licensed loan brokers and agents, had a fiduciary duty to Reiner which they breached in several ways; the trial court listed instances of Russell's misrepresentation of, or failure to disclose, material facts, in reckless disregard of Reiner's rights. When the First District affirmed the underlying action, it held that the evidence of "multiple instances of malfeasance" by Russell supported the finding that Russell and CREL breached their fiduciary duty.

On appeal in the disciplinary matter, CREL argued that a broker may not be disciplined under section 10177.5 when its liability in the underlying action is vicarious. CREL's argument was based on Business and Professions Code section 10179, which provides that no violation of any of specified provisions by any real estate salesperson or employee of any licensed real estate broker shall cause the revocation or suspension of the license of the employer unless it appears upon a hearing by the Commissioner that the employer had "guilty knowledge" of such violation. CREL argued that since there was no evidence that it had "guilty knowledge" of Russell's misconduct, revocation of its license violated section 10179.

In affirming the trial court's decision, the First District noted that when an accusation is based on disciplinary charging statutes that condition discipline upon a wrongful act or omission by a licensee, the act or omission must be proved at an administrative hearing; however, when an accusation is based on section 10177.5, the express language of the statute makes the underlying judgment itself the operative fact upon which the disciplinary action is imposed, not the acts or omissions of the licensee which led to that judgment. Thus, the court noted that if the elements of fraud have been proved in the civil action, collateral estoppel principles bar the licensee from attempting to relitigate those facts at the administrative proceeding.

The court noted that section 10177.5 is stated in absolute terms: when a final judgment is obtained against any real estate licensee, the Commissioner may suspend or revoke the license of such real estate licensee—the statute does not exempt judgments against a broker based on vicarious liability. Therefore, the court noted that although statutes on similar subjects must be considered together, section 10179 cannot be read to limit or qualify section 10177.5. According to the court, section 10179 requires guilty knowledge by a broker before a violation of specified provisions by the broker's salesperson can cause revocation or suspension of the broker's license; the ordinary common sense meaning of the term "violation" is a failure to comply with rules or requirements; and an accusation based on section 10177.5 is based on the existence of a judgment against a licensee, not on a "violation" of the charging statutes.

The First District also addressed CREL's claim that the Commissioner did not file a timely accusation within the statute of limitations. Business and Professions Code section 10101 requires the accusation to be filed not later than three years from the occurrence of the alleged grounds for disciplinary action, unless the acts or omissions with which the licensee is charged involve fraud, misrepresentation or a false promise, in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud or within three years after the occurrence thereof, whichever is later. CREL acknowledged that the accusation in this case was filed within three years of the date the judgment against it became final; nevertheless, CREL contended that the accusation was not timely, reasoning that the event beginning the limitations period is the licensee's act of misconduct, not the date of final judgment. In rejecting CREL's argument, the court noted that because the ground for license revocation in this case was the final civil judgment against CREL, not the acts or omissions underlying that judgment, the accusation was timely filed.

On December 30, the California Supreme Court denied CREL's petition for review of the First District's decision.

DEPARTMENT OF SAVINGS AND LOAN

Interim Commissioner:
Keith Paul Bishop
(213) 897-8202

The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). The Savings and Loan Association Law is in sections 5000 through 10050 of the California Financial Code. Departmental regulations are in Chapter 2, Title 10 of the California Code of Regulations (CCR). The Department, which has been recently downsized by the Wilson administration *[13:4 CRLR 128]*, now consists of three employees and regulates only 15 state-chartered S&L institutions.

LEGISLATION

SB 202 (Deddeh). Existing law provides that no savings association or subsidiary thereof, without the prior written consent of the Savings and Loan Commissioner, shall enter into certain specified transactions. As introduced February 4, this bill would instead provide that no savings association or subsidiary thereof, without the prior written consent of the Commissioner, and except as otherwise permitted by law, shall enter into those specified transactions. *[S. BC&IT]*

SB 161 (Deddeh). Existing law requires financial institutions to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than 10 days after the date of the initial deposit. As introduced February 1, this bill would instead require the statement to be furnished not later than seven business days after the date of the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bill would reduce the notice time from fifteen days prior to date of change or variance to seven business days.

The bill would also make technical, clarifying changes in provisions specifying the maximum percentage of assets that an association chartered by this state under the Savings Association Law, including a savings bank, may invest in specified loans made for agricultural, business, commercial, or corporate purposes. *[S. BC&IT]*

AB 320 (Burton). Existing law does not prescribe interest rates for bank credit card accounts, but prohibits defined usurious interest rates for any loan or forbearance made by a nonexempt lender. As introduced February 4, this bill would prescribe a maximum interest rate or finance charge which could be charged on credit card accounts issued by a bank, savings association, or credit union. Except as otherwise provided, the interest rate or finance charge assessed with respect to any account for which charges may be added by the use of a bank credit card shall not exceed an annual rate equal to 10% plus the savings account interest rate paid by the financial institution issuing the card. *[A. F&I]*

AB 1995 (Archie-Hudson), as introduced March 5, would authorize state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations. Any loan so restructured or

extended shall not be classified as delinquent, and the financial institution shall not be required to increase its reserves, or be subject to adverse regulatory action because of that loan. *[A. F&I]*

AB 1756 (Tucker), as amended June 9, would prohibit state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include specified information regarding the nature of the governance of the companies, and their lending and investment practices, with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. *[A. Inactive File]*

LITIGATION

On September 30, the California Supreme Court granted review of the Second District Court of Appeal's decision in ***People v. Charles H. Keating***, 16 Cal. App. 4th 280 (1993). In its ruling, the Second District affirmed a jury verdict in which the former savings and loan boss was found guilty of defrauding 25,000 investors out of $268 million by persuading them to buy worthless junk bonds instead of government-insured certificates. *[12:2&3 CRLR 169]*

Keating primarily challenges the trial court's jury instructions stating that Keating could be convicted under theories that he was either the direct seller of false securities in violation of Corporations Code sections 25401 and 25540, or a principal who aided and abetted the violations. Keating was convicted on 17 counts, all violations of sections 25401 and 25540. The major issue raised by Keating is whether aiding and abetting of a section 25401 crime statutorily exists; Keating claims that criminal liability is restricted to direct offerors and sellers, and that the evidence failed to prove he personally interacted with any of the investors. The Supreme Court unanimously voted to hear Keating's appeal of his state conviction, for which he received a ten-year prison term and a $250,000 fine. However, even if his state conviction is set aside by the court, Keating must serve a twelve-year term in federal prison based on his January conviction by a federal jury for racketeering, conspiracy, and fraud. *[13:4 CRLR 110]*

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director:
Steven Jablonsky
(916) 322-3640

California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. At this writing, OSB is functioning with a labor representative vacancy.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS

Expansion of Cal-OSHA Authorized by New Workers' Compensation Laws. AB 110 (Peace) (Chapter 121, Statutes of 1993), part of a package of workers' compensation bills which became law during 1993, requires Cal-OSHA to, among other things, establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses, and to establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis; the bill also requires Cal-OSHA to expand the activities of its consultation unit to proactively target employers with the greatest injury and illness rates and workers' compensation losses. The targeted inspection program and the expansion of the consultation services are to be financed by a surcharge to the workers' compensation insurance premium of employers with a workers' compensation experience modification rate of 1.25 or more (1.0 is average and higher rates reflect worse losses). *[13:4 CRLR 133]*

As a result of AB 110 and other workers' compensation reform bills, Cal-OSHA is able to hire an additional 122 people to work in compliance and consulting positions, as well as some auditors; additionally, the Division of Workers' Compensation has funding for 200 new positions. Following an October 19 hearing before the Senate Industrial Relations Committee, convened to investigate whether Cal-OSHA is failing to adequately protect the health and safety of Latinos and other minorities working in the Los Angeles area *[13:4 CRLR 131]*, DOSH Chief Dr.