
9 this 25th day of June, 1985.

10
11 
12 Deputy Real Estate Commissioner
13

14 cc: James Phillip Knell
15 Sacto.
16 JC
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