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2 Department of Real Estate  
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FILED  
FEB 10 2005  
DEPARTMENT OF REAL ESTATE

By K. Mendenhall

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 CAPITAL FINANCIAL RESOURCES INC., )  
13 and GEORGE BENJAMIN SMITH, )  
14 individually and as designated office )  
15 of Capital Financial Resources Inc. )  
16 Respondents. )

No. H-30106 LA

STIPULATION  
AND  
AGREEMENT

17 It is hereby stipulated by and between Respondents  
18 CAPITAL FINANCIAL RESOURCES INC., and GEORGE BENJAMIN SMITH,  
19 individually and as designated officer of Capital Financial  
20 Resources Inc. (sometimes collectively referred to as  
21 "Respondents"), represented by James L. Kellner, Esq., and the  
22 Complainant, acting by and through Elliott Mac Lennan, Counsel  
23 for the Department of Real Estate, as follows for the purpose of  
24 settling and disposing of the Accusation filed on May 12, 2003,  
25 in this matter:  
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1           1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and Respondents  
3 at a formal hearing on the Accusation, which hearing was to be  
4 held in accordance with the provisions of the Administrative  
5 Procedure Act ("APA"), shall instead and in place thereof be  
6 submitted solely on the basis of the provisions of this  
7 Stipulation and Agreement ("Stipulation").  
8

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

13           3. Respondents filed a Notice of Defense pursuant to  
14 Section 11506 of the Government Code for the purpose of  
15 requesting a hearing on the allegations in the Accusation.  
16 Respondents hereby freely and voluntarily withdraw said Notice of  
17 Defense. Respondents acknowledge that they understand that by  
18 withdrawing said Notice of Defense they thereby waive their right  
19 to require the Commissioner to prove the allegations in the  
20 Accusation at a contested hearing held in accordance with the  
21 provisions of the APA and that they will waive other rights  
22 afforded to them in connection with the hearing such as the right  
23 to present evidence in their defense the right to cross-examine  
24 witnesses.  
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1           4. This Stipulation is based on the factual  
2 allegations contained in the Accusation. In the interest of  
3 expedience and economy, Respondents choose not to contest these  
4 allegations, but to remain silent and understand that, as a  
5 result thereof, these factual allegations will serve as a prima  
6 facie basis for the disciplinary action stipulated to herein.  
7 The Real Estate Commissioner shall not be required to provide  
8 further evidence to prove said factual allegations.  
9

10           5. This Stipulation and Respondent's decision not to  
11 contest the Accusation is made for the purpose of reaching an  
12 agreed disposition of this proceeding and is expressly limited to  
13 this proceeding and any other proceeding or case in which the  
14 Department of Real Estate ("Department"), or another licensing  
15 agency of this state, another state or if the federal government  
16 is involved, and otherwise shall not be admissible in any other  
17 criminal or civil proceeding.

18           6. It is understood by the parties that the Real  
19 Estate Commissioner may adopt this Stipulation as his Decision in  
20 this matter thereby imposing the penalty and sanctions on  
21 Respondents' real estate licenses and license rights as set forth  
22 in the "Order" herein below. In the event that the Commissioner  
23 in his discretion does not adopt the Stipulation, it shall be  
24 void and of no effect and Respondents shall retain the right to a  
25 hearing and proceeding on the Accusation under the provisions of  
26 the APA and shall not be bound by any stipulation or waiver made  
27

herein.

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

8           8. Respondents understand that by agreeing to this  
9 Stipulation, Respondents agree to pay, pursuant to Business and  
10 Professions Code Section 10148, the cost of the audit (CAPITAL  
11 FINANCIAL RESOURCES INC.) which led to this disciplinary action.  
12 The amount of said cost is \$10,418.90.

