BEFORE THE
COMMISSIONER OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CHRIS PROCTOR-COOKE, Respondent.	OAH No. N2002050717

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on August 27, 2002

IT IS SO ORDERED August 27, 2002

CALIFORNIA CORPORATIONS COMMISSIONER

By _____

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In the Matter of the Accusation Against: CHRIS PROCTOR-COOKE, Respondent.	OAH No. N2002050717

PROPOSED DECISION

On June 26, 2002 in Sacramento, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Donald A. Newbold, Corporation Counsel, Department of Corporations.

Respondent was present and represented by D. Randall Ensminger, Attorney at Law.

Evidence was received, a stipulation of facts was entered into, the record was closed and the matter was submitted.

FINDINGS OF FACT

1. Complainant Demetrios A. Boutris made the accusation in his official capacity as the California Corporations Commissioner.

2. Beginning sometime in the year 2000 and continuing until March 15, 2001, respondent Chris Proctor-Cooke ("respondent") was employed by U.S. Financial Mortgage Corp. ("U.S. Financial") as a Branch Manager, Senior Loan Officer, at U.S. Financial's branch office known as Golden One Mortgage, located at 1100 Melody Lane #122, Roseville, California. As Branch Manager, respondent managed the Golden One branch and supervised Loan Officers in the branch.

In February 2001, U.S. Financial gave respondent a 30-day written notice of her termination as a Branch Manager. Respondent's employment was terminated on March 15, 2001.

3. U.S. Financial is a residential mortgage lender and servicer licensed by the Corporations Commissioner of the State of California. On January 27, 2000, pursuant to the California Residential Mortgage Lending Act (California Financial Code section 50000, et. seq.). U.S. Financial has its principal place of business at 735 Sunrise Avenue, Suite 210, Roseville, California 95661. On January 27, 2000, U.S. Financial also applied for and received acknowledgment for a branch office under the fictitious business name of Golden One Mortgage. The business address of Golden One Mortgage was 735 Sunrise Avenue, Suite 145, Roseville, California 95661. A mortgage lending trust account was maintained by U.S. Financial. Golden One Mortgage did not have a trust account.

4. After respondent's employment was terminated by U.S. Financial on March 15, 2001, she continued to accept new loan applications and checks in the amount of $408.00 for appraisal and credit report fees. In April 2001, respondent received two such applications and checks. The checks were made payable to Chris Proctor-Golden One Mortgage. The checks were intended for credit reports and appraisals necessary for residential mortgage loans. Respondent did not deposit the checks in an escrow account or other trust account. Respondent endorsed the checks herself and submitted them for cash. In neither case was an appraisal of the subject property ever completed.

5. On or about May 8, 2001, respondent received a check in the amount of $350.00 from a potential mortgagor to cover the cost of an appraisal of the subject property. The sale of the property involved a 30-day escrow. Despite numerous requests by the borrower, an appraisal was not performed in a timely manner. The borrower had to switch lenders in order to secure a loan. Although respondent cashed the potential mortgagor's check for $350.00, she did not reimburse the potential mortgagor.

6. On May 22, 2001, respondent requested a potential borrower to write a check in the amount of $408.00 payable to "Chris Proctor Trust" to cover the cost of a credit check and appraisal for a mortgage loan. A credit report was ordered, but the potential borrower cancelled the transaction before an appraisal was done. The check had been endorsed and cashed by respondent with the word "Trust" obliterated on the payee line. Respondent made no refund.

7. In all four of the above transactions, respondent required that fees be paid in advance for credit checks and/or appraisals of subject properties. Said fees were paid by check. None of the checks were deposited in an escrow or trust account. All of the checks were cashed by respondent. Despite numerous requests, written and oral, by the above four potential borrowers for return of their money after appraisals were not made and appraisal fees were not earned, respondent did not reimburse any of the money. Respondent fraudulently misappropriated trust fund money and converted them to her own use.

8. Respondent's testimony did not mitigate the above findings. She had been in the mortgage lending business for approximately 15 years prior to 2001. She had supervised loan officers for approximately ten of those prior years. In 1997, respondent was employed by her husband as a loan officer in his mortgage lending business known as, or to be known as, Golden One Mortgage. After a divorce in 2000, respondent took over managing Golden One Mortgage, a branch of U.S. Financial.

Respondent's testimony that her employment relationship with U.S. Financial did not end until May 2001 was false; it ended on March 15, 2001. Although some loan transactions that began prior to March 15, 2001 were still in progress after that date and respondent continued to keep the branch office open, she was then no longer an employee of U.S. Financial. Nevertheless, she continued to accept at least four new applications for mortgage loans after March 15, 2001 and did not deposit advance fees for credit checks and/or appraisals into a trust account. Respondent had no trust account. Her testimony that she did not know she had to put such fees into a trust account was not believable in view of her long history of employment in the mortgage lending industry. As respondent testified, during her career she had been involved with approximately 4,700 mortgage loans.

Respondent's testimony that during the period of the above four mortgage lending transactions her brother died and she was responsible for the support of her mother and young son does not mitigate her conversion of trust funds to her own use. Portions of respondent's testimony were confused. Some of it was evasive. Some of it was unbelievable and false. For example, respondent's testimony that she did not use any of the above trust funds for her own purposes was unbelievable.

CONCLUSIONS OF LAW

1. After proper notice and an opportunity to be heard, section 50318 of the Financial Code ("Code") authorizes the Corporations Commissioner to bar from any position of employment, management, or control any person if such a bar is in the public interest and the person has committed a violation such as each of those set forth below and the violation was known, or should have been known by the person committing it, or the violation has caused material damage to the public.

2. Such a bar is in the public interest in this matter. Section 50503(a)(1) of the Code makes it a violation for any person or employee, such as respondent, to knowingly or recklessly disperse or cause the dispersal of trust funds, except as authorized by law, or to knowingly or recklessly be involved in any activity that constitutes theft or fraud in connection with trust funds. Respondent violated this section in both ways. She knowingly and without legal authorization dispersed trust funds to herself. This constituted theft or fraud, as set forth in Findings 4 through 7.

3. Section 50503(b) of the Code makes misappropriation of money deposited with a licensee a violation, if it is misappropriated by an employee or other principal of the

licensee. Respondent did not violate section 50503(b) of the Code because the conduct set forth in Findings 4 through 7 occurred when respondent was no longer an employee or principal of U.S. Financial and the trust funds involved were never deposited with U.S. Financial. For similar reasons, respondent did not violate section 50509 of the Code.

4. Because Respondent has willfully violated section 50503(a)(1) of the Code and material damage has been done to the public, it is in the best interests of the public to bar respondent from any position of employment, management or control of any residential mortgage lender or residential mortgage loan servicer. No creditable extenuation, mitigation or rehabilitation evidence was received to justify anything less than such a complete bar.

ORDER

WHEREFORE, the following Order is here made:

Chris Proctor-Cooke is BARRED from any position of employment, management or control of any residential mortgage lender or residential mortgage loan servicer.

Dated: July 26, 2002

JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings