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NOV-9 1989

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY Laura B. Orwa

* * * *

In the Matter of the Accusation of)	NO. H-23497 LA
))
BETTER MORTGAGE BROKERS,))
INC., a California))
corporation,))
))
))
Respondent.))

DECISION

The Proposed Decision dated October 19, 1989, of Robert McCabe, Regional Manager, Department of Real Estate, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o' clock noon on November 29, 1989.

IT IS SO ORDERED November 3, 1989.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

John R. Liberator
By: John R. Liberator
Chief Deputy Commissioner

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-23497 LA
BETTER MORTGAGE BROKERS, INC.,)	
a California corporation,)	
Respondents.)	

PROPOSED DECISION

This matter was presided over as an uncontested case by Robert McCabe, Regional Manager, Department of Real Estate, as the designee of the Real Estate Commissioner, in Los Angeles, California on October 19, 1989.

Timothy L. Newlove, Counsel represented the complainant.

Respondent, BETTER MORTGAGE BROKERS, INC. and its attorney of record Charles S. Doskow, waived appearance at the hearing.

The matter of the Accusation of BETTER MORTGAGE BROKERS, INC., was submitted upon the written stipulation of the parties, and pursuant thereto, the following Decision is proposed, certified and recommended for adoption:

FINDINGS OF FACT

I

The complainant, Randolph Brenda, in his capacity as Acting Deputy Managing Commissioner III of the State of California, made the Accusation in his official capacity.

II

Respondent BETTER MORTGAGE BROKERS, INC. (hereinafter "BETTER MORTGAGE"), is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter referred to as the "Code").

III

At all times mentioned herein, respondent BETTER MORTGAGE was licensed by the California Department of Real Estate

(hereinafter "Department") as a corporate real estate broker.

IV

At all times material herein, John T. Marcell (hereinafter "Marcell") was and presently is the chief executive officer and president of BETTER MORTGAGE. At all times material herein, Marcell was not licensed by the Department as a real estate broker or salesperson.

V

At all times material herein, Gerald E. McGetrick (hereinafter "McGetrick") was and presently is the chief financial officer and secretary of BETTER MORTGAGE. At all times material herein, McGetrick was not licensed by the Department as a real estate broker or salesperson.

VI

All further reference to respondent BETTER MORTGAGE shall be deemed to refer to, in addition, to BETTER MORTGAGE, the officers (including Marcell and McGetrick), employees, agents and real estate licensees employed by and associated with BETTER MORTGAGE who at all times mentioned herein were engaged in the furtherance of the business or operations of BETTER MORTGAGE and who were acting within the course and scope of their authority and employment.

VII

At all times material herein, BETTER MORTGAGE engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(d) of the Code including the operation of a mortgage loan brokerage business with the public, wherein BETTER MORTGAGE solicited borrowers for loans secured by liens on real property and packaged said loans for referral to institutional lenders, all for or in expectation of compensation.

VIII

In performing the acts described hereinbelow, respondent BETTER MORTGAGE was at all times performing acts for which a real estate license is required, for or in expectation of compensation.

IX

On or about June 6, 1986, Kenneth N. Schafer and Ruth Schafer, husband and wife, (hereinafter collectively "Schafer"), applied for a loan at respondent BETTER MORTGAGE in order to refinance existing loans which were secured by residential real property owned by Schafer located at 1649 Kiowa Crest Drive,

Diamond Bar, California. At all times material in the process of obtaining said refinance loan, Marcell acted as the loan agent for Schafer.

X

On or about June 20, 1986, respondent BETTER MORTGAGE caused an escrow regarding the Schafer refinance loan to be opened at Ontario Escrow Service. Thereafter, BETTER MORTGAGE solicited lenders to provide the refinance loan. As part of said transaction, Safeco Title Insurance Company (hereinafter "Safeco") was requested to provide title insurance and to act as a sub-escrow for the purpose of paying-off the two existing loans secured by the above-described real property owned by Schafer. At all times material herein, the officers and employees of Safeco mistakenly believed that the escrow for said transaction was at respondent BETTER MORTGAGE. On or about October 23, 1986, escrow on the Schafer loan refinance closed. PFG Mortgage, Inc. provided a \$65,000 loan to Schafer. Respondent BETTER MORTGAGE earned a \$1,800 commission from the transaction.