13           9. Respondents have received, read, and understand the  
14 "Notice Concerning Costs of Subsequent Audit". Respondents  
15 further understand that by agreeing to this Stipulation, the  
16 findings set forth below in the Determination of Issues become  
17 final, and the Commissioner may charge Respondents for the cost  
18 of any subsequent audit conducted pursuant to Business and  
19 Professions Code Section 10148 to determine if the violations  
20 have been corrected. The maximum cost of the subsequent audit  
21 will not exceed \$10,418.90.

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DETERMINATION OF ISSUES

1  
2 By reason of the foregoing stipulations and waivers and  
3 solely for the purpose of settlement of the pending Accusation  
4 without a hearing, it is stipulated and agreed that the following  
5 determination of issues shall be made:

I.

6  
7 The conduct, acts and/or omissions of CAPITAL FINANCIAL  
8 RESOURCES INC., as described in Paragraph 4, is in violation of  
9 Section 10145, 10163, 10176(g) and 10240 of the Business and  
10 Professions Code ("Code") and Sections 2715, 2731, 2831, 2831.1,  
11 2831.2, 2832, 2832.1, 2834, 2950(d), 2950(g) and 2950(h) of Title  
12 10, Chapter 6 of the California Code of Regulations  
13 ("Regulations") and is a basis for the suspension or revocation  
14 of Respondent's license and license rights as a violation of the  
15 Real Estate Law pursuant to Code Sections 10165, 10177(d) and  
16 10177(g).

II.

17  
18 The conduct, acts and/or omissions of GEORGE BENJAMIN  
19 SMITH, as described in Paragraph 4, constitutes a failure to keep  
20 CAPITAL FINANCIAL RESOURCES INC., in compliance with the Real  
21 Estate Law during the time that he was the officer designated by  
22 a corporate broker licensee in violation of Section 10159.2 of  
23 the Code. This conduct is a basis for the suspension or  
24 revocation of Respondent's license pursuant to Code Sections  
25 10177(d), 10177(g) and 10177(h).  
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents

CAPITAL FINANCIAL RESOURCES INC. and GEORGE BENJAMIN SMITH, under  
the Real Estate Law are revoked; provided, however, new  
restricted real estate broker licenses shall be issued to said  
Respondents, pursuant to Section 10156.5 of the Business and  
Professions Code if Respondents:

(A) Make application thereof and pays to the Department  
of Real Estate the appropriate fee for the restricted license  
within ninety (90) days from the effective date of this Decision.

(B) Prior to and as a condition of the issuance of a  
new restricted license, Respondent GEORGE BENJAMIN SMITH shall  
submit proof satisfactory to the Commissioner of having taken and  
completed at an accredited institution the continuing education  
course on trust fund accounting and handling specified on  
paragraph (3) of subdivision (a) of Section 10170.5 of the  
Business and Professions Code. Proof of satisfaction of this  
requirement includes evidence that Respondent has successfully  
completed the trust fund account and handling continuing  
education course within 120 days prior to the effective date of  
the Decision in this matter.

In the event of a change of designated officers after  
the effective date but during the restricted period, the new

1 designated officer must take and complete at an accredited  
2 institution the continuing education course on trust fund  
3 accounting and handling specified in paragraph (3) of subdivision  
4 (a) of Section 10170.5 of the Business and Professions Code.

5 Proof of satisfaction of this requirement includes evidence that  
6 the designated officer has successfully completed the trust fund  
7 account and handling course within 120 days prior to or after the  
8 new designated officer's employment date.

9 (C) Prior to and as a condition of the issuance of any  
10 restricted license, Respondents shall first provide evidence  
11 satisfactory to the Commissioner that the trust fund deficit set  
12 forth in the Accusation and in Audit Report LA 020096 (CAPITAL  
13 FINANCIAL RESOURCES INC.), in the amount of \$61,725.25, as of  
14 November 30, 2002, has been cured, including the identification  
15 of the source of funds used to cure the deficit; and  
16

17 1. The restricted license issued to Respondents may be  
18 suspended prior to hearing by Order of the Real Estate  
19 Commissioner in the event of a Respondent's conviction or plea of  
20 nolo contendere to a crime which is substantially related to a  
21 Respondent's fitness or capacity as a real estate licensee.

