

FILED

NOV 13 2008

DEPARTMENT OF REAL ESTATE

By *Jean Arundel*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CRISP COLE & ASSOCIATES, a)
Corporation, TOWER LENDING, a)
Corporation, CARL COLE, DAVID)
MARSHALL CRISP, JILL LOUISE)
PINHEIRO, SNEHA MOHAMMADI,)
and ROBINSON DINH NGUYEN,)
Respondents.)

No. H-2163 FR
OAH No. 2008030219

In the Matter of the Accusation of)
TOWER LENDING and)
CARL L. COLE,)
Respondents.)

No. H-2074 FR
OAH No. 2008030218

ORDER DENYING RECONSIDERATION

On September 24, 2008, a Decision was rendered in the above-entitled matter. The Decision was to become effective at 12 o'clock noon on October 15, 2008 (hereinafter the "Decision of October 15, 2008").

FILED

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DEPARTMENT OF REAL ESTATE

By L. Frost

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

**TOWER LENDING and
CARL L. COLE,**

Respondents

Case No. **H-2074 FR**

OAH No. **2008030218**

In the Matter of the Accusation of

**CRISP COLE & ASSOCIATES, A Corporation,
TOWER LENDING, A Corporation,
CARL COLE, DAVID MARSHALL CRISP,
JILL LOUISE PINHEIRO, SNEHA
MOHAMMADI, AND ROBINSON DINH
NGUYEN,**

Respondents

Case No. **H-2163 FR**

OAH No. **2008030219**

ORDER STAYING EFFECTIVE DATE

On September 24, 2008, a Decision was rendered in the above-entitled matters to become effective October 15, 2008.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of September 24, 2008, is stayed for a period of thirty (30) days, as to CARL L. COLE only.

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The Decision of the Real Estate Commissioner of September 24, 2008, as to CARL L. COLE only, shall become effective at 12 o'clock noon on November 14, 2008.

DATED: October 7, 2008

JEFF DAVI
Real Estate Commissioner

William E. Moran
By: William E. Moran
Assistant Commissioner,
Enforcement

FILED

SEP 26 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

CRISP COLE & ASSOCIATES, a Corporation,
TOWER LENDING, a Corporation, CARL
COLE, DAVID MARSHALL CRISP, JILL
LOUISE PINHEIRO, SNEHA MOHAMMADI
and ROBINSON DINH NGUYEN,

Respondents.

Case No. H-2163 FR

OAH NO. L2008030219

In the Matter of the Accusation of

TOWER LENDING and CARL L COLE,

Respondents.

Case No. H-2074 FR

OAH NO. L2008030218

DECISION

The Proposed Decision dated September 3, 2008, 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 OCT 15 2008

IT IS SO ORDERED 9-24-08

JEFF DAVI
Real Estate Commissioner

[Signature]

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

In the Matter of the Accusation of:

CRISP COLE & ASSOCIATES,
A corporation,
TOWER LENDING, a Corporation,
CARL COLE,
DAVID MARSHALL CRISP,
JILL LOUISE PINHEIRO,
SNEHA MOHAMMADI, and
ROBINSON DINH NGUYEN,

Respondents.

Case No.: H-2163 FR

OAH No.: L2008030219

In the Matter of the Accusation of:

TOWER LENDING and
CARL L. COLE,

Respondents.

Case No.: H-2074 FR

OAH No.: L2008030218

ORDER NUNC PRO TUNC

On September 4, 2008, the undersigned received a telephone voice mail from John Van Drill, Assistant Chief Counsel, Department of Real Estate, State of California, informing the undersigned of a typographical error in the proposed decision issued September 3, 2008. Mr. Van Drill indicated that the typographical error was on the last line of Legal Conclusion No. 6

The Administrative Law Judge reviewed the proposed decision and determined that it contained a typographical error on page 16, on the last line of Legal Conclusion No. 6. Pursuant to Government Code section 11517, subdivision (c)(2)(C), the phrase "as set forth in Factual Findings 36 and 39" shall be changed to read "as set forth in Factual Findings 36 through 39." Legal Conclusion 6 is changed as follows:

LEGAL CONCLUSIONS RE: RESPONDENT ROBINSON DINH NGUYEN

6. Cause exists to suspend or revoke the license and licensing rights of Respondent Robinson Dinh Nguyen under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j), in that Respondent Nguyen made substantial misrepresentations and engaged in fraud and dishonest dealing, as set forth in Factual Findings 36 through 39.

GOOD CAUSE APPEARING, the following order is issued:

1. The proposed decision is corrected as set forth herein.
2. This order nunc pro tunc is made part of the record in this case, and shall be attached to the proposed decision.

DATED: September 5, 2008

Humberto Flores

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation of:

**CRISP COLE & ASSOCIATES,
A corporation,
TOWER LENDING, a Corporation,
CARL COLE,
DAVID MARSHALL CRISP,
JILL LOUISE PINHEIRO,
SNEHA MOHAMMADI, and
ROBINSON DINH NGUYEN,**

Respondents.

Case No.: H-2163 FR

OAH No.: L2008030219

In the Matter of the Accusation of:

**TOWER LENDING and
CARL L. COLE,**

Respondents.

Case No.: H-2074 FR

OAH No.: L2008030218

PROPOSED DECISION

The above captioned matters were consolidated for hearing and were heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on from July 29, through August 5, 2008, in Bakersfield, California.

Michael B. Rich, Counsel for the Department of Real Estate, represented complainants.

Respondent Carl L. Cole appeared personally and as an officer and director of Crisp Cole & Associates and Tower Lending, and was represented by Glenn M. Kottcamp, Attorney at Law. Respondent David Marshall Crisp appeared in pro se, and as an officer and director of Crisp Cole & Associates and Tower Lending.

Respondent Robinson Dinh Nguyen did not appear despite being served with the Accusation and Notice of Hearing pursuant to Government Code sections 11505 and 11509. Complainant proceeded by default against Respondent Nguyen.

Respondents Jill Louise Pinheiro and Sneva Mohammadi reached settlement agreements with the Department of Real Estate and did not appear at the hearing. The decision in this matter shall not contain legal conclusions or orders relating to the licenses held by Respondents Pinheiro and Mohammadi.

Evidence was received and the matter was submitted for decision. The Administrative Laws Judge makes the following factual findings, legal conclusions and order.

