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FILED  
MAY 23 2007  
DEPARTMENT OF REAL ESTATE

*K. W. Waddell*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 STONEWOOD CONSULTING INC.; and )  
13 HENDRIX MORENO MONTECASTRO, )  
14 individually and as designated )  
15 officer of Stonewood Consulting )  
16 Inc., )

Respondents. )

No. H-33999 LA

A C C U S A T I O N

17 The Complainant, Janice Waddell, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against STONEWOOD CONSULTING INC. and HENDRIX MORENO MONTECASTRO,  
20 individually and as designated officer of Stonewood Consulting  
21 Inc., alleges as follows:

22 1.

23 The Complainant, Janice Waddell, acting in her official  
24 capacity as a Deputy Real Estate Commissioner of the State of  
25 California, makes this Accusation against STONEWOOD CONSULTING  
26 INC. and HENDRIX MORENO MONTECASTRO.  
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2.

All referencés to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations, except as specifically set forth.

LICENSE HISTORY

3.

A. At all times mentioned, STONEWOOD CONSULTING INC. ("SCI") and HENDRIX MORENO MONTECASTRO ("MONTECASTRO") were licensed or had license rights issued by the Department of Real Estate ("Department") as real estate brokers.

B. At all times mentioned, SCI was licensed by the Department as a corporate real estate broker by and through MONTECASTRO, as the designated officer and broker responsible, pursuant to Code Section 10159.2 for supervising the activities requiring a real estate license conducted on behalf of SCI by SCI's officers, agents and employees, including MONTECASTRO. SCI was originally licensed on June 16, 2005, by MONTECASTRO.

C. MONTECASTRO was originally licensed as a real estate salesperson on May 3, 1993 and originally licensed as a real estate broker on November 20, 2003.

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## LICENSED ACTIVITIES AND BROKERAGE

4.

At all times mentioned, in the City of Murrieta, County of Riverside, SCI and MONTECASTRO acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(a). Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers, including the solicitation for listings of and the negotiation of the sale of real property as the agent of others.

B. Code Section 10131(b). Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers, including the operation and conduct of a property management business with the public wherein, for or in expectation of compensation, for another or others, Respondents leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon; and

C. Code Section 10131(d). Respondent's engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees collected in advance.

## FIRST CAUSE OF ACTION

## MORTGAGE LOAN AUDIT

## 5.

On May 22, 2007, the Department completed an audit examination of the books and records of SCI pertaining to the mortgage and loan brokerage activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on December 1, 2004 to January 31, 2007. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report SD 060038 and the exhibits and workpapers attached to said audit report.

## TRUST ACCOUNT

## MORTGAGE AND LOAN ACTIVITIES

## 6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, SCI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by SCI including borrowers and lenders and thereafter made deposits and or disbursements of such funds. During the audit period SCI did not maintain a trust account for the mortgage loan activities.

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VIOLATIONS CITED BY THE  
MORTGAGE LOAN AUDIT

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents SCI and MONTECASTRO acted in violation of the Code and the Regulations in that they:

(a) Failed to provide, maintain or retain a true and correct copy of a Department of Real Estate approved Mortgage Loan Disclosure Statement signed by the broker for borrowers DeGuzman (Jameson property), Cabrales (Agean property), Giron (Wrangler property), Lanuzo (Wgasa property) and Lanuzo (Wildwood property), in violation of Code Section 10241. Additionally, no Truth-In-Lending Disclosure Statement was provided in the loan file for borrower Reiss (Falkirk property). The Mortgage Loan Disclosure Statement contained missing signatures, and inaccurate information about current liens and anticipated liens.

(b) Failed to disclose loan origination fees and yield spread premiums from lenders on the Mortgage Loan Disclosure Statement for the aforesaid borrowers, in violation of Code Sections 10176(g) and 10241; and

(c) Failed to maintain a record for trust funds handled by SCI related to mortgage loan activities, in violation of Code Section 10145 of the Code and Regulation 2832.

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VIOLATIONS OF THE REAL ESTATE LAW

MORTGAGE LOAN AUDIT

8.

The conduct of Respondents SCI and MONTECASTRO, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10241
7(b)	Code Sections 10176(g) and 10241
7(c)	Code Section 10145 and Regulation 2832

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of SCI and MONTECASTRO, under the provisions of Code Sections 10176(g), 10177(d) and/or 10177(g).

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SECOND CAUSE OF ACTION  
RESIDENTIAL RESALES AUDIT

9.