22 2. The restricted licenses issued to Respondents may  
23 be suspended prior to hearing by Order of the Real Estate  
24 Commissioner on evidence satisfactory to the Commissioner that a  
25 Respondent has violated provisions of the California Real Estate  
26 Law, the Subdivided Lands Law, Regulations of the Real Estate  
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1 Commissioner or conditions attaching to the restricted license.

2 3. Respondents shall not be eligible to apply for the  
3 issuance of an unrestricted real estate license nor for the  
4 removal of any of the conditions, limitations or restrictions of  
5 a restricted license until two (2) years have elapsed from the  
6 effective date of this Decision.

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

19 5. Respondent GEORGE BENJAMIN SMITH shall first  
20 provide evidence satisfactory to the Commissioner that  
21 Respondent has taken and passed the Professional Responsibility  
22 Examination administered by the Department including the payment  
23 of the appropriate examination fee. The restricted license  
24 issued to Respondent shall be subject to all of the provisions  
25 of Section 10156.7 of the Code and the following limitations,  
26  
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1 conditions and restrictions imposed under authority of Section  
2 10156.6 of that Code:

3 6. Pursuant to Section 10148 of the Business and  
4 Professions Code, Respondents shall pay the Commissioner's  
5 reasonable cost for (a) the audits which led to this  
6 disciplinary action and (b) a subsequent audits to determine if  
7 Respondent CAPITAL FINANCIAL RESOURCES INC. and GEORGE BENJAMIN  
8 SMITH are now in compliance with the Real Estate Law. The cost  
9 of the audit which led to this disciplinary action is  
10 \$10,418.90. (CAPITAL FINANCIAL RESOURCES INC.). In calculating  
11 the amount of the Commissioner's reasonable cost, the  
12 Commissioner may use the estimated average hourly salary for all  
13 persons performing audits of real estate brokers, and shall  
14 include an allocation for travel time to and from the auditor's  
15 place of work. Said amount for the prior and subsequent audits  
16 shall not exceed \$20,837.80. Respondents are jointly and  
17 severally liable for the cost of the audits.  
18

19 Respondents shall pay such cost within 60 days of  
20 receiving an invoice from the Commissioner detailing the  
21 activities performed during the audit and the amount of time  
22 spent performing those activities.

23 The Commissioner may suspend the license of Respondents  
24 pending a hearing held in accordance with Section 11500, et seq.,  
25 of the Government Code, if payment is not timely made as provided  
26 for herein, or as provided for in a subsequent agreement between  
27

1 the Respondents and the Commissioner. The suspension shall  
2 remain in effect until payment is made in full or until a  
3 Respondent enters into an agreement satisfactory to the  
4 Commissioner to provide for payment, or until a decision  
5 providing otherwise is adopted following a hearing held pursuant  
6 to this condition.

7 II.

8 The restricted licenses issued to Respondents  
9 CAPITAL FINANCIAL RESOURCES INC., and GEORGE BENJAMIN SMITH  
10 pursuant to Paragraph I above are suspended for a period of  
11 thirty (30) days from the date of issuance; provided, however,  
12 that if Respondents' petition said suspension (or a portion  
13 thereof) shall be stayed for two (2) years upon condition that:

14 1. Respondents pay a monetary penalty pursuant to  
15 Section 10175.2 of the Business and Professions Code at a rate of  
16 \$166.67 for each day of the suspension for a total monetary  
17 penalty of \$5,000 for each Respondent, totaling \$10,000 for both  
18 Respondents.

19 2. Said payment shall be in the form of a cashier's  
20 check or certified check made payable to the Recovery Account of  
21 the Real Estate Fund. Said check must be received by the  
22 Department prior to the effective date of the Decision in this  
23 matter.

24 3. No further cause for disciplinary action against  
25 the real estate license of Respondents occur within two (2) years  
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1 from the effective date of the Decision in this matter.