STATEMENT OF THE CASE

Complainants are requesting revocation of the licenses and licensing rights of Respondents Crisp Cole & Associates, Tower Lending, David Marshall Crisp, Carl Cole and Robinson Nguyen, based on allegations that these named Respondents engaged in fraud and dishonest dealing by processing and submitting Uniform Residential Loan Applications containing false representations of material facts. In addition, Complainants are requesting revocation of the real estate broker's license previously issued to Respondent Carl Cole for failing to properly supervise the activities of salespersons and other employees of Crisp Cole & Associates and Tower Lending.

FACTUAL FINDINGS

FACTUAL FINDINGS RE: JURISDICTION AND PARTIES

1. Complainant Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in case H-2163 FR in his official capacity. Complainant John W. Sweeney, a Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in case H-2074 FR in his official capacity.

2. Respondents Crisp Cole & Associates (Respondent CCA), a corporation, Tower Lending (Respondent Tower), a corporation, Carl Cole (Respondent Cole), David Marshall Crisp (Respondent Crisp), Jill Louise Pinheiro (Respondent Pinheiro), Sneha Mohammadi (Respondent Mohammadi), and Robinson Dinh Nguyen (Respondent Nguyen) are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code).

3. At all relevant times, Respondent CCA was licensed by the Department of Real Estate (Department) as a corporate real estate broker by and through Respondent Cole as its designated officer-broker to qualify and to act for Respondent CCA as a real estate broker. At all relevant times, Respondents Cole and Crisp were principal stockholders of CCA, and each was a director and officer of the corporation.

4. At all relevant times Respondent Tower was and is licensed by the Department as a corporate real estate broker by and through Respondent Cole as its designated officer-broker to qualify and to act for Respondent Tower as a real estate broker. At all relevant times Respondents Cole and Crisp were principal stockholders of Respondent Tower, and each was a director and officer of the corporation.

5. At all relevant times Respondent Cole was and is now licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondents CCA and Tower. As the designated officer-broker, Respondent Cole was responsible pursuant to section 10159.2 of the Code for the supervision of the activities, for which a license is required, of the officers, agents, real estate licensees, and employees of Respondents CCA and Tower.

6. At all relevant times Respondent Mohammadi was licensed by the Department as a real estate broker.

7. At all relevant times Respondents Crisp, Pinheiro and Nguyen were licensed by the Department as real estate salespersons in the employ of Respondent CCA.

8. Within the three year period preceding the filing of the Accusations, Respondents Cole, CCA and Tower engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California within the meaning of:

- (a) Code section 10131, subdivision (a), in that Respondents Cole and CCA and operated and conducted a real estate resale brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, said Respondents sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property or a business opportunity; and,
- (b) Code section 10131, subdivision (d), in that Respondent Cole and Tower operated and conducted a mortgage loan brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, said Respondents solicited borrowers or lenders for or negotiated loans or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

FACTUAL FINDINGS RE: CCA AND OTHER RESPONDENTS

9. In November and December 2005, Respondents CCA and Cole induced No Red Tape Mortgage to make mortgage loans in the sum of \$1,000,000 and \$450,000 secured by real property at 9619 Marseilles Avenue, Bakersfield (Marseilles property), California, to finance the purchase of said real property by Respondent Cole. Respondent Cole signed a Uniform Residential Loan Application in which he falsely represented to the lender that he was purchasing the Marseilles property as his primary residence and that he intended to occupy the property as a residential owner. In fact, Respondent Cole never intended to reside in the house, rather he intended to lease the subject property to the sellers as tenants.

10. Respondent Cole testified that he was negligent in signing the residential loan application for the Marseilles property. Respondent Cole's testimony is not persuasive. The loan application has certain creditor and liability information that was supplied by Respondent Cole to the interviewer, and a reasonable inference is that Respondent Cole provided all of the other information in the document.

11. The Marseilles property loan file also contains a letter purportedly signed by Respondent Cole indicating that he would rent his then residence in order to make the Marseilles property his primary residence (exhibit 34, p. 185). This letter was generated from the offices of Respondent Tower. Respondent Cole claimed that his purported signature on this document was forged. Respondent Cole's assertion is credible. However, it was Respondent Cole's failure to properly supervise CCA and Tower activities that created a business atmosphere where an employee of either CCA or Tower might forge Respondent Cole's signature on a document without fear of repercussion by Respondent Cole or other management personnel.

12. The representation set forth in Factual Finding 9 was false and misleading and was known by Respondents CCA and Cole to be false and misleading when made, or was made by such Respondents with no reasonable grounds for believing the representation to be true. Further, the representation is a substantial misrepresentation of a material fact, and constitutes fraud and dishonest dealing.

13. In September and October 2005, Respondents CCA, Tower, Pinheiro, and Crisp induced Sun Trust Mortgage, Inc., to make loans in the sum of \$299,200 and \$74,800 secured by real property at 800 Astoria Park Drive, Bakersfield, California, to finance the purchase of said real property by Leslie Sluga. The above-named respondents falsely represented to the lender that purchaser/borrower Leslie Sluga had been employed by Respondent CCA as a transaction coordinator during the two-year period preceding the loan application. The false employment information was verified by Respondent Pinheiro, who at the time was Respondent CCA's office manager.

14. The Uniform Residential Loan Application, submitted by Respondent Tower, indicates that Respondent Cole was the interviewer for the loan application. Respondent Cole denied that he interviewed Ms. Sluga and denies signing the loan application. Respondent Cole's testimony on this issue is credible. A comparison of the signature on the Astoria loan application with Respondent Cole's actual signature supports his testimony.¹ Further, Ms. Sluga is the mother-in-law of Respondent Crisp, and it is inferred that Ms. Sluga's connection with CCA was not Respondent Cole, but rather Respondent Crisp, who either submitted the loan application or directed employees of CCA and/or Tower to submit the document containing the false statement.

15. The representations set forth in Factual Findings 13 and 14 above, were false and misleading and were known by Respondents CCA, Tower, Pinheiro, and Crisp to be false and misleading when made, or were made by such Respondents with no reasonable grounds for believing said representations to be true, because Respondent CCA had never employed Leslie Sluga in any capacity.

16. The acts, omissions and representations of Respondents CCA, Tower, Pinheiro, and Crisp as set forth in Factual Findings 13 and 14 constitute substantial misrepresentations of material facts, fraud and dishonest dealing.