XI

On or about October 23, 1986, the officers and employees of Safeco, based on the mistaken belief described in Paragraph X hereinabove, sent a \$7,200.73 check to respondent BETTER MORTGAGE. The check should have been sent to Ontario Escrow Service. On or about October 24, 1986, BETTER MORTGAGE caused the \$7,200.73 check to be deposited into a general account maintained by the company. Shortly after the \$7,200.73 check was sent by mistake to respondent BETTER MORTGAGE, the officers and employees of Safeco explained the matter to BETTER MORTGAGE and requested a return of the check or the funds represented by said check. In or about July, 1989, respondent BETTER MORTGAGE returned the said \$7,200.23 plus interest at the rate of ten (10) percent which had accumulated on said amount since October 23, 1986.

XII

During 1986 and 1987, respondent BETTER MORTGAGE employed and compensated persons not licensed by the Department, including Marcell and McGetrick, to solicit and negotiate loans secured by liens on real property, including, but not necessarily limited to the following transactions:

<u>BORROWER</u>	<u>LOAN AGENT</u>	<u>DATE</u>
Schafer	Marcell	6-86
Davis	McGetrick	2-87

DETERMINATION OF ISSUES

I

The conduct of respondent BETTER MORTGAGE, in retaining monies sent to it by mistake, as described in Paragraph XI hereinabove, constitutes negligence in the performance of acts which require a real estate license and is a violation of Section 10177(g) of the Code. Said conduct and violation are cause thereunder to suspend or revoke the real estate license and license rights of respondent BETTER MORTGAGE.

II

The conduct of respondent BETTER MORTGAGE, in employing and compensating persons who were not licensed under the corporate real estate broker license of BETTER MORTGAGE for performing acts which require a real estate license, as described in Paragraph XII hereinabove, constitutes a violation of Section 10137 of the Code. Said conduct and violation constitutes grounds for the suspension or revocation of the real estate license and license rights of respondent BETTER MORTGAGE.

ORDER

WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE WRITTEN STIPULATION OF THE PARTIES:

The corporate real estate broker license and all licensing rights of respondent BETTER MORTGAGE BROKERS, INC. are hereby revoked.

However respondent shall be entitled to apply for and be issued a restricted corporate real estate broker license pursuant to Section 10156.6 of the Code if respondent makes application within ninety (90) days from the effective date of the Decision herein.

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

(A) The restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction (including conviction on a plea of nolo contendere) to a crime which bears a substantial relationship to respondent's fitness or capacity as a real estate licensee.

(B) The restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated


provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to said restricted license.

(C) Respondent shall obey all laws of the United States, the State of California and its political subdivisions, and shall further obey and comply with all rules and regulations of the Real Estate Commissioner.

(D) Respondent shall report in writing to the Department of Real Estate as the Commissioner shall direct by his decision herein or by separate written order issued while the restricted license is in effect, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

(E) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions of the restricted license until at least one year has elapsed from the effective date of the Decision.

DATED: October 19, 1989.



ROBERT McCABE
Regional Manager
Department of Real Estate

Sacto. 2/27/89

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

RECEIVED
FEB 27 1989

DEPARTMENT OF REAL ESTATE
BY *Laura B. Chua*

In the Matter of the Accusation of

BETTER MORTGAGE BROKERS, INC.,
a California corporation,

Case No. H-23497 LA
OAH No. L-45123

Respondent(s)

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 _____

OFFICE OF ADMINISTRATIVE HEARINGS, 314 West First Street, Los Angeles, CA 90012

on the 28th day of AUGUST, 19 89, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: February 27, 1989

By *Tran Lone*
Counsel

cc: Better Mortgage Brokers, Inc.
Peter H. Norell, Esq.
Sacto.
OAH
MJF
RE 501 (Rev. 7/87)

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Mary*

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TIMOTHY L. NEWLOVE, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012

(213) 620-4790

NOV 15 1988
DEPARTMENT OF REAL ESTATE
BY *Laura B. Crow*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-23497 LA
BETTER MORTGAGE BROKERS, INC.,)	<u>A C C U S A T I O N</u>
a California corporation,)	
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)	
Respondent.)	