2 4. If Respondents fail to pay the monetary penalty in  
3 accordance with the terms and conditions of the Decision, the  
4 Commissioner may, without a hearing, order the immediate  
5 execution of all or any part of the stayed suspension in which  
6 event Respondents shall not be entitled to any repayment nor  
7 credit, prorated or otherwise, for money paid to the Department  
8 under the terms of this Decision.

9 5. If Respondents pay the monetary penalty and if no  
10 further cause for disciplinary action against the real estate  
11 licenses of Respondents occur within two (2) years from the  
12 effective date of the Decision, the stay hereby granted shall  
13 become permanent.

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15  
16 DATED: 1-19-08

EL  
ELLIOTT MAC LENNAN, Counsel for  
the Department of Real Estate

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\* \* \*

EXECUTION OF THE STIPULATION

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2  
3 We have read the Stipulation, and have discussed it  
4 with our counsel. Its terms are understood by us and are  
5 agreeable and acceptable to us. We understand that we are  
6 waiving rights given to us by the California Administrative  
7 Procedure Act (including but not limited to Sections 11506,  
8 11508, 11509 and 11513 of the Government Code), and we willingly,  
9 intelligently and voluntarily waive those rights, including the  
10 right of requiring the Commissioner to prove the allegations in  
11 the Accusation at a hearing at which we would have the right to  
12 cross-examine witnesses against us and to present evidence in  
13 defense and mitigation of the charges.

FACSIMILE OF THE STIPULATION

14  
15 Respondents can signify acceptance and approval of the  
16 terms and conditions of this Stipulation by faxing a copy of its  
17 signature page, as actually signed by Respondents, to the  
18 Department at the following telephone/fax number: Elliott Mac  
19 Lennan at (213) 576-6917. Respondents agree, acknowledge and  
20 understand that by electronically sending to the Department a fax  
21 copy of Respondents' actual signature as they appear on the  
22 Stipulation, that receipt of the faxed copy by the Department  
23 shall be as binding on Respondents as if the Department had  
24 received the original signed Stipulation.  
25  
26  
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DATED: 1-13-05

George B Smith  
CAPITAL FINANCIAL RESOURCES INC.  
BY: GEORGE BENJAMIN SMITH, D.O.,  
Respondent

DATED: 1-13-05

George B Smith  
GEORGE BENJAMIN SMITH, individually  
and as designated officer of  
Capital Financial Resources Inc.,  
Respondent

DATED: 1-13-05

James L Kellner  
JAMES L. KELLNER, Attorney for  
Respondents  
Approved as to Form

\* \* \*

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents CAPITAL FINANCIAL RESOURCES INC. and GEORGE BENJAMIN SMITH, individually and as designated officer of Capital Financial Resources Inc. and shall become effective at 12 o'clock noon on \_\_\_\_\_, 2005.

IT IS SO ORDERED \_\_\_\_\_, 2005.

JEFF DAVI  
Real Estate Commissioner

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DATED: \_\_\_\_\_

\_\_\_\_\_  
CAPITAL FINANCIAL RESOURCES INC.  
BY: GEORGE BENJAMIN SMITH, D.O.,  
Respondent

DATED: \_\_\_\_\_

\_\_\_\_\_  
GEORGE BENJAMIN SMITH, individually  
and as designated officer of  
Capital Financial Resources Inc.,  
Respondent

DATED: \_\_\_\_\_

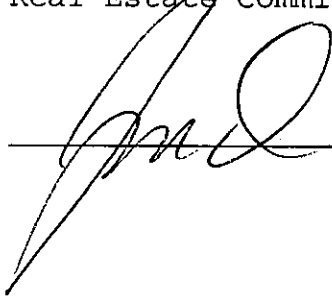
\_\_\_\_\_  
JAMES L. KELLNER, Attorney for  
Respondents  
Approved as to Form

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision as to Respondents CAPITAL FINANCIAL  
RESOURCES INC. and GEORGE BENJAMIN SMITH, individually and as  
designated officer of Capital Financial Resources Inc. and shall  
become effective at 12 o'clock noon on MAR 14 , 2005.

