

**FILED**  
AUG 13 1999

DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-28033 LA
	)	
	)	L-1999040380
MICHELE MARCELLA LANCE,	)	
doing business as American	)	
Home Loans and Investments	)	
of the High Desert,	)	
	)	
	)	
Respondent.	)	
	)	

---

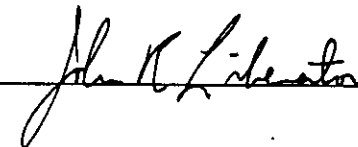
DECISION

The Proposed Decision dated July 26, 1999, 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.

This Decision shall become effective at 12 o'clock noon on September 2, 1999.

IT IS SO ORDERED August 9, 1999.

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

  
\_\_\_\_\_

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	No. H 28033 LA
MICHELE MARCELLA LANCE,	)	
doing business as American	)	
Home Loans and Investments of	)	OAH NO. L-1999040380
the High Desert,	)	
	)	
	)	
Respondent.	)	

---

PROPOSED DECISION

On June 24, 1999, at Los Angeles, California, Joseph D. Montoya, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, heard this matter.

Mr. Tuan Van Lai, Staff Counsel, represented the Complainant. Ms. Michele Lance appeared in propria persona.

Evidence was received and the matter argued, and the case deemed submitted on the hearing date. The Administrative Law Judge makes his findings of fact, conclusions of law, and orders, as follows.

FACTUAL FINDINGS

1. Thomas McCrady filed the Accusation in the above-captioned matter while he was acting in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate ("the Department"), State of California.

2. (A) Respondent Michelè Marcella Lance (sometimes "Lance") is an individual presently licensed as a real estate broker. Holding license no. 00922428, she was first licensed as a broker in 1993. Her license is valid through October 20, 2001.

(B) The Department authorized her to use the fictitious business name "American Home Loans and Investments of the High Desert" ("American") as of January 11, 1994. That

fictitious name, or "dba", was cancelled by her effective January 22, 1998.

3. During the period from January 1, 1997, through January 22, 1998, Respondent doing business as American engaged in the business of a real estate broker, including the operation and conduct of a mortgage loan brokerage business with the public. In that regard, she or those working with her in the American firm solicited prospective borrowers, lenders or investors for loans secured directly or collaterally by liens on real estate. Further, she and those associated with her in the American firm negotiated, serviced, processed, or arranged such loans.

4. Between June 5 and July 7, 1998, the Department conducted an audit of Respondent's books and records, as they pertained to the operation of American. The audit was for the period from January 1, 1997, through January 30, 1998. That audit revealed the following business practices by Respondent or her firm during the audit period:

(A) A trust account had been set up, but not in Respondent's name. Instead, it was in her business name, American Home Loans and Investments of the High Desert. Respondent was not a signatory on the trust account. Instead, the signatory was her business associate, Mr. Dwayne Brown, who was the actual owner of the business.

(B) The audit established, and it is hereby found, that the trust account was short in the approximate amount of \$2,138.00. Respondent caused, permitted, and/or allowed this shortage to occur, by allowing or permitting the withdrawal or disbursement of funds from the trust account without the prior written consent of each and every principal of the trust account. That reduced the balance of funds in the trust account to an amount less than the then-existing aggregate trust fund liability.

(C) It was established that a completed columnar record was not maintained for the trust account.

(D) It was established that separate beneficiary records were not maintained for the trust account.

(E) It was established that a monthly reconciliation of trust records was not maintained for the trust account during the audit period.

(F) It was established that borrowers were not provided with approved mortgage loan disclosure statements.

5. The shortage in the trust account followed from mis-management of that account, including the failure to keep the

records required by the Department, as set forth in Findings 4(C) through 4(E), above. Thus, invoices for credit checks were paid from the trust account without the firm knowing whether there were funds on hand to pay such bills.

6. Respondent may not have been aware that Mr. Brown, the true owner of the firm, had even opened up the trust account, as she was not a signatory on the account. Her relationship with Mr. Brown was complicated by the fact that her estranged husband was working with Mr. Brown at the firm, and her marriage was in the process of dissolving through a bitter divorce.

7. Respondent had terminated her relationship with Mr. Brown prior to the time of the audit. There was no evidence of significant harm to the public. Respondent's firm did provide federal loan disclosure forms to borrowers, which are similar in many respects to the state-required forms. Respondent has never been disciplined by the Department. She has been honored by her peers for outstanding performance and service as a real estate professional, and has undertaken training to increase her professional capacity. Since the audit, she has changed business practices to avoid violations of this type.

#### CONCLUSIONS OF LAW

1. Cause was established to suspend or revoke the license of Respondent Lance pursuant to Business and Professions Code section 10145 and Title 10, California Code of Regulations, section 2832.1,<sup>1</sup> for a shortfall in trust funds, based on Findings of Fact 4(A) and (B).

2. Cause was established to suspend or revoke the license of Respondent Lance pursuant to CCR section 2832, for failing to open and hold the trust account in her own name, rather than in her business name, based on Finding of Fact 4(A).

