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FILED

JUL -8 1992

DEPARTMENT OF REAL ESTATE  
BY C. Bay

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-24840 LA
	)	
ERNEST SALT,	)	L-55207
	)	
	)	
Respondent.	)	

---

ORDER STAYING EFFECTIVE DATE

On June 13, 1992, a Decision was rendered in the above-entitled matter to become effective July 16, 1992.

IT IS HEREBY ORDERED that the effective date of the Decision of June 13, 1992, is stayed for a period of 30 days.

The Decision of June 13, 1992, shall become effective at 12 o'clock noon on August 14, 1992.

DATED: July 8, 1992

CLARK WALLACE  
Real Estate Commissioner

By: Randolph Brendia  
RANDOLPH BRENDIA  
Regional Manager



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation  
of:

MCDONNELL & CHURCH INVESTMENTS, INC., a  
California Corporation, formerly B.  
McDonnell Investments, Inc.: ERNEST SALT,  
individually and as designated officer  
of McDonnell & Church Investments, Inc.  
and BRIAN WILLIAM MCDONNELL;

Respondents.

H-24840 LA

L-55207

PROPOSED DECISION

This matter was tried before Rosalyn M. Chapman, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on April 27, 1992. Complainant was represented by James Beaver, Staff Counsel. Respondent Salt was not present at the trial or represented by counsel. There was service of process upon respondent Salt pursuant to Government Code Sections 11505(c) and 11509.

At trial, complainant made a motion to sever the Accusation against respondent Ernest Salt from the Accusations against other respondents, and said motion was granted.

At trial, the Accusation was amended as follows: At page 5, line 8, the number "XI" was stricken and in its stead the number "IX" was inserted.

On April 28, 1992, Complainant submitted certified Department documents re respondent's previous discipline. Said documents are hereby marked and admitted into evidence as Exhibit 8.

Oral and documentary evidence having been received, and the matter submitted, the Administrative Law Judge finds as follows:

## FINDINGS OF FACT

1. On her own motion, the Administrative Law Judge takes official notice that the Accusation was made by Stephen J. Ellis solely in his official capacity as Deputy Real Estate Commissioner of the State of California.

2. On an undetermined date, the Department of Real Estate, State of California (hereafter Department), issued real estate broker's license number 00318579 to Ernest Salt (hereafter respondent Salt). Said license is in full force and effect.

3. Respondent Salt's license to act as a real estate broker was disciplined by the Department on May 7, 1991, pursuant to stipulation by respondent Salt, for violating Business and Professions Code (BPC) Section 10177(d) and Title 10, California Code of Regulations (CCR) Section 2831 in that respondent Salt failed to refund money to a client in a timely manner and did not maintain a record of trust funds received from the client. The Department suspended respondent Salt's license for thirty days, stayed the suspension, and placed respondent Salt on probation for one year on the condition that he make restitution to the client.

4. On December 22, 1988, the Department issued corporate real estate broker's license number 01011608 to B. McDonnell Investments, Inc. (hereafter McDonnell), with respondent Salt as the designated officer. Effective July 17, 1991, McDonnell's name was changed on Department records to McDonnell & Church Investments, Inc., dba Inter-Financial Capital. Respondent Salt's license as designated officer of McDonnell is in full force and effect.

5. Effective May 7, 1991, respondent Salt's license as designated officer of McDonnell was disciplined in the same manner, and for the same reasons, as set forth above in Finding 3.

6. From its original licensure, and continuing to the present, McDonnell has acted as a real estate broker, within the meaning of BPC Section 10131(d), in that it operates and conducts a mortgage loan brokerage business wherein McDonnell solicits prospective borrowers and lenders for, and negotiates and arranges, loans secured by liens on real property, for another or others, in expectation of compensation.

7. McDonnell is a California corporation established by Brian McDonnell (hereafter B. McDonnell), who holds fifty percent of the outstanding stock in the corporation. At all times prior to April 18, 1991, B. McDonnell was not licensed by the Department as a real estate salesperson or broker.

8. Respondent Salt was initially hired by B. McDonnell to act as designated officer of McDonnell at a salary of \$500.00 per month. Shortly thereafter, respondent Salt's salary was decreased to \$250.00 per month. Respondent Salt was paid monthly for being McDonnell's designated officer until March 1992.

9. As designated officer, respondent Salt usually visited McDonnell's office once or twice a month and reviewed some, but not all, documents. McDonnell employs five or six licensed real estate agents. Respondent Salt trained one of those agents, but not the others. Respondent Salt, as designated officer, never met with McDonnell's loan officers, although he did occasionally review the accounts and offer suggestions.