IT IS SO ORDERED 22, 2005.

JEFF DAVI  
Real Estate Commissioner

  
\_\_\_\_\_

*Sacto  
Jag*

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

**FILED**  
JUL 23 2003  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By *[Signature]*

CAPITAL FINANCIAL RESOURCES INC., ET AL

}  
}

Case No. H-30106 LA

OAH No. L-2003070143

Respondent

**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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on January 26-28, 2004, 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.

DEPARTMENT OF REAL ESTATE

Dated: JUL 23 2003

By *[Signature]*  
ELLIOTT MAC LENNAN, Counsel

cc: Capital Financial Resources Inc./George B. Smith  
James L. Kellner  
Sacto/OAH/AK

*Handwritten initials/signature*

**FILED**  
MAY 12 2003  
DEPARTMENT OF REAL ESTATE

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105  
5  
6  
7  
8 Telephone: (213) 576-6911 (direct)  
9 -or- (213) 576-6982 (office)

By *Handwritten signature*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

11	In the Matter of the Accusation of	)	No. H-30106 LA
12	CAPITAL FINANCIAL RESOURCES INC., and	)	
13	GEORGE BENJAMIN SMITH, individually	)	<u>A C C U S A T I O N</u>
14	and as designated officer of	)	
15	Capital Financial Resources Inc.,	)	
16		)	
17	Respondents.	)	

18 The Complainant, Janice Waddell, a Deputy Real Estate  
19 Commissioner of the State of California, for cause of Accusation  
20 against CAPITAL FINANCIAL RESOURCES INC., and GEORGE BENJAMIN  
21 SMITH, individually and as designated officer of Capital  
22 Financial Resources Inc., is informed and alleges as follows:

23 1.

24 The Complainant, Janice Waddell, acting in her official  
25 capacity as a Deputy Real Estate Commissioner of the State of  
26 California, makes this Accusation against CAPITAL FINANCIAL  
27



1 RESOURCES INC. ("CFRI"), and GEORGE BENJAMIN SMITH, individually  
2 and as designated officer of CFRI ("SMITH")

3 2.

4 All references to the "Code" are to the California  
5 Business and Professions Code and all references to "Regulations"  
6 are to Title 10, Chapter 6, California Code of Regulations.

7 3.

8 CFRI and SMITH (sometimes hereinafter referred to as  
9 Respondents) are presently licensed or have license rights under  
10 the Real Estate Law (Part 1 of Division 4 of the Business and  
11 Professions Code, hereinafter "Code").

12 4.

13  
14 At all times herein mentioned, SMITH was licensed by  
15 the Department as the designated officer of CFRI, to qualify CFRI  
16 and to act for CFRI as a real estate broker and, as provided by  
17 Code Section 10159.2, was responsible for the supervision and  
18 control of the activities conducted on behalf of CFRI by CFRI's  
19 officers, managers and employees as necessary to secure full  
20 compliance with the provisions of the Real Estate Law including  
21 the supervision of the salespersons licensed to the corporation  
22 in the performance of acts for which a real estate license is  
23 required. CFRI's corporate real estate broker license was  
24 originally issued on June 23, 2000. SMITH was originally  
25 licensed as a real estate broker on February 28, 1986.

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1 5.

2 Whenever reference is made in an allegation in the  
3 Accusation to an act or omission of CFRI, such allegation shall  
4 be deemed to mean that the officers, directors, managers,  
5 employees, agents and real estate licensees employed by or  
6 associated with CFRI, including SMITH, committed such act or  
7 omission while engaged in the furtherance of CFRI's business or  
8 operation and while acting within the course and scope of CFRI's  
9 corporate authority, agency and employment.

10 6.

11 At all times mentioned, in the City of Redondo Beach,  
12 County of Los Angeles, CFRI acted as real estate broker and  
13 conducted licensed activities within the meaning of:

14 A. Business and Professions Code Section 10131(d) in  
15 that CFRI operated a mortgage and loan brokerage.

16 CFRI used the name "Haworth & Associates" for its  
17 mortgage and loan operation; and,

18 B. California Financial Code Section 17006(a)(4) in  
19 that CFRI conducted broker-controlled escrows through its escrow  
20 division under the exemption set forth in for real estate brokers  
21 performing escrows incidental to a real estate transaction where  
22 the broker is a party and where the broker is performing acts for  
23 which a real estate license is required.

24 CFRI used the name "Capital Escrow" for its escrow  
25 division.  
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7.

1  
2 On or about February 18, 2003, the Department completed  
3 an examination of the books and records of CFRI, pertaining to  
4 its mortgage and loan and escrow activities described in  
5 Paragraph 6, above, covering a period from January 1, 2002  
6 through November 30, 2002. The audit examination revealed  
7 violations of the Code and the Regulations as set forth below,  
8 and more fully discussed in Audit Report LA 020096 and exhibits  
9 and workpapers attached to said audit report.

10  
11 8.

12 The audit examination determined that, in connection  
13 with the mortgage and loan brokerage and escrow activities  
14 described in Paragraph 6, CFRI accepted or received funds,  
15 including funds in trust ("trust funds") from or on behalf of  
16 borrowers and lenders and thereafter made deposit or disbursement  
17 of such funds. During the audit period CFRI maintained the  
18 following trust account:

19 "Haworth & Associates dba Capital Escrow Trust Account  
20 Account No. 1892059450" ("Escrow Trust Account")  
21 Commerica Bank - California  
22 9920 La Cienega Blvd, 11th Floor  
23 Inglewood, California

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1  
2 With respect to the licensed and trust fund handling  
3 activities referred to in Paragraphs 6 and 8, and the audit  
4 examination including the exhibits and workpapers referred to in  
5 Paragraph 7, it is alleged that CFRI:

6 (a) Permitted, allowed or caused the disbursement of  
7 trust funds from the escrow trust account where the disbursement  
8 of funds reduced the total of aggregate funds in the escrow trust  
9 account, to an amount which, on November 30, 2002, was  
10 \$61,725.25, less than the existing aggregate trust fund liability  
11 of CFRI to every principal who was an owner of said funds,  
12 without first obtaining the prior written consent of the owners  
13 of said funds, as required by Code Section 10145 and Regulations  
14 2832.1, 2950(d) and 2950(g). The cause of the shortage was  
15 fifteen overdrawn escrows.

16 (b) Failed to maintain an adequate and complete control  
17 record in the form of a columnar record in chronological order of  
18 all escrowed trust funds received for the escrow trust account,  
19 as required by Code Section 10145 and Regulations 2831 and  
20 2950(d).

21 (c) Failed to maintain a separate record for each  
22 beneficiary or transaction, thereby failing to account for all  
23 trust funds received, deposited into, and disbursed from the  
24 escrow trust account, as required by Code Section 10145 and  
25 Regulations 2831.1 and 2950(d).  
26  
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1  
2 (d) Failed to perform a monthly reconciliation of the  
3 balance of all separate beneficiary or transaction records  
4 maintained pursuant to Regulation 2831.1 with the record of all  
5 trust funds received and disbursed from the escrow trust account,  
6 as required by Code Section 10145 and Regulations 2831.2 and  
7 2950(d).

8 (e) While acting in the capacity of an escrow holder,  
9 CFRI failed to place trust funds, received from borrowers and  
10 lenders, accepted on behalf of another into the hands of the  
11 owner of the funds, a neutral escrow depository or into a trust  
12 fund account in the name of the broker at a bank or other  
13 financial institution, in violation of Code Section 10145 and  
14 Regulation 2832.

15 (f) Permitted Tony Guffrie, an unlicensed person and  
16 who is CFRI's escrow officer and who was not bonded, to be an  
17 authorized signatory on the escrow trust account, in violation of  
18 Code Section 10145 and Regulation 2834.