On May 22, 2007, the Department completed an audit examination of the books and records of SCI pertaining to the residential resales activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on December 1, 2004 to January 31, 2007. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report SD 060029 and the exhibits and workpapers attached to said audit report.

10.

TRUST ACCOUNT  
RESIDENTIAL RESALES AUDIT

At all times mentioned, in connection with the activities described in Paragraph 4, above, SCI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by SCI including buyers and sellers and thereafter made deposits and or disbursements of such funds. During the audit period SCI did not maintain a trust account for the residential resale activity.

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VIOLATIONS CITED BY THE  
RESIDENTIAL SALES AUDIT

11.

In the course of activities described in Paragraphs 4 and 10, above, and during the examination period described in Paragraph 9, Respondents SCI and MONTECASTRO, as indicated, acted in violation of the Code and the Regulations in that they:

(a) Engaged in a price inflation scheme using inflated appraisals and additional compensation besides the realtor commissions in the form of "concessions". The mortgage loan was made by lenders on the contract sales price. This price was higher than the seller net price. SCI and MONTECASTRO received as a concession the difference between the contract sales price based on the inflated property appraisals and the seller net price. Both the realtor commissions and the concessions were disclosed to the buyers and sellers. Concessions ranging from \$74,000 to \$115,000 were obtained from buyers DeGuzman, Canett and Reiss, Cabrales and Lanuzo, for a total of ten properties totaling \$969,158, in violation of Code Sections 10176(i) and 10177(g).

(b) Misrepresented to sellers that Respondents held earnest money deposits at the time the offer to purchase was made for buyers DeGuzman (Honeysuckle property), Canett (Cherrybranch property) and Reiss (Cloverleaf property). No earnest money

1 deposits were held for the sellers, in violation of Code Sections  
2 10176(a) and/or 10177(g).

3 (c) Failed to maintain a control record in the form of  
4 a columnar record in chronological order of all "Trust Funds  
5 Received, Not Placed Broker's Trust Account", in violation of  
6 Code Section 10145 and Regulations 2831.

7 (d) Failed to maintain a separate record for each  
8 beneficiary or transaction, thereby failing to account for all  
9 trust funds received, as required by Code Section 10145 and  
10 Regulation 2831.1.

11 (e) Failed to perform a monthly reconciliation of the  
12 balance of all separate beneficiary or transaction records  
13 maintained pursuant to Regulation 2831.1 with the record of all  
14 trust funds received and disbursed the property management trust  
15 account, as required by Code Section 10145 and Regulation 2831.2;  
16 and

17 (f) Failed to place trust funds, including a \$500  
18 appraisal fee to be paid to Advance Real Estate Appraisal on  
19 behalf of borrower DeGuzman's (Jameson property), accepted on  
20 behalf of another into the hands of the owner of the funds, a  
21 neutral depository or into a trust fund account in the name of  
22 the trustee at a bank or other financial institution not later  
23 than three business days following receipt of the funds by the  
24 broker or by the broker's salesperson, as required by Code  
25 Section 10145 and Regulation 2832(d).  
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## VIOLATIONS OF THE REAL ESTATE LAW

## RESIDENTIAL SALES AUDIT

12.

The conduct of Respondents SCI and MONTECASTRO, described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
11(a)	Code Section 10176(i) and 10177(g)
11(b)	Code Section 10176(a) and 10177(g)
11(c)	Code Section 10145 and Regulation 2831
11(d)	Code Section 10145 and Regulation 2831.1
11(e)	Code Section 10145 and Regulation 2831.2
11(f)	Code Section 10145 and Regulation 2832(d)

The foregoing violation constitutes cause for the suspension or revocation of the real estate license and license rights of SCI and MONTECASTRO, under the provisions of Code Sections 10176(a), 10176(i), 10177(d) and/or 10177(g).

1 THIRD CAUSE OF ACTION  
2 PROPERTY MANAGEMENT AUDIT

3 13.

4 On May 22, 2007, the Department completed an audit  
5 examination of the books and records of SCI pertaining to the  
6 broker-controlled escrow activities described in Paragraph 4,  
7 that require a real estate license. The audit examination  
8 covered a period of time beginning on June 1, 2006 to January 31,  
9 2007. The audit examination revealed violations of the Code and  
10 the Regulations as set forth in the following paragraphs, and  
11 more fully discussed in Audit Report SD 060037 and the exhibits  
12 and workpapers attached to said audit report.

13 TRUST ACCOUNT  
14 PROPERTY MANAGEMENT AUDIT

15 14.

16 At all times mentioned, in connection with the  
17 activities described in Paragraph 4, above, SCI accepted or  
18 received funds including funds in trust (hereinafter "trust  
19 funds") from or on behalf of actual or prospective parties to  
20 transactions handled by SCI including property owners and  
21 tenants. Thereafter SCI made deposits and or disbursements of  
22 such funds. SCI maintained the following trust account into  
23 which it deposited certain of these funds:  
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1 "Hendrix Moreno Montecastro Stonewood Consulting Inc.  
2 Real Estate Broker Trust  
3 Account No. 2141840767"  
4 Bank of America  
5 Wildomar, California (property management trust account)

6 VIOLATIONS CITED BY  
7 PROPERTY MANAGEMENT AUDIT

8 15.

9 In the course of activities described in Paragraphs 4  
10 and 14, above, and during the examination period described in  
11 Paragraph 13, Respondents SCI and MONTECASTRO, as indicated,  
12 acted in violation of the Code and the Regulations in that they:

13 (a) Permitted, allowed or caused the disbursement of  
14 trust funds from the escrow trust account where the disbursement  
15 of funds reduced the total of aggregate funds in the property  
16 management trust account, to an amount which, on December 31,  
17 2006, was \$5,516.23 less than the existing aggregate trust fund  
18 liability of SCI to every principal who was an owner of said  
19 funds, without first obtaining the prior written consent of the  
20 owners of said funds, as required by Code Section 10145 and  
21 Regulation 2832.1. The shortage has not been restored.

22 (b) Failed to maintain an adequate control record in  
23 the form of a columnar record in chronological order of trust  
24 funds received for the property management trust account, as  
25 required by Code Section 10145 and Regulation 2831.

26 (c) Failed to maintain a separate record for each  
27 beneficiary or transaction, thereby failing to account for all

1 trust funds received, as required by Code Section 10145 and  
2 Regulation 2831.1.

3 (d) Failed to perform a monthly reconciliation of the  
4 balance of all separate beneficiary or transaction records  
5 maintained pursuant to Regulation 2831.1 with the record of all  
6 trust funds received and disbursed the property management trust  
7 account, as required by Code Section 10145 and Regulation 2831.2.

8 (e) The property management trust account was not in  
9 the name of the broker as trustee at a bank or other financial  
10 institution, nor designated as a trust account, in violation of  
11 Code Section 10145 of the Code and Regulation 2832(a).

12 (f) Permitted employees JoEtta Zimmer and Bridgett  
13 Holbrook, unlicensed and unbonded persons, to be authorized  
14 signatories on the trust account, in violation of Code Section  
15 10145 and Regulation 2834.

16 (g) Failed to disburse from the property management  
17 trust account broker's management fees totaling \$20,000 within  
18 twenty-five days of deposit, in violation of Code Section 10145  
19 and Regulation 2835.

21 VIOLATIONS OF THE REAL ESTATE LAW

22 PROPERTY MANAGEMENT AUDIT

23 16.

24 The conduct of Respondents SCI and MONTECASTRO,  
25 described in Paragraph 15, above, violated the Code and the  
26 Regulations as set forth below:  
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	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
1		
2	15 (a)	Code Section 10145 and Regulation
3		2832.1
4		
5	15 (b)	Code Section 10145 and Regulation
6		2831
7		
8	15 (c)	Code Section 10145 and Regulation
9		2831.1
10		
11		
12	15 (d)	Code Section 10145 and Regulation
13		2831.2
14		
15	15 (e)	Code Section 10145 and Regulation
16		2832 (a)
17		
18	15 (f)	Code Section 10145 and Regulation
19		2834
20		
21	15 (g)	Code Section 10145 and Regulation
22		2835
23		


24 The foregoing violation constitutes cause for the suspension or  
25 revocation of the real estate license and license rights of SCI  
26 and MONTECASTRO, under the provisions of Code Sections 10177 (d)  
27 and/or 10177 (g).



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 STONEWOOD CONSULTING INC.. and HENDRIX MORENO MONTECASTRO,  
 6 individually and as designated officer of Stonewood Consulting  
 7 Inc. under the Real Estate Law (Part 1 of Division 4 of the  
 8 Business and Professions Code) and for such other and further  
 9 relief as may be proper under other applicable provisions of law.

10 Dated at Los Angeles, California

11 this *23 May 2007*

  
 Deputy Real Estate Commissioner

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24 cc: Stonewood Consulting Inc.  
 25 c/o Hendrix Moreno Montecastro D.O.  
 26 Janice Waddell  
 27 Sacto  
 Audits - Jennifer Borremeo