10. Prior to April 18, 1991, McDonnell employed B. McDonnell and Danny Erez as real estate agents, within the meaning of BPC Section 10131(d), and paid them commissions, although neither was licensed by the Department. More specifically, B. McDonnell received commissions from McDonnell totaling \$10,000.00 from October 25, 1990, through January 8, 1991; and Erez received commissions from McDonnell totaling \$3,000.00 from June 13, 1989, to December 4, 1989.

11. On December 20, 1988, McDonnell established a bank account at Wells Fargo Bank, number [REDACTED] as a client trust account. On or about February 19, 1991, McDonnell established a bank account at the World Trade Bank, number 00111752, as a client trust account. On or about March 30, 1991, the funds in McDonnell's Wells Fargo Bank account were transferred to its World Trade Bank account.

12. The Wells Fargo Bank account, number [REDACTED], was in McDonnell's name, dba IFC Mortgage, which dba was not authorized by the Department prior to April 29, 1991.

13. Clients' trust funds, including fees for credit report and appraisals, were routinely placed into McDonnell's Wells Fargo Bank account.

14. B. McDonnell, who was not covered by a fidelity bond or licensed by the Department until April 18, 1991, was a signatory on the Wells Fargo Bank account and could make withdrawals prior to April 18, 1991. B. McDonnell, who was not licensed by the Department, was a signatory on the World Trade Bank account and could make withdrawals prior to April 18, 1991.

15. Respondent Salt was not a signatory on either Wells Fargo Bank account or World Trade Bank account.

16. During the period of January 1, 1989, to March 31, 1991, McDonnell failed to deposit trust funds into a neutral escrow depository, into the hands of a principal on behalf of

whom the funds were received, or into a trust fund account in the name of the broker as a trustee, but instead deposited funds into Wells Fargo Bank account or World Trade Bank account, both of which were maintained by McDonnell under a fictitious business name and not in the name of McDonnell as a real estate broker and as a trustee.

17. During the period of January 1, 1989, to March 31, 1991, McDonnell failed to maintain a formal trust fund receipt journal and a formal trust fund disbursement journal in connection with the Wells Fargo Bank account and World Trade Bank account, or other records of the receipt and disposition of all funds accepted in trust, which conformed to the requirements of 10 CCR Section 2831.

18. During the period of January 1, 1989, to March 31, 1991, McDonnell failed to maintain adequate separate records for each beneficiary or transaction, accounting therein for all trust funds received, deposited, and disbursed, which conformed to the requirements of 10 CCR Section 2831.1.

19. During the period of January 1, 1989, to March 31, 1991, McDonnell failed to perform a monthly reconciliation of the records and the receipt and disposition of all trust funds received in trust and the balance of all separate beneficiary transaction records, as required by 10 CCR Section 2831.2.

20. As of January 31, 1991, World Trade Bank account was approximately \$1,771.00 less than the existing aggregate trust fund liability to all owners of said fund, and there was no record indicating that the borrowers had given permission to McDonnell for this deficit, as required by CCR Section 2832.1.

21. During the period of January 1, 1989, to March 3, 1991, respondent Salt failed to provide borrowers with the written mortgage loan disclosure statement required by BPC Section 10240(a) before the borrower became obligated to complete the loan; rather, McDonnell provided the borrowers only with a good faith estimate.

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Pursuant to the foregoing Findings of Fact, the Administrative Law Judge makes the following Determination of Issues:

CONCLUSIONS OF LAW

Grounds exist to revoke or suspend respondent Salt's license to act as a real estate broker pursuant to Business and Professions Code (BPC) Section 10177(h) in that respondent Salt, as the designated officer, failed to properly supervise McDonnell, as set forth above in Findings 4, 8, and 9, resulting in McDonnell's violation of the following provisions of law:

A. McDonnell violated BPC Section 10137 by using unlicensed employees as real estate agents, as set forth in Findings 6, 7, and 10 above.

B. McDonnell violated BPC Section 10145 and 10 CCR Section 2830, as set forth in Findings 11 - 16 above.

C. McDonnell violated 10 CCR Section 2831, as set forth in Finding 17 above.

D. McDonnell violated 10 CCR Section 2831.1, as set forth in Finding 18 above.

E. McDonnell violated 10 CCR Section 2831.2, as set forth in Finding 19 above.

F. McDonnell violated 10 CCR Section 2832.1, as set forth in Finding 20 above.

G. McDonnell violated 10 CCR Section 2934, as set forth in Findings 11 and 14 above.

H. McDonnell violated BPC Section 10240(a) by failing to provide borrowers with required disclosure forms, as set forth in Finding 21 above.

\* \* \* \* \*

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

Real estate broker's license number 00318579 issued to respondent Ernest Salt is hereby revoked.

DATED: May 28, 1992

*Rosalyn M. Chapman*  
ROSALYN M. CHAPMAN  
Administrative Law Judge  
Office of Administrative Hearings

RMC:mh



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Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, California, 90012

Telephone: (213) 897-3937

RECEIVED

*C. Berg*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	DRE No. H-24840 LA
<u>MCDONNELL &amp; CHURCH INVESTMENTS, INC.</u> , a	)	
California Corporation, formerly B.	)	OAH No. L-55207
McDonnell Investments, Inc.;	)	
and <u>BRIAN WILLIAM MCDONNELL</u> ;	)	
Respondents.	)	

STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

I

STIPULATION

It is hereby stipulated by and between MCDONNELL & CHURCH INVESTMENTS, INC, a California Corporation( herein "MCI", and BRIAN WILLIAM MCDONNELL (herein "MCDONNELL"), and the Complainant acting by and through James L. Beaver, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on September 17, 1991, in this matter (hereinafter "the Accusation"):

A. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents MCI and MCDONNELL (herein collectively "Respondents") at a formal

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hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation.

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

C. Heretofore, Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that Respondents understand that by withdrawing said Notice of Defense, Respondents will thereby waive Respondents' right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that Respondents will waive other rights afforded to Respondents in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

D. Respondents admit the factual allegations in Paragraphs I through XVIII, inclusive, of the Accusation and stipulate, subject to the limitations set forth below, that the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

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E. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation And Agreement In Settlement and Order as his decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order" below. In the event that the Commissioner in his discretion does not adopt the Stipulation And Agreement In Settlement and Order, the Stipulation And Agreement In Settlement and Order shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

II

DETERMINATION OF ISSUES

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

A. In employing Danny Erez and McDONNELL, as described in Paragraphs VIII and IX of the Accusation, Respondent MCI violated Section 10137 of the Code. Each of said violations

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separately constitutes cause for the suspension or revocation of all real estate licenses and license rights of Respondent MCI pursuant to the provisions of Section 10137 of the Code.

B. The conduct and omissions of Respondent McDONNELL described in Paragraphs X and XI of the Accusation violated Section 10130 of the Code. Said violation constitutes cause for suspension or revocation of all real estate licenses and license rights of Respondent McDONNELL pursuant to the provisions of Section 10177(d) of the Code.

C. The acts and omissions of Respondent MCI described in Paragraphs XVI and XVII of the Accusation violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>	
XVI (a)	Sec. <u>10145</u>	of the Code, and
	Sec. <u>2830</u>	of the Regulations;
XVI (b)	Sec. <u>2831</u>	of the Regulations;
XVI (c)	Sec. <u>2831.1</u>	of the Regulations;
XVI (d)	Sec. <u>2831.2</u>	of the Regulations;
XVI (e)	Sec. <u>2832.1</u>	of the Regulations;
XVI (f)	Sec. <u>2834</u>	of the Regulations;
XVII	Sec. <u>10240</u>	of the Code.

Each of the foregoing violations separately constitutes cause for the suspension or revocation of all licenses and license rights of Respondent MCI under the provisions of Section 10177(d) of the Code.

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III  
ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

A. MCDONNELL & CHURCH INVESTMENTS, INC.:

(1) The license and license rights of Respondent MCDONNELL & CHURCH INVESTMENTS, INC. under the provisions of Part 1 of Division 4 of the Business and Professions Code are hereby suspended for the sixty (60) day period commencing upon the effective date of the Decision entered pursuant to this Stipulation.

(2) However, the final thirty (30) days of the sixty-day suspension period shall be stayed upon the condition that no further cause for disciplinary action against the real estate licenses and license rights of such Respondent shall occur within one (1) year after the effective date of the Decision herein.

(3) Furthermore, the initial thirty (30) day portion of the sixty day suspension period shall be permanently stayed if, prior to the effective date of the Decision herein, said Respondent petitions pursuant to Section 10175.2 of the Code and pays to the Real Estate Recovery Account \$125.00 for each day stayed for a maximum of \$3,750.00. The adoption of this provision in the Decision of the Real Estate Commissioner shall constitute a determination that it would not be against the public interest to permit said Respondent to pay a monetary penalty. Payment of the monetary penalty shall be by certified or cashier's check made payable to the Department of Real Estate.

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B. BRIAN WILLIAM McDONNELL:

(1) The license and license rights of Respondent BRIAN WILLIAM McDONNELL under the provisions of Part 1 of Division 4 of the Business and Professions Code are hereby suspended for the sixty (60) day period commencing upon the effective date of the Decision entered pursuant to this Stipulation.

(2) However, the initial thirty (30) day portion of the sixty day suspension period shall be permanently stayed if, prior to the effective date of the Decision herein, said Respondent petitions pursuant to Section 10175.2 of the Code and pays to the Real Estate Recovery Account \$125.00 for each day stayed for a maximum of \$3,750.00. The adoption of this provision in the Decision of the Real Estate Commissioner shall constitute a determination that it would not be against the public interest to permit said Respondent to pay a monetary penalty. Payment of the monetary penalty shall be by certified or cashier's check made payable to the Department of Real Estate.

(3) Furthermore, the the final thirty (30) days of the sixty-day suspension period shall be stayed on condition that:

- (a) No further cause for disciplinary action against the real estate licenses and license rights of such Respondent shall occur within one (1) year after the effective date of the Decision herein; and
- (b) Respondent McDONNELL shall, within six (6) months from the effective date of the Decision herein, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may, after notice and an opportunity for a hearing, order suspension of the Respondent McDONNELL's licenses and license rights until Respondent passes the examination;

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IV

EXECUTION OF STIPULATION

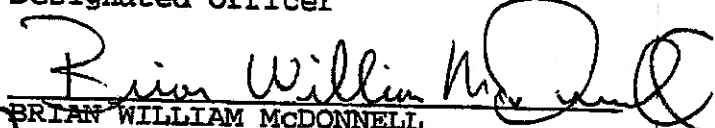
I have read the Stipulation And Agreement In Settlement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the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

DATED: 4-2-92

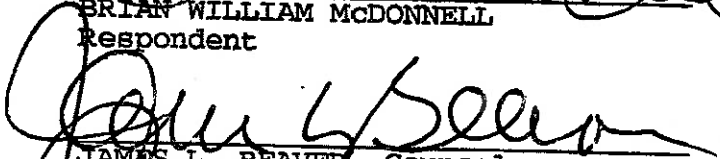
MCDONNELL & CHURCH INVESTMENTS, INC.  
Respondent

  
By DAVID ANTHONY CHURCH  
Designated Officer

DATED: 4-2-92


  
BRIAN WILLIAM MCDONNELL  
Respondent

DATED: 4-2-92

  
JAMES L. BEAVER, Counsel

APPROVED AS TO FORM.

DATED: 4/2/92

  
EDWARD R. BROWN  
Attorney for Respondents

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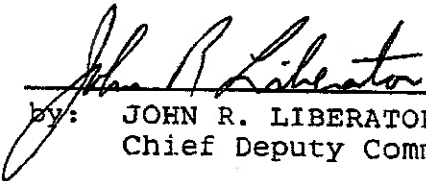
DECISION

The foregoing Stipulation And Agreement In Settlement  
and Order is hereby adopted as the Decision and Order of the Real  
Estate Commissioner in the above entitled matter with respect to  
Respondents McDONNELL & CHURCH INVESTMENTS, INC. and BRIAN WILLIAM  
McDONNELL.

This Decision shall become effective at 12 o'clock noon  
on May 8, 1992.

Dated: April 21, 1992

CLARK WALLACE  
Real Estate Commissioner

  
by: JOHN R. LIBERATOR  
Chief Deputy Commissioner



Sac

1 James L. Beaver, Counsel  
2 Department of Real Estate  
3 107 South Broadway, Room 8107  
4 Los Angeles, California, 90012  
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12 (213) 620-4790

RECEIVED  
C. Berg

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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12	In the Matter of the Accusation of	)	H- 24840	LA
13	MCDONNELL & CHURCH INVESTMENTS, INC., a	)		
14	California Corporation, formerly B.	)		
15	McDonnell Investments, Inc.; ERNEST SALT,	)		<u>A C C U S A T I O N</u>
16	individually and as designated officer	)		
17	of McDonnell & Church Investments, Inc.;	)		
18	and BRIAN WILLIAM MCDONNELL;	)		
19	Respondents.	)		

18 The Complainant, STEVEN J. ELLIS, a Deputy Real Estate  
19 Commissioner of the State of California, for cause of Accusation  
20 against MCDONNELL & CHURCH INVESTMENTS, INC., a California  
21 Corporation, formerly B. McDonnell Investments, Inc., ERNEST SALT,  
22 individually and as designated officer of MCDONNELL & CHURCH  
23 INVESTMENTS, INC., and BRIAN WILLIAM MCDONNELL (herein  
24 "Respondents"), is informed and alleges as follows:

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26 The term "the Regulations" as used herein refers to  
27 provisions of Chapter 6, Title 10, California Code of Regulations.

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II

The Complainant, STEVEN J. ELLIS, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

III

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code").

IV

At all times mentioned herein, Respondent McDONNELL & CHURCH INVESTMENTS, INC., a California Corporation, formerly B. McDonnell Investments, Inc., (herein "MCI") was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through ERNEST SALT (herein "SALT") as the officer and broker responsible pursuant to the provisions of Section 10159.2(a) of the Code for supervising the activities requiring a real estate license conducted on behalf of MCI by MCI's officers and employees.

V

At all times mentioned herein, Respondent SALT was and now is licensed by the Department individually as a real estate broker and as an officer of MCI. At all times mentioned herein since April 18, 1991, Respondent BRIAN WILLIAM McDONNELL (herein "McDONNELL") has been and now is licensed by the Department as a real estate salesperson; prior to April 18, 1991, McDONNELL was unlicensed.

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VI

All further references herein to "Respondents" include the parties identified in Paragraphs IV and V above, and also include the officers, directors, employees, agents and real estate licensees employed by or associated with said parties and who at all times herein mentioned were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority and employment.

VII

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage with the public wherein Respondents solicited prospective borrowers and lenders for and negotiated and arranged loans secured by a lien on real property, for another or others, for or in expectation of compensation.

VIII

From on or about February 27, 1989, through on or about September 10, 1989, in course of the activities described in Paragraph VII, above, Respondents employed and compensated Danny Erez and McDONNELL, persons then not licensed by the Department and known to Respondents not to be licensed by the Department, to perform acts requiring a real estate license for and in the name of Respondents, including but not limited to soliciting borrowers for applications for loans to be secured directly by liens on real

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property, and including but not limited to the acts described in Paragraph IX, below.

IX

In the course of the employment described in Paragraph VIII, above:

(a) On or about February 27, 1989, McDONNELL, without first obtaining any license from the Department, for and in expectation of compensation, as agent for MCI, solicited and obtained an application from Charles and Laurie Weissman for a purchase money mortgage loan to be arranged by Respondents to be secured by a lien on real property at 1762 Regan Circle, Simi Valley, California;

(b) On or about September 10, 1989, Danny Erez, without first obtaining any license from the Department, for and in expectation of compensation, as agent for MCI, solicited and obtained an application from Ben and Edna Yedid for a mortgage loan to be arranged by Respondents to be secured by a lien on real property at 5928 Tulane Street, San Diego, California.

X

In employing Danny Erez and McDONNELL, as described in Paragraphs VIII and IX, above, Respondents violated Section 10137 of the Code. Each of said violations separately constitutes cause for suspension or revocation of all real estate licenses and license rights of Respondents pursuant to the provisions of Section 10137 of the Code.

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SECOND CAUSE OF ACCUSATION

XI

Complainant incorporates herein the allegations of Paragraphs I through X, inclusive, hereinabove.

XII

The conduct and omissions of Respondent McDONNELL described in Paragraphs X and XI, above, violated Section 10130 of the Code. Said violation constitutes cause for suspension or revocation of all real estate licenses and license rights of Respondent McDONNELL pursuant to the provisions of Section 10177 (d) of the Code.

THIRD CAUSE OF ACCUSATION

XIII

Complainant incorporates herein the allegations of Paragraphs I through XII, inclusive, hereinabove.

XIV

At all times mentioned herein, in connection with the activities described in Paragraph VII, above, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of actual and prospective borrowers and lenders and thereafter made disbursement of such funds. From time to time mentioned herein these trust funds were maintained by Respondents in bank accounts, including but not necessarily limited to the following accounts:

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B. McDonnell Investments, Inc. dba IFC Mortgage  
Account Number [REDACTED]  
Wells Fargo Bank  
9600 Santa Monica Blvd.  
Beverly Hills, CA 90210  
(herein "MCI Account #1")

McDonnell & Church Investments, Inc. IFC Trust Account  
Account No. [REDACTED]  
World Trade Bank  
9944 Santa Monica Blvd.  
Beverly Hills, CA 90212  
(herein "MCI Account #2")

XV

On or about April 29, 1991, the Department completed an examination of Respondents' books and records pertaining to Respondents' activities, as described in Paragraph VII, for a twenty-six month period ending March 31, 1991, which revealed violations of the Code and Chapter 6, Title 10, California Code of Regulations (herein "the Regulations"), as set forth in the following paragraphs.