17. In July of 2005, Respondents CCA, Tower, Cole, and Crisp:

- (a) Induced Fremont Investment and Loan (Fremont) to make loans in the sum of \$527,472 and \$131,868 secured by real property at 8702 Oak Hills Avenue, Bakersfield, California, to finance the purchase of said real property by Jennifer Crisp. In the Uniform Residential Loan Application processed and submitted by Respondent Tower, the above-named Respondents falsely represented to the lender that Ms. Crisp intended to occupy said real property as her primary residence, and concealed from the lender the fact, as Respondents knew or should have known at the time through the exercise of reasonable diligence, that Jennifer Crisp was simultaneously applying for and obtaining a mortgage loan obligation from Long Beach Mortgage Corporation in the sum of \$320,000, to finance the purchase of real property at 7908 Revelstoke Way, Bakersfield, California.
- (b) Induced Long Beach Mortgage Corporation to make a loan in the sum of \$320,000 secured by real property at 7908 Revelstoke Way, Bakersfield, California, to finance the purchase of said real property by Jennifer Crisp. In the loan application processed and submitted by Respondent Tower,

¹ Evidence Code section 1417 allows the trier of fact to determine the genuineness of handwriting by comparing it to other handwriting that has been found to be genuine.

Respondents falsely represented to the lender that Ms. Crisp intended to occupy said real property as her primary residence, and concealed from said lender the fact, as Respondents knew or should have known at the time through the exercise of reasonable diligence, that Jennifer Crisp was simultaneously applying for and obtaining mortgage loan obligations to Fremont Investment and Loan in the sum of \$527,472 and \$131,868 to finance the purchase of real property at 8702 Oak Hills Avenue, Bakersfield, California.

18. Jennifer Crisp, who is married to Respondent Crisp, signed a loan application to Long Beach Mortgage on July 15, 2005, and signed a loan application to Fremont on July 27, 2005. In both applications, Ms. Crisp falsely claimed that she was purchasing both properties as her primary residences. In addition, Ms. Crisp signed an occupancy agreement for the Revelstoke property.

19. In both applications, Respondent Cole is identified as the interviewer, and he signed the documents on behalf of Respondent Tower. Although Respondent Cole testified that he wasn't sure that he signed these documents as the interviewer, a comparison of these signatures with the signatures on the loan documents in exhibit 34 proves to the undersigned that Respondent Cole signed the residential loan applications as the interviewer for the Jennifer Crisp loans.

20. Testimony from a representative of Fremont established that Fremont would not have loaned the funds to Ms. Crisp on the Oak Hills property had Fremont been made aware that Ms. Crisp was not in fact going to reside at the property,² and that she had submitted a loan application to Long Beach Mortgage for the Revelstoke property only days earlier. Conversely, Long Beach Mortgage would not have processed and made the loan on the Revelstoke property had it been aware of the loan application submitted by Ms. Crisp to Fremont.

21. The acts, omissions and representations of Respondents CCA, Tower, Crisp, and Cole, as set forth in Factual Finding 17, were known by said Respondents to be false, or were made by Respondents with no reasonable grounds for believing said representations to be true, and constitute substantial misrepresentations of material facts, fraud, and dishonest dealing.

² Testimony at the hearing established that loan institutions have internal guidelines on processing and making loans. These guidelines usually allow for greater loan amounts and more favorable terms and conditions on loans when a borrower purchases a house as her primary residence.

22. On or about September 2, 2005, Respondents CCA, Tower, and Crisp induced Long Beach Mortgage Corporation to make loans of \$504,000 and \$126,000 secured by real property at 11402 Marazion Hill Court, Bakersfield, California (Marazion Hill property), to finance the purchase of said real property by Respondent Crisp by making false representations as follows:

- (a) In his Uniform Residential Loan Application processed and submitted by Respondent Tower, Respondent Crisp falsely represented to the lender that as buyer, he intended to occupy the property as his primary residence. In fact, Respondent Crisp did not intend to occupy said real property as his primary residence.
- (b) In connection with the loan application, Respondent Crisp signed an "Occupancy Agreement" certifying that he intended to occupy the property during the 12-month period immediately following loan closing. In fact, upon the completion of the transaction, Respondent Crisp leased the property to the seller for a two-month period.
- (c) The Uniform Residential Loan Application, processed by Respondent Tower, contains an interviewer's signature purported to be that of Respondent Cole (exhibit 43, p. 38). Respondent Cole denied that it was his signature, and a comparison of his signature in exhibit 34 supports his testimony. This leads to the inference that Respondent Crisp, who stood to benefit from the transaction, either forged Respondent Cole's signature, or directed an employee of Respondent Tower to forge the signature.

23. The representations set forth in Factual Finding 22 were false and misleading and were known by Respondents CCA, Tower, and Crisp to be false and misleading because during the negotiations leading up to the transaction, Respondent Crisp agreed to lease the property to the seller as a tenant. Respondent Crisp and the seller executed a lease agreement on September 2, 2005. Respondent Crisp did not intend to reside in the Marazion Hill property, but rather intended to subsequently sell the Marazion Hill property without residing there. This is evidenced not only by the lease agreement, but also by the fact that within a two-month period, Respondent Crisp and/or his wife purchased three different residential properties and represented in the underlying loan applications that they intended to occupy each house as their primary residence. In addition, Respondent Crisp purchased two other houses in November and December of 2005, in which he claimed primary residence for each house, as set forth below in Factual Finding 25.

24. The acts, omissions and representations of Respondents CCA, Tower, and Crisp, set forth in Factual Findings 19 and 20 constitute substantial misrepresentations of material facts, fraud, and dishonesty dealing.

25. In November and December of 2005, Respondents CCA, Tower, and Crisp:

- (a) Induced Sun Trust Mortgage to make loans of \$1,105,000 and \$350,000 secured by real property at 10509 Newquay Court, Bakersfield, California, to finance the purchase of said real property by Respondent Crisp. In the residential loan applications processed and submitted by Respondent Tower, Respondents CCA, Tower, and Crisp falsely represented to the lender that Respondent Crisp intended to occupy the real property as his primary residence, and concealed from said lender the fact that Respondent Crisp was simultaneously applying for and obtaining a mortgage loan obligation to WMC Mortgage Corporation in the sum of \$1,060,000 to finance the purchase of real property at 1805 Grimshaw Way, Bakersfield, California.
- (b) Induced WMC Mortgage Corporation to make loans in the sum of \$860,000 and \$200,000 secured by real property at 1805 Grimshaw Way, Bakersfield, California, to finance the purchase of said real property by Respondent Crisp. In the residential loan applications processed and submitted by Respondent Tower, Respondents CCA, Tower, and Crisp falsely represented to the lender that Respondent Crisp intended to occupy said real property as his primary residence, and concealed from said lender the fact that Respondent Crisp was simultaneously applying for and obtaining mortgage loan obligations to Sun Trust Mortgage of \$1,455,000 to finance the purchase of real property at 10509 Newquay Court, Bakersfield, California;

26. Respondent Crisp signed residential loan applications for the Newquay and Grimshaw properties on December 21, 2005. He signed an occupancy affidavit for each property on March 13, 2006, indicating that each house would be his primary residence. He signed a deed of trust for each property on March 13, 2006.

27. Respondent Crisp introduced testimony from a painting contractor and from Respondent Cole, both of whom testified that Respondent Crisp lived at the Grimshaw house for a number of months. While Respondent Crisp may have spent some time living at the Grimshaw house, he purchased the Grimshaw and Newquay properties as investments and not as his primary residences.

28. The acts, omissions and representations of Respondents CCA, Tower, and Crisp, as set forth in Factual Finding 25 constitute substantial misrepresentations of material facts, fraud and dishonest dealing.

29. In September 2006, Respondents CCA, Tower, and Crisp:

- (a) Induced Sun Trust Mortgage, Inc., to make loans in the sum of \$1,000,000 and \$295,000 secured by real property at 11219 Draper Court, Bakersfield, California, to finance the purchase of said real property by Jennifer Crisp. In the residential loan applications, Respondents CCA, Tower, and Crisp falsely represented to the lender that the buyer intended to occupy the real property as her primary residence, and that California Business Solutions employed Jennifer Crisp as a chief operations officer (COO). In fact, Ms. Crisp had never been employed by California Business Solutions.³ Respondents also concealed from the lender the fact, as Respondents knew or should have known through the exercise of reasonable diligence, that Jennifer Crisp was simultaneously applying for and obtaining a mortgage loan obligation to Aegis Wholesale Corporation in the sum of \$475,000 to finance the purchase of real property at 12706 Lanai Avenue, Bakersfield, California.
- (b) Induced Aegis Wholesale Corporation to make loans in the sum of \$400,000 and \$75,000 secured by real property at 12706 Lanai Avenue, Bakersfield, California, to finance the purchase of said real property by Jennifer Crisp. In the residential loan applications, Respondents CCA, Tower, and Crisp falsely represented to the lender that the buyer intended to occupy the real property as her primary residence, and that California Business Solutions employed Jennifer Crisp as its COO. Respondents knew or should have known through the exercise of reasonable diligence that Jennifer Crisp had no intention of occupying the property and that she did not work for California Business Solutions as its COO. Respondents also concealed from said lender the fact that, as Respondents knew or should have known at the time through the exercise of reasonable diligence, Jennifer Crisp was simultaneously applying for and obtaining mortgage loan obligations to Sun Trust Mortgage, Inc. totaling \$1,295,000 to finance the purchase of real property at 11219 Draper Court, Bakersfield, California.

30. The acts, omissions and representations of Respondents CCA, Tower, and Crisp, as set forth in Factual Finding 29 constitute substantial misrepresentations of material facts, fraud and dishonest dealing.

³ Timothy Hubbell, the owner of California Business Solutions, testified that Ms. Crisp never worked at his company. Further, Mr. Hubbell denied signing the letter in the loan documents verifying her employment with California Business Solutions.

31. In October and November 2005, Respondents CCA, Tower, and Crisp:

- (a) Induced Long Beach Mortgage Corporation to make loans in the sum of \$303,200 and \$75,800 secured by real property at 14309 San Jose Avenue, Bakersfield, California, to finance the purchase of said real property by Janie Stockton by falsely representing to the lender that said buyer intended to occupy the property as her primary residence and that Respondent CCA employed Janie Stockton as an office manager.
- (b) Induced Sun Trust Mortgage, Inc., to make loans of \$594,350 and \$148,600 secured by real property at 416 Copinsay Court, Bakersfield, California, to finance the purchase of said real property by Janie Stockton in that Respondents falsely represented to the lender that said buyer intended to occupy the real property as her primary residence and that Respondent CCA employed Janie Stockton as a marketing director.

32. The acts, omissions and representations of Respondents CCA, Tower and Crisp, as set forth in Factual Finding 31 constitute substantial misrepresentations of material facts, fraud, and dishonest dealing.

33. Complainant did not establish that Respondent Crisp and Janie Stockton had entered into an agreement whereby Respondent Crisp paid Janie Stockton to sign and submit the loan applications on behalf of Respondent Crisp, who would then pay the monthly mortgage installments, and that Janie Stockton would sell the property at the direction of Respondent Crisp and pay the equity proceeds from such sale to Respondent Crisp. The only evidence presented on this issue were the hearsay statements attributed to Janie Stockton.

34. In the period between February 2, 2006, and April 14, 2006, Respondents CCA, Tower, Mohammadi, and Crisp:

- (a) Induced Sun Trust Mortgage, Inc., to make loans in the sum of \$894,451 and \$223,613 secured by real property at 11504 Haydock Court, Bakersfield, California, to finance the purchase of said real property by Respondent Mohammadi as an ostensible buyer. In the residential loan applications, Respondents CCA, Tower, Mohammadi, and Crisp, falsely represented to the lender that Mohammadi intended to occupy the real property as her primary residence, and concealed from said lender the fact, as such Respondents knew or should have known at the time through the exercise of reasonable diligence, that Respondent Crisp and Respondent Mohammadi had entered into an agreement whereby Crisp paid Mohammadi to sign and submit the loan applications as the purchaser. The agreement also called for Crisp to pay the monthly mortgage installments, and upon the future sale of the property, Respondent Crisp would receive the equity proceeds.