The Complainant, Randolph Brendia, Acting Deputy
Managing Deputy Commissioner III of the California Department of
Real Estate, for cause of accusation against BETTER MORTGAGE
BROKERS, INC., a California corporation, alleges as follows:

- The Complainant, Randolph Brendia, Acting Deputy
Managing Commissioner III of the California Department of Real
Estate, makes this Accusation in his official capacity.
- Respondent BETTER MORTGAGE BROKERS, INC.
(hereinafter "BETTER MORTGAGE") is presently licensed and/or has
license rights under the Real Estate Law, Part 1 of Division 4 of

1 the California Business and Professions Code (hereinafter referred
2 to as the "Code").

3 3. At all times mentioned herein, respondent BETTER
4 MORTGAGE was licensed by the California Department of Real Estate
5 (hereinafter "Department") as a corporate real estate broker.

6 4. At all times material herein, John T. Marcell
7 (hereinafter "Marcell") was and presently is the chief executive
8 officer and president of BETTER MORTGAGE. At all times material
9 herein, Marcell was not licensed by the Department as a real
10 estate broker or salesperson.

11 5. At all times material herein, Gerald E. McGetrick
12 (hereinafter "McGetrick") was and presently is the chief financial
13 officer and secretary of BETTER MORTGAGE. At all times material
14 herein, McGetrick was not licensed by the Department as a real
15 estate broker or salesperson.

16 6. All further reference to respondent BETTER MORTGAGE
17 shall be deemed to refer to, in addition to BETTER MORTGAGE, the
18 officers (including Marcell and McGetrick), employees, agents and
19 real estate licensees employed by and associated with BETTER
20 MORTGAGE who at all times mentioned herein were engaged in the
21 furtherance of the business or operations of BETTER MORTGAGE and
22 who were acting within the course and scope of their authority and
23 employment.

24 7. At all times material herein, respondent BETTER
25 MORTGAGE engaged in the business of, acted in the capacity of,
26 advertised, or assumed to act as a real estate broker in the State
27 of California within the meaning of Section 10131(d) of the Code

1 including the operation of a mortgage loan brokerage business with
2 the public, wherein BETTER MORTGAGE solicited borrowers for loans
3 secured by liens on real property and packaged said loans for
4 referral to institutional lenders, all for or in expectation of
5 compensation.

6 8. In performing the acts described hereinbelow,
7 respondent BETTER MORTGAGE was at all times performing acts for
8 which a real estate license is required, for or in expectation of
9 compensation.

10 9. On or about June 6, 1986, Kenneth N. Schafer and
11 Ruth Schafer, husband and wife, (hereinafter collectively
12 "Schafer"), applied for a loan at respondent BETTER MORTGAGE in
13 order to refinance existing loans which were secured by
14 residential real property owned by Schafer located at 1649 Kiowa
15 Crest Drive, Diamond Bar, California. At all times material in
16 the process of obtaining said refinance loan, Marcell acted as the
17 loan agent for Schafer.

18 10. On or about June 20, 1986, respondent BETTER
19 MORTGAGE caused an escrow regarding the Schafer refinance loan to
20 be opened at Ontario Escrow Service. Thereafter, BETTER MORTGAGE
21 solicited lenders to provide the refinance loan.

22 11. As part of said transaction, Safeco Title Insurance
23 Company (hereinafter "Safeco") was requested to provide title
24 insurance and to act as a sub-escrow for the purpose of paying-off
25 the two existing loans secured by the above-described real
26 property owned by Schafer.

27

/

1 12. At all times material herein during said
2 transaction, the officers and employees of Safeco mistakenly
3 believed that the escrow for said transaction was at respondent
4 BETTER MORTGAGE.

5 13. On or about October 23, 1986, escrow on the Schafer
6 loan refinance closed. PFG Mortgage, Inc. provided a \$65,000 loan
7 to Schafer. Respondent BETTER MORTGAGE earned a \$1,800 commission
8 from the transaction.

9 14. On or about October 23, 1986, the officers and
10 employees of Safeco, based on the mistaken belief described in
11 Paragraph 11 hereinabove, sent a \$7,200.73 check to respondent
12 BETTER MORTGAGE. The check should have been sent to Ontario
13 Escrow Service. On or about October 24, 1986, BETTER MORTGAGE
14 caused the \$7,200.73 check to be deposited into a general account
15 maintained by the company.

16 15. Shortly after the \$7,200.73 check was sent by
17 mistake to respondent BETTER MORTGAGE, the officers and employees
18 of Safeco explained the matter to BETTER MORTGAGE and requested a
19 return of the check or the funds represented by said check. From
20 October, 1986 to the present, the officers and employees of Safeco
21 have requested BETTER MORTGAGE to return said proceeds.
22 Respondent BETTER MORTGAGE has failed and refused and continues in
23 its failure and refusal to return the \$7,200.73.

24 16. During 1986 and 1987, respondent BETTER MORTGAGE
25 employed and compensated persons not licensed by the Department,
26 including Marcell and McGetrick, to solicit and negotiate loans
27 secured by liens on real property, including, but not necessarily

1 limited to the following transactions:

2	<u>BORROWER</u>	<u>LOAN</u> <u>AGENT</u>	<u>DATE</u>
3	Schafer	Marcell	6-86
4	Davis	McGetrick	2-87
5	Duff	Marcell	10-87
6	Orr	Marcell	11-87

7
8 FIRST CAUSE OF ACCUSATION

9 (Violation by respondent BETTER MORTGAGE of Sections
10 10176(i) and/or 10177(j) of the Code)

11 17. As a First Cause of Accusation, complainant
12 incorporates herein by this reference the Preamble and each of the
13 allegations in Paragraphs 1 through 15 hereinabove.

14 18. The conduct of respondent BETTER MORTGAGE, in
15 knowingly retaining monies sent to it by mistake and rejecting all
16 requests by Safeco for the return of said proceeds, as described
17 in Paragraph 15 hereinabove, constitutes dishonest dealing and is
18 a violation of Section 10176(i) and/or 10177(j) of the Code. Said
19 conduct and violation are cause to suspend or revoke the real
20 estate license and license rights of respondent BETTER MORTGAGE.

21 SECOND CAUSE OF ACCUSATION

22 (Violation by respondent BETTER MORTGAGE of
23 Section 10137 of the Code)

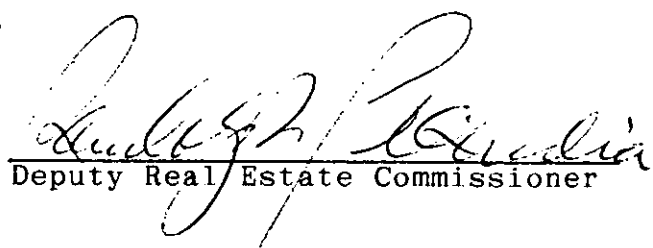
24 19. As a Second Cause of Accusation, complainant
25 incorporates herein by this reference the Preamble and each of the
26 allegations in Paragraphs 1 through 16 hereinabove.

27 /

1 20. The conduct of respondent BETTER MORTGAGE, in
2 employing and compensating persons who were not licensed under the
3 corporate real estate broker license of BETTER MORTGAGE for
4 performing acts which require a real estate license, as described
5 in Paragraph 16 hereinabove, constitutes a violation of Section
6 10137 of the Code. Said conduct and violation constitutes grounds
7 for the suspension or revocation of the real estate license and
8 license rights of respondent BETTER MORTGAGE.

9
10 WHEREFORE, complainant prays that a hearing be conducted
11 on the allegations on this Accusation and, that upon proof
12 thereof, a decision be rendered imposing disciplinary action
13 against all licenses and license rights of respondent BETTER
14 MORTGAGE BROKERS, INC., under the Real Estate Law (Part 1 of
15 Division 4 of the Business and Professions Code) and for such
16 other and further relief as may be proper under other applicable
17 provisions of law.

18 Dated at Los Angeles, California
19 this 15th day of November, 1988.

20
21 
22 Deputy Real Estate Commissioner
23
24
25

26 cc: Better Mortgage Brokers, Inc.
27 Sacto.
MJF

lbo