19 (g) Performed licensed activities and/or escrows under  
20 the fictitious business names of "Capital Escrow" and "Haworth &  
21 Associates" without holding a license bearing these fictitious  
22 business names, in violation of Regulation 2731.

23 (h) Failed to advise all parties of CFRI's ownership of  
24 Capital Escrow, in violation of Regulation 2950(h).

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1 (i) Failed to maintain a statement in writing  
2 containing all the information required by Code Section 10241 to  
3 various borrowers including Elias Pulido, Daniel Judiz, Linda  
4 Smith and Frederick Jones and to twenty-seven other borrowers,  
5 before these borrowers became obligated to perform under the  
6 terms of their loans, in violation of Code Section 10240.

7 (j) Received undisclosed compensation in the form of  
8 rebates from mortgage lenders pertaining to yield spread premiums  
9 earned by CFRI in connection with CFRI's mortgage and loan  
10 activities requiring a real estate license. The premiums paid to  
11 CFRI were not disclosed in the Mortgage Loan Disclosure  
12 Statements or Good Faith Estimates provided to various borrowers.  
13 The borrowers include but are not limited to Kathryn Marquez in  
14 the amount of \$4,207.50, Fidel Solis in the amount of \$3,600.00,  
15 and Micaela Gomez, in the amount of \$1,480.00, for a total of  
16 \$9,287.50, in undisclosed compensation, in violation of Code  
17 Section 10176(g); and

18 (k) Failed to notify the Department that a branch  
19 office located at 425 W. Broadway, Suite 420, Glendale,  
20 California, was no longer utilized, in violation of Code Section  
21 10163 and Regulation 2715.

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The conduct of Respondent CFRI, described in Paragraph 9, violated the Code and the Regulations as set forth:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9 (a)	Code Section 10145 and Regulation 2832.1, 2950(d) and 2950(g)
9 (b)	Code Section 10145 and Regulation 2831 and 2950(d)
9 (c)	Code Section 10145 and Regulation 2831.1 and 2950(d)
9 (d)	Code Section 10145 and Regulation 2831.2 and 2950(d)
9 (e)	Code Section 10145 and Regulation 2832
9 (f)	Code Section 10145 and Regulation 2834
9 (g)	Regulation 2731
9 (h)	Regulation 2950(h)
9 (i)	Code Section 10240
9 (j)	Code Section 10176(g)
9 (k)	Code Section 10163 Regulation 2715

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1 Each of the foregoing violations constitute cause for the  
2 suspension or revocation of the real estate license and license  
3 rights of CFRI under Code Sections 10165, 10176(g), 10177(d)  
4 and/or 10177(g).

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6 11.

7 The overall conduct of Respondent SMITH constitutes a  
8 failure on his part, as officer designated by a corporate broker  
9 licensee, responsible for the supervision and control over the  
10 activities conducted on behalf of CFRI by its officers, managers  
11 and employees as necessary to secure full compliance with the  
12 provisions of the Real Estate Law including the supervision of  
13 the salespersons licensed to the corporation in the performance  
14 of acts for which a real estate license is required, in violation  
15 of Code Section 10159.2. This conduct is cause for the  
16 suspension or revocation of the real estate license and license  
17 rights of SMITH under Code Sections 10177(d), 10177(g) and/or  
18 10177(h).

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1                   WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondents  
5 CAPITAL FINANCIAL RESOURCES INC., and GEORGE BENJAMIN SMITH,  
6 individually and as designated officer of Capital Financial  
7 Resources Inc., under the Real Estate Law (Part 1 of Division 4  
8 of the Business and Professions Code) and for such other and  
9 further relief as may be proper under other applicable provisions  
10 of law.

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12 Dated at Los Angeles, California

13 this *12<sup>th</sup> day of May, 2003*

14   
15 Deputy Real Estate Commissioner

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23 cc: Capital Financial Resources Inc.  
24 c/o George Benjamin Smith  
25 Janice Waddell  
26 Sacto  
27 AK  
Audits