(b) Induced Kirkwood Financial Corporation to make loans in the sum of \$1,275,000 and \$425,000 secured by real property at 11504 Haydock Court, Bakersfield, California, to finance the purchase of said real property by an ostensible buyer, Leslie Sluga, by falsely representing to the lender that said buyer intended to occupy the real property as her primary residence and that Ms. Sluga was the owner of a company known as California Business Solutions. In fact, California Business Solutions employed Ms. Sluga as a bookkeeper. As noted in Factual Finding 13, Ms. Sluga is the mother-in-law of Respondent Crisp. Therefore, Respondents knew, or with the exercise of reasonable diligence, should have known that the statement concerning Ms. Sluga's employment information was false.

35. The acts, omissions and representations of Respondents CCA, Tower, Mohammadi, and Crisp, as set forth Factual Finding 34 constitute substantial misrepresentations of material facts, fraud, and dishonest dealing.

36. On July 26, 2005, Respondents CCA, Tower, Nguyen, and Crisp induced Long Beach Mortgage Corporation to make mortgage loans in the sum of \$507,960 and \$126,990 secured by real property at 1904 Ordsall Street, Bakersfield, California, to finance the purchase of said real property by Respondent Nguyen by falsely representing to the lender that Respondent Nguyen was purchasing the said property as his primary residence and intended to occupy the property as a residential owner, and would reside in the property during the twelve (12) month period immediately following the close of escrow.

37. Respondent Nguyen did not intend to reside in the Ordsall Street property as stated in his loan application. This is because on July 27, 2005, he submitted another loan application to Fremont Investment and Loan to finance the purchase of a house at 3507 Rancho Santa Fe, Bakersfield, California. In his loan application submitted to Fremont, Respondent Nguyen stated that he intended to reside in the Rancho Santa Fe property. In addition, he signed an occupancy affidavit indicating his intention to reside there.

38. The representations set forth in Factual Findings 36 and 37 were false and misleading and were known by Respondents CCA, Tower, Nguyen, and Crisp to be false and misleading when made, or were made by such Respondents with no reasonable grounds for believing said representations to be true.

39. The acts, omissions and representations of Respondents CCA, Tower, Nguyen, and Crisp, as set forth in Factual Findings 36 and 37 constitute substantial misrepresentations of materials facts, fraud, and dishonesty dealing.

40. At all relevant times Respondent Cole was responsible, as the designated broker-officer of Respondent CCA, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent Cole failed to exercise reasonable supervision and control over the real estate purchase and sale brokering activities of Respondent CCA. In particular, Respondent Cole permitted, ratified and/or caused the conduct set forth in factual Findings 9 through 39 to occur, and failed to take reasonable steps, including but not limited to the review of purchase contracts, the review of escrow instructions, preventing straw-buyer purchases of residential real properties, preventing misrepresentations and false statements on loan applications and occupancy agreements, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law.

41. At all relevant times, Respondent Cole was responsible, as the designated broker-officer of Respondent Tower, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent Cole failed to exercise reasonable supervision and control over the mortgage brokering activities of Respondent Tower. In particular, Respondent Cole permitted, ratified and/or caused the conduct described in the Factual Findings 9 through 35 to occur, and failed to take reasonable steps, including but not limited to the review of loan applications, preventing misrepresentations and false statements on loan applications and occupancy agreements, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law.

FACTUAL FINDINGS RE: RESPONDENTS TOWER AND COLE

42. From approximately April through August of 2005, Respondents Tower and Cole employed and compensated Jayson Costa to perform activities requiring a real estate license. Specifically, Mr. Costa solicited prospective borrowers, and/or lenders 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. Mr. Costa was not licensed by the Department during his entire employment with Respondent Tower. Despite not being licensed, Mr. Costa contacted borrowers, quoted interest rates, interviewed loan applicants and negotiated loans on more than 50 transactions.

43. Respondent Cole was the designated broker-officer for Respondent Tower during Mr. Costa's employment. Respondent Cole testified at the hearing that he had been told by Mr. Costa that he (Costa) was licensed by the Department at the time he was hired to negotiate and process loans for Respondent Tower. Respondent Cole's testimony is not credible on this issue. Mr. Costa testified credibly at the hearing he never told Respondent Cole that he was licensed and that Respondent Cole never asked to see his license nor did he inquire about it. Mr. Costa's testimony is supported by the transaction records maintained by Respondent Tower. Although

Costa processed and negotiated over 50 residential loans for Tower, and was paid over \$150,000 from April to August 2005, the company records (exhibits 59 and 61) do not show him as the agent who processed the loans. Rather, the records designate Respondent Cole as the processing agent. Further, the residential loan applications that are attached to exhibit 61 were not signed by Costa, but rather by Respondent Cole as the ostensible interviewer. Finally, Respondent Mohammadi, the office manager for respondent Tower, explained to a Department investigator that the reason that the records were kept in this fashion was because Mr. Costa was not licensed. These facts not only show that Respondents Cole and Tower knew that Mr. Costa was not licensed, but that they devised and prepared a set of records designed to hide that Mr. Costa was engaged in licensed activities for Respondents Tower and Cole.

44. Transactions that were processed and negotiated by Mr. Costa included loans to the following borrowers:

- (a) Eric Maldonado for a loan secured by real property located at 2125 Sacramento Street, Bakersfield, California, based on a loan application submitted April 28, 2005;
- (b) Paul and Dee Ann Wheaton for a loan secured by real property located at 6205 Hartman Avenue, Bakersfield, California, based on a loan application submitted June 28, 2005; and
- (c) Jennifer and Craig Greitlin for a loan secured by real property located at 10012 Vanessa Avenue, Bakersfield, California, based on a loan application submitted on June 17, 2005.

45. The Uniform Residential Loan Applications for the borrowers identified in Factual Finding 44, contain certain language requesting information relating to the borrower's race, ethnicity or sex. It states in pertinent part:

You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may discriminate neither, on the basis of this information, nor on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race or sex, under Federal regulation, this lender is required to note the information on the basis of visual observation or surname. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under the applicable state law for the particular loan applied for).

46. The residential loan applications indicated that each borrower provided the race, sex and ethnicity information to the interviewer, who according to the loan application was Respondent Cole.

47. Complainant did not prove that Respondent Cole never interviewed any of the borrowers set forth in Factual Finding 44. None of the above borrowers testified at the hearing to prove complainant's contention. The fact that Mr. Costa processed the loans and interviewed the borrowers does not, by itself, prove that Respondent Cole never spoke with the borrowers.