XVI

In connection with the trust funds described in Paragraph XIV, Respondents:

- (a) Failed to deposit said trust funds into a neutral escrow depository, into the hands of a principal on whose behalf the funds were received, or into a trust fund account in the name of the broker as trustee, but instead deposited said funds into the two accounts identified in Paragraph XV, above, which accounts were then maintained by Respondents under fictitious business names, and not in the name of MCI as broker and as trustee;
- (b) Failed to maintain a formal trust fund receipts journal and a formal trust fund disbursements journal in

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connection with the two accounts identified above, or other records of the receipt and disposition of all trust funds accepted in trust by Respondents conforming to the requirements of Section 2831 of the Regulations;

(c) Failed to maintain adequate separate records for each beneficiary or transaction, accounting therein for all trust funds received, deposited, and disbursed, conforming to the requirements of Section 2831.1 of the Regulations;

(d) Failed to perform a monthly reconciliation of the records of the receipt and disposition of all trust funds received in trust by Respondents, and the balance of all separate beneficiary or transaction records;

(e) Disbursed or caused or allowed the disbursement of trust funds from MCI Account #2, where the disbursement of said funds reduced the funds in the said account to an amount which, on January 31, 1990, was approximately \$1771.12 less than the existing aggregate trust fund liability to all owners of said funds, without first obtaining the prior written consent of every principal who was an owner of said funds;

(f) Permitted the withdrawal of trust funds from the two accounts by McDONNELL, who was neither licensed by the Department nor covered by a fidelity bond in any amount at the time of the withdrawals.

XVII

During the twenty-six month period described in Paragraph XV, above, in connection with the mortgage loan brokerage activities described in Paragraph VII, above,

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Respondents failed to provide borrowers the written mortgage loan disclosure statement prescribed by Section 10240(a) of the Code before the borrower became obligated to complete the loan.

XVIII

The acts and omissions of Respondents MCI and SALT described in Paragraphs XVI and XVII, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>	
XVI (a)	Sec. 10145	of the Code, and
	Sec. 2830	of the Regulations;
XVI (b)	Sec. 2831	of the Regulations;
XVI (c)	Sec. 2831.1	of the Regulations;
XVI (d)	Sec. 2831.2	of the Regulations;
XVI (e)	Sec. 2832.1	of the Regulations;
XVI (f)	Sec. 2834	of the Regulations;
XVII	Sec. 10240	of the Code.

Each of the foregoing violations separately constitutes cause for the suspension or revocation of all licenses and license rights of Respondents MCI and SALT under the provisions of Section 10177(d) of the Code.

FOURTH CAUSE OF ACCUSATION

XIX

Complainant incorporates herein the allegations of Paragraphs I through XVIII, inclusive, hereinabove.

XX

Respondent SALT caused, suffered, and permitted Respondents MCI and McDONNELL to violate Sections 10130, 10137, 10140, 10145 of the Code, and Sections 2830, 2831, 2831.1, 2831.2, 2832.1, and 2834 of the Regulations, as described in Paragraphs VIII through XVII, hereinabove.

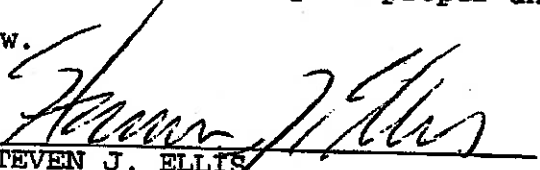


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XXI

The conduct, acts and omissions of Respondent SALT, as described in Paragraphs XX, above, independently and collectively constitute failure on the part of SALT, as the officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of MCI required by Section 10159.2 of the Code, and is cause for the suspension or revocation of all real estate licences and license rights of SALT pursuant to the provisions of Section 10177(h) of the Code.

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

  
STEVEN J. ELLIS  
Deputy Real Estate Commissioner

Dated at Los Angeles, California  
this 17th day of September , 1991.

cc: McDonnell & Church Investments, Inc.  
Ernest Salt  
Brian William McDonnell  
sacto.  
JO