3. Cause was established to suspend or revoke the license of Respondent Lance pursuant to Code section 10145(g) and CCR section 2831, for failing to maintain completed columnar

<sup>1</sup> Hereafter, all statutory citations shall be to the Business and Professions Code, cited as "Code", along with the section number, unless otherwise noted. Citations to regulations shall be to Title 10 of the California Code of Regulations, cited as "CCR", along with the section number, unless otherwise noted.

records for a trust account, based on Finding of Fact 4(C).

4. Cause was established to suspend or revoke the license of Respondent Lance pursuant to Code section 10145(g) and CCR section 2831.1, for failing to maintain separate beneficiary records for a trust account, based on Finding of Fact 4(D).

5. Cause was established to suspend or revoke the license of Respondent Lance pursuant to Code section 10145(g) and CCR sections 2831.1 and 2831.2, for failing to maintain a monthly reconciliation of all trust funds received, based on Finding of Fact 4(E).

6. Cause was established to suspend or revoke the license of Respondent Lance pursuant to Code section 10240 for failing to provide borrowers with approved mortgage loan statements, based on Finding of Fact 4(F).

7. There are mitigating circumstances which should be considered when determining what discipline, if any, should be imposed, based on Findings of Fact 6 and 7. There is some evidence of rehabilitation, based on Finding of Fact 7.

8. The public welfare can be protected by a discipline order which imposes less than an outright revocation of Respondent's license, based on the foregoing, and the discussion below.

#### Discussion and Rationale:

Reasonable inferences indicate that Respondent had essentially lent her license to Mr. Brown, the owner of the firm. While she attempted to supervise the operations adequately, she was plainly unable to do so. That conclusion must be reached even if Respondent's testimony is given full weight.

Respondent contended that she had counseled against holding a trust account because of the benefits for the business were outweighed by the administrative headaches and inconvenience. She contended that she regularly reviewed the real estate transactions then taking place. Yet, for at least one year she did not perceive that the firm was operating a trust account. This may have been complicated by the fact that she was associated with another firm during this period, as her own evidence indicates.

There is evidence that the strains of the dissolution of her marriage, and her former husband's sometimes abusive behavior during the audit period may have distracted her. But, she must remain responsible as the licensed broker for the firm;

these violations of the law occurred on her watch.

Fortunately, there is no evidence of any significant harm to the public. Respondent has many positive professional accomplishments, and exhibited a keen awareness at the hearing that her practices during the audit period were unprofessional.

The purpose of hearings of this type are to protect the public, and not to punish the Respondent. (Camacho v. Youde (1979) 95 Cal. App. 3d 161, 164.) In these circumstances, the revocation of Respondent's license, stayed, and the issuance of a restricted license should be sufficient to protect the public in the future.

#### ORDER

1. All licenses and licensing rights of Respondent Michele Marcella Lance under the Real Estate Law are revoked; provided, however, a restricted real estate broker's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

(A) The restricted license issued<sup>n</sup> to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

(B) The restricted license issued to Respondent 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 the restricted license.

(C) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

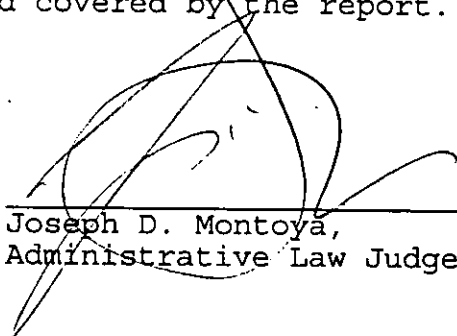
(D) Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

(E) Respondent shall, within six months from the effective date of this Decision, 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 order suspension of Respondent's license until Respondent passes the examination.

(F) Respondent shall report in writing to the Department of Real Estate as the Real Estate 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.

Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

July 26, 1999

  
\_\_\_\_\_  
Joseph D. Montoya,  
Administrative Law Judge

SACTO  
file

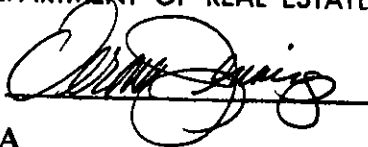
BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

FILED  
MAY - 7 1999  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of )  
 )  
MICHELE MARCELLA LANCE, )  
etc., )  
 )  
Respondent. )

Case No. H-28033 LA  
OAH No. L-1999040380

By 

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, 320 West 4th Street, Suite 630, Los Angeles, California, on June 24, 1999, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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

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

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

Dated: May 7, 1999.

DEPARTMENT OF REAL ESTATE

cc: Michele Marcella Lance  
Sacto.  
OAH

By:   
TUAN VAN LAI, Counsel



5/20/00  
Flay

Tuan Van Lai, Counsel  
State Bar No. 182967  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, California 90012  
Telephone: (213) 897-3937

**FILED**  
FEB 26 1999  
DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

11	In the Matter of the Accusation of )	No. H-28033 LA
12	MICHELE MARCELLA LANCE, )	<u>A C C U S A T I O N</u>
13	doing business as )	
14	American Home Loans and )	
15	Investments of the High )	
16	Desert, )	
	Respondent. )	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MICHELE MARCELLA LANCE, doing business as American Home Loans and Investments of the High Desert (hereinafter referred to as Respondent), is informed and alleges in his official capacity as follows:

1.

At all times mentioned herein, Respondent was and still is licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the Business and Professions

Code, hereinafter "Code").

2.

On or about January 11, 1994, Respondent was licensed by the Department to do business under the fictitious business name of "American Home Loans and Investments of the High Desert". On or about January 22, 1998, Respondent canceled said license with the Department.

3.

All further references herein to "Respondent" include the party identified in Paragraph 2 and also the employees, agents and real estate licensees employed by or associated with said party and who at all times herein mentioned were engaged in the furtherance of the business or operations of said party and who were acting within the course and scope of their authority and employment.

4

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker for others 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 business with the public wherein Respondent solicited prospective borrowers, lenders or investors, for and/or negotiated, serviced, processed and/or arranged loans secured directly or collaterally by liens on real property for another or others, for or in expectation of compensation.

/



5.

1  
2 At all times material herein, in connection with the  
3 activities described in Paragraph 4, above, Respondent accepted or  
4 received funds including funds in trust (hereinafter "trust  
5 funds") from or on behalf of actual and prospective borrowers,  
6 lenders, investors and/or parties to mortgage loan transactions  
7 handled by Respondent and thereafter made deposits and/or  
8 disbursements of such funds. From time to time herein mentioned,  
9 said trust funds were deposited and/or maintained by Respondent,  
10 in bank accounts, including but not limited to Account No.  
11 053-012434, known as the "American Home Loans & Investments of the  
12 High Desert Inc. Trust Account" (hereinafter "Trust Account") at  
13 Antelope Valley Bank located at 31924 Crown Valley Road, Acton,  
14 California.

6.

15  
16 On or about July 7, 1998, the Department completed an  
17 examination of the books and records of Respondent pertaining to  
18 the real estate and trust fund handling activities described in  
19 Paragraphs 4 and 5, above, covering a period approximately from  
20 January 1, 1997, through January 30, 1998, which examination  
21 revealed violations of the Code and of Title 10, Chapter 6,  
22 California Code of Regulations (hereinafter "Regulations") as set  
23 forth below.

7.

24  
25 In the course of activities described in Paragraphs 4  
26 and 5, above, and during the examination period described in  
27 Paragraph 6, Respondent acted in violation of the Code and the



1 Regulations in that:

2 (a) as of January 30, 1998, Trust Account had a  
3 shortage in the amount of approximately \$2,138.00. Respondent  
4 caused, permitted and/or allowed the withdrawal or disbursement of  
5 trust funds from this account, without the prior written consent  
6 of every principal who then was an owner of funds in the account,  
7 thereby reducing the balance of funds in the said account to an  
8 amount less than the existing aggregate trust fund liability of  
9 the broker to all owners of said trust funds, in violation of Code  
10 Section 10145 and Regulation 2832.1;

11 (b) Trust Account was not set up in Respondent's name,  
12 in violation of Regulation 2832;

13 (c) Respondent failed to maintain a completed columnar  
14 record for Trust Account, in violation of Regulation 2831;

15 (d) Respondent failed to maintain separate beneficiary  
16 records for Trust Account, in violation of Regulation 2831.1;

17 (e) Respondent failed to maintain a monthly  
18 reconciliation of records described in Regulations 2831 and 2831.1  
19 for Trust Account, in violation of Regulation 2831.2; and

20 (f) Respondent failed to provide borrowers with  
21 approved mortgage loan disclosure statements, in violation of Code  
22 Section 10240.

23 /

24 /

25 /

26 /

27 /



1  
2 The conduct, acts and omissions of Respondent as described  
3 in Paragraph 7, above, constitute cause for the suspension or  
4 revocation of all real estate licenses and license rights of  
5 Respondent under the provisions of Code Section 101077(d).  
6

7 WHEREFORE, Complainant prays that a hearing be conducted  
8 on the allegations of this Accusation and that upon proof thereof, a  
9 decision be rendered imposing disciplinary action against all  
10 licenses and/or license rights of Respondent MICHELE MARCELLA LANCE,  
11 doing business as American Home Loans and Investments of the High  
12 Desert, under the Real Estate Law (Part 1 of Division 4 of the  
13 Business and Professions Code) and for such other and further relief  
14 as may be proper under other applicable provisions of law.

15 Dated at Los Angeles, California  
16 this 26th day of February, 1999.

17  
18   
19 \_\_\_\_\_  
20 Deputy Real Estate Commissioner  
21  
22  
23

24 cc: Michele Marcella Lance  
25 Thomas McCrady  
26 L. A. Audit Section  
27 Sacto.  
JP