FACTORS IN AGGRAVATION

48. The evidence presented at the hearing proved that Respondent Crisp, in his capacity as salesperson and officer of Respondents CCA and Tower, engaged in a practice of submitting, or causing to be submitted, loan applications containing false representations, omissions, and forged documents in order obtain residential property loans. The evidence established that these lending institutions would not have made the loans had they been made aware of the false representations and omissions contained in the loan applications. In the purchase of the three properties set forth in Factual Findings 22 and 25, Respondent Crisp personally submitted false and/or fraudulent loan applications. In loan applications submitted for other properties, Respondent Crisp convinced others, including family members and employees of Respondents CCA and Tower, to act as purchaser/borrowers and to submit false information on residential loan applications. A review of the escrow documents for the transactions set forth in Factual Findings 9 through 39, reveals that Respondent CCA, the real estate broker for the transactions, received approximately \$488,000 in commissions, while Respondent Tower received approximately \$120,000 in loan origination fees for negotiating loans, and processing and submitting loan applications.

49. Respondent Cole delegated almost all of the activities relating to real estate transactions conducted and/or processed by Respondents CCA and Tower, and thereafter failed to properly supervise the licensed activities of salespersons and other licensed employees and failed to review transaction documents for accuracy. Rather than properly performing his duty to supervise CCA employees and its real estate activities, Respondent Cole focused his attention on development projects in Kern County, such as his project to build twin high-rise buildings in Bakersfield. As a result, Respondent Cole abdicated his supervisory responsibility and allowed Respondent Crisp, a real estate salesperson, to run the day-to-day operations of Respondents CCA and Tower. Finally, Respondent Cole, in his capacity as designated broker-officer of Respondent Tower, was aware that Jayson Costa was not licensed during the time that Mr. Costa was employed to negotiate and process loans for borrowers. Rather than hire a licensed individual, Respondents Cole and Tower prepared deceptive records to hide Mr. Costa's activities, which required a license.

FACTORS IN MITIGATION

50. Respondent Cole received a salesperson's license in 1991, and obtained a broker's license in 2003. He has no previous discipline. The evidence proved that he has been active in the community since he moved to Bakersfield in 1998, and has donated time and money to various community organizations. It is also noted that Respondent Cole purchased the Marseilles property (Factual Finding 9) as a favor to a friend and colleague who had suffered family and financial difficulties.

LEGAL CONCLUSIONS

LEGAL CONCLUSIONS RE: RESPONDENT DAVID MARSHALL CRISP

1. Cause exists to suspend or revoke the license and licensing rights of Respondent David Marshall Crisp under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j), in that respondent Crisp made substantial misrepresentations, engaged in fraud and dishonest dealing, and disregarded the Real Estate Law, as set forth in Factual Findings 13 through 39.

LEGAL CONCLUSIONS RE: RESPONDENT CARL L. COLE

2. Cause exists to suspend or revoke the license and licensing rights of Respondent Carl L. Cole under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j), in that Respondent Cole made substantial misrepresentations, engaged in fraud and dishonest dealing, and willfully disregarded the Real Estate Law, as set forth in Factual Findings 9 through 12, and 17 through 21.

3. Cause exists to suspend or revoke the license and licensing rights of Respondent Carl L. Cole under Business and Professions Code section 10177, subdivision (g), in that Respondent Cole demonstrated negligence or incompetence while performing licensed activities, as set forth in Factual Findings 13 through 49.

4. Cause exists to suspend or revoke the license and licensing rights of Respondent Carl L. Cole under Business and Professions Code section 10177, subdivisions (d) and (g), in conjunction with section 10159.2, in that Respondent Cole failed to properly supervise the licensed activities conducted by salespersons and other employees on behalf of Respondents CCA and Tower, as set forth in Factual Findings 13 through 49.

5. Cause exists to suspend or revoke the license and licensing rights of Respondent Carl L. Cole under Business and Professions Code sections 10137 and 10177, subdivision (d), in that Respondent Cole employed a non-licensed person to perform licensed activities for Respondent Tower Lending, as set forth in Factual Findings 42, 43 and 44.

LEGAL CONCLUSIONS RE: RESPONDENT ROBINSON DINH NGUYEN

6. Cause exists to suspend or revoke the license and licensing rights of Respondent Robinson Dinh Nguyen under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j), in that Respondent Nguyen made substantial misrepresentations and engaged in fraud and dishonest dealing, as set forth in Factual Findings 36 ~~and~~ 39.
through

LEGAL CONCLUSIONS RE: RESPONDENT CRISP COLE & ASSOCIATES

7. Cause exists to suspend or revoke the license and licensing rights of Respondent CCA under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j), in that Respondent CCA, through Respondents Crisp, Cole, Nguyen, Mohammadi and Pinheiro, made substantial misrepresentations, engaged in fraud and dishonest dealing, and willfully disregarded the Real Estate Law, as set forth in Factual Findings 9 through 39.

8. Cause exists to suspend or revoke the license and licensing rights of Respondent CCA under Business and Professions Code section 10177, subdivision (g), in that Respondent CCA, through Respondent Cole, demonstrated negligence or incompetence in the performance licensed activities, as set forth in Factual Findings 9 through 39.

LEGAL CONCLUSIONS RE: RESPONDENT TOWER LENDING

9. Cause exists to suspend or revoke the license and licensing rights of Respondent Tower under Business and Professions Code sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d) and (j), in that Respondent Tower, through Respondents Crisp and Cole, made substantial misrepresentations, engaged in fraud and dishonest dealing, and willfully disregarded the Real Estate Law, as set forth in Factual Findings 13 through 39.

10. Cause exists to suspend or revoke the license and licensing rights of Respondent Tower under Business and Professions Code section 10177, subdivision (g), in that Respondent Tower, through Respondent Cole, demonstrated negligence or incompetence in the performance licensed activities, as set forth in Factual Findings 13 through 44.

11. Cause exists to suspend or revoke the license and licensing rights of Respondent Tower under Business and Professions Code sections 10137 and 10177, subdivision (d), in that Respondent Tower, through Respondent Cole, employed a non-licensed person to perform licensed activities, as set forth in Factual Findings 42, 43 and 44.

ORDER

1. All licenses and licensing rights of Respondent DAVID MARSHALL CRISP are revoked.


2. All licenses and licensing rights of Respondent CARL L. COLE are revoked.

3. All licenses and licensing rights of Respondent ROBINSON DINH NGUYEN are revoked.

4. All licenses and licensing rights of Respondent CRISP COLE & ASSOCIATES are revoked.

5. All licenses and licensing rights of Respondent TOWER LENDING are revoked.

DATED: September 3, 2008


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

FILED

MAR 26 2007

DEPARTMENT OF REAL ESTATE

By S. Ely

1 MICHAEL B. RICH, Counsel
2 State Bar Number 82457
3 DEPARTMENT OF REAL ESTATE
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 TOWER LENDING and) H-2074 FR
13 CARL L. COLE,)
14 Respondents.) ACCUSATION

15
16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, as and for an
18 Accusation herein against TOWER LENDING and CARL L. COLE, is
19 informed and alleges as follows:

20 FIRST CAUSE OF ACCUSATION

21 I

22 Respondents TOWER LENDING and CARL L. COLE, are
23 presently licensed and/or have license rights under the Real
24 Estate Law, Part 1 of Division 4 of the California Business and
25 Professions Code (hereafter the Code).

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II

The Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent TOWER LENDING (hereafter "Respondent TOWER") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker.

IV

At all times herein mentioned, Respondent CARL L. COLE (hereafter "Respondent COLE") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a real estate broker.

V

At all times herein mentioned, Respondent COLE was and is licensed by the Department as the designated broker/officer of Respondent TOWER. As said designated Broker/officer, Respondent TOWER was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent TOWER for which a real estate license is required.

VI

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent TOWER, such

1 allegation shall be deemed to mean that the officers, directors,
2 employees, agents and real estate licensees employed by or
3 associated with Respondent TOWER committed such act or omission
4 while engaged in the furtherance of the business or operations
5 of Respondent TOWER and while acting within the course and scope
6 of their corporate authority and employment.

7 VII

8 At no time mentioned herein did the Department license
9 JAYSON COSTA either as a real estate broker or as a real estate
10 salesperson.

11 VIII

12 At all times herein mentioned, Respondent TOWER and
13 Respondent COLE engaged in the business of, acted in the
14 capacity of, advertised, or assumed to act as a real estate
15 broker within the State of California, within the meaning of
16 Section 10131(d) of the Code, including the operation of and
17 conduct of a mortgage loan brokerage business with the public
18 wherein lenders and borrowers were solicited for loans secured
19 directly or collaterally by liens on real property, wherein such
20 loans were arranged, negotiated, processed, and consummated on
21 behalf of others for compensation or in expectation of
22 compensation, and/or wherein such loans were serviced and
23 payments thereon were collected on behalf of others.

24 IX

25 Within the three year period next preceding to the
26 filing of this Accusation, during the period from on or about
27 April 13, 2005, and continuing through on or about August 8,

1 2005, Respondents TOWER and COLE employed and compensated JAYSON
2 COSTA to perform the activities requiring a license as alleged
3 in Paragraph VIII, above.

4 X

5 Between on or about April 13, 2005, and continuing
6 through on or about August 8, 2005, in the course of the
7 employment and activities described in Paragraph VIII and IX,
8 above, JAYSON COSTA solicited prospective borrowers and/or
9 lenders for loans secured directly or collaterally by liens on
10 real property and/or arranged, negotiated, processed such loans
11 secured directly or collaterally by liens on real property for
12 or in expectation of compensation in more than fifty (50) such
13 transactions, including, but not limited to, the following:

14 1.) Real Property: 2125 Sacramento, Bakersfield,
15 California.

16 Borrower: Eric Maldonado.

17 Application Date: 4/28/05.

18 Purpose of Property: Borrowers' primary residence.

19 Purpose of Loan: Purchase.

20 Loan Amount: \$172,400.00.

21 Lender: Long Beach Mortgage.

22 2.) Real Property: 6205 Hartman Avenue, Bakersfield,
23 California.

24 Borrowers: Paul and Dee Ann Wheaton.

25 Application Date: 6/28/05.

26 Purpose of Property: Borrowers' primary residence.

27 Purpose of Loan: Purchase.

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Loan Amount: \$226,400.00.

Lender: Sierra Pacific Mortgage.

3.) Real Property: 10012 Vanessa Avenue, Bakersfield,
California.

Borrower: Jennifer and Craig Greitlin.

Application Date: 6/17/05.

Purpose of Property: Borrowers' primary residence.

Purpose of Loan: Purchase.

Loan Amount: \$260,000.00.

Lender: Long Beach Mortgage.

XI

The facts alleged above constitute cause for the suspension or revocation of the licenses and license rights of Respondents TOWER and COLE under Section 10137 of the Code in conjunction with and Section 10177(d) the Code.

SECOND CAUSE OF ACCUSATION

XII

There is hereby incorporated in this Second, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I through XI, inclusive, of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIII

On or about April 29, 2005, on behalf of Eric Maldonado (hereinafter "Borrower"), Respondent COLE as the designated broker/officer for Respondent TOWER submitted a UNIFORM RESIDENTIAL LOAN APPLICATION (hereinafter "Application") to Long

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1 Beach Mortgage (hereinafter "Lender") relating to a \$172,400.00
2 loan to be secured by real property located at 2125 Sacramento,
3 Bakersfield, California (hereinafter "the Property").

4 XIV

5 On or about May 27, 2005, pursuant to Lender's
6 acceptance of the Application and the information contained
7 therein, the Lender funded the loan.

8 XV

9 The Application provided, in pertinent part, the
10 following language:

11 "The following information is requested by the Federal
12 Government for certain types of loan related to a
13 dwelling in order to monitor the lender's compliance
14 with equal credit opportunity, fair housing and home
15 mortgage disclosure laws. You are not required to
16 furnish this information, but are encouraged to do so.
17 The law provides that a lender may discriminate
18 neither on the basis of this information, nor on
19 whether you choose to furnish it. If you furnish the
20 information, please provide both ethnicity and race.
21 For race, you may check more than one designation. If
22 you do not furnish ethnicity, race, or sex, under
23 Federal regulations, this lender is required to note
24 the information on the basis of visual observation or
25 surname. If you do not wish to furnish the
26 information, please check the box below. (Lender must
27

1 review the above material to assure that the
2 disclosures satisfy all requirements to which the
3 lender is subject under applicable state law for the
4 particular type of loan applied for.)"

5 XVI

6 The race, ethnicity, and sex information was set forth
7 on the Application. The Application indicated that the Borrower
8 had provided this information.

9 XVII

10 Respondent COLE signed the Application on or about
11 April 28, 2005, as the "Interviewer" and checked information to
12 "be Completed by Interviewer" indicating the "application was
13 taken . . . by telephone." In truth and in fact, Respondent
14 COLE had not met with the Borrower at any time, had not spoken
15 to the Borrower at any time, and had not taken any information
16 from the Borrower.

17 XVIII

18 Respondent COLE's representation on the Application
19 that he had interviewed the Borrower by telephone and had
20 obtained the requested ethnicity, race, and sex information from
21 the Borrower was false, and was known by Respondent COLE to be
22 false at the time he made it.

23 XIX

24 The acts and/or omissions of Respondent described
25 above are grounds for the revocation or suspension of all
26 Respondent's licenses under Sections 10176(a) and (i) and/or
27 10177(g) and/or (j) of the Code.

1 THIRD CAUSE OF ACCUSATION

2 XX

3 There is hereby incorporated in this Third, separate
4 and distinct, Cause of Accusation, all of the allegations
5 contained in Paragraphs I through XI, inclusive, of the First
6 Cause of Accusation with the same force and effect as if herein
7 fully set forth.

8 XXI

9 On or about June 29, 2005, on behalf of Paul and Dee
10 Ann Wheaton (hereinafter "Borrowers"), Respondent COLE as the
11 designated broker/officer for Respondent TOWER submitted a
12 UNIFORM RESIDENTIAL LOAN APPLICATION (hereinafter "Application")
13 to Sierra Pacific Mortgage (hereinafter "Lender") relating to a
14 \$226,400.00 loan to be secured by real property located at 6205
15 Hartman Avenue, Bakersfield, California (hereinafter "the
16 Property").

17 XXII

18 On or about July 1, 2005, pursuant to Lender's
19 acceptance of the Application and the information contained
20 therein, the Lender funded the loan.

21 XXIII

22 The Application provided, in pertinent part, the
23 following language:

24 "The following information is requested by the Federal
25 Government for certain types of loan related to a
26 dwelling in order to monitor the lender's compliance
27

1 with equal credit opportunity, fair housing and home
2 mortgage disclosure laws. You are not required to
3 furnish this information, but are encouraged to do so.
4 The law provides that a lender may discriminate
5 neither on the basis of this information, nor on
6 whether you choose to furnish it. If you furnish the
7 information, please provide both ethnicity and race.
8 For race, you may check more than one designation. If
9 you do not furnish ethnicity, race, or sex, under
10 Federal regulations, this lender is required to note
11 the information on the basis of visual observation or
12 surname. If you do not wish to furnish the
13 information, please check the box below. (Lender must
14 review the above material to assure that the
15 disclosures satisfy all requirements to which the
16 lender is subject under applicable state law for the
17 particular type of loan applied for.)"

18 XXIV

19 The race, ethnicity, and sex information was set forth
20 on the Application. The Application indicated that the
21 Borrowers had provided this information.

22 XXV

23 Respondent COLE signed the Application on or about
24 June 28, 2005, as the "Interviewer" and checked information to
25 "be Completed by Interviewer" indicating the "application was
26 taken . . . by telephone." In truth and in fact, Respondent
27 COLE had not met with the Borrowers at any time, had not spoken

1 to the Borrowers at any time, and had not taken any information
2 from the Borrowers.

3 XXVI

4 Respondent COLE's representation on the Application
5 that he had interviewed the Borrowers by telephone and had
6 obtained the required ethnicity, race, and sex information from
7 the Borrowers was false, and was known by Respondent COLE to be
8 false at the time he made it.

9 XXVII

10 The acts and/or omissions of Respondent described
11 above are grounds for the revocation or suspension of all
12 Respondent's licenses under Sections 10176(a) and (i) and/or
13 10177(g) and/or (j) of the Code.

14 FOURTH CAUSE OF ACTION

15 XXVIII

16 There is hereby incorporated in this Fourth, separate
17 and distinct, Cause of Accusation, all of the allegations
18 contained in Paragraphs I through XI, inclusive, of the First
19 Cause of Accusation with the same force and effect as if herein
20 fully set forth.

21 XXIX

22 On or about June 18, 2005, on behalf of Jennifer and
23 Craig Greitlin (hereinafter "Borrowers"), Respondent COLE as the
24 designated broker/officer for Respondent TOWER submitted a
25 UNIFORM RESIDENTIAL LOAN APPLICATION (hereinafter "Application")
26 to Long Beach Mortgage (hereinafter "Lender") relating to a
27 \$260,000.00 loan to be secured by real property located at 10012

1 Vanessa Avenue, Bakersfield, California (hereinafter "the
2 Property").

3 XXX

4 On or about July 8, 2005, pursuant to Lender's
5 acceptance of the Application and the information contained
6 therein, the Lender funded the loan.

7 XXXI

8 The Application provided, in pertinent part, the
9 following language:

10 "The following information is requested by the
11 Federal Government for certain types of loan related
12 to a dwelling in order to monitor the lender's
13 compliance with equal credit opportunity, fair housing
14 and home mortgage disclosure laws. You are not
15 required to furnish this information, but are
16 encouraged to do so. The law provides that a lender
17 may discriminate neither on the basis of this
18 information, nor on whether you choose to furnish it.
19 If you furnish the information, please provide both
20 ethnicity and race. For race, you may check more than
21 one designation. If you do not furnish ethnicity,
22 race, or sex, under Federal regulations, this lender
23 is required to note the information on the basis of
24 visual observation or surname. If you do not wish to
25 furnish the information, please check the box below.
26 (Lender must review the above material to assure that
27

1 the disclosures satisfy all requirements to which the
2 lender is subject under applicable state law for the
3 particular type of loan applied for.)"

4 XXXII

5 The race and ethnicity information was not set forth
6 on the Application, though the gender information was provided.
7 The Application indicated that the Borrowers did not wish to
8 provide this information.

9 XXIII

10 Respondent COLE signed the Application on or about
11 June 17, 2005, as the "Interviewer" and checked information to
12 "be Completed by Interviewer" indicating the "application was
13 taken . . . by telephone." In truth and in fact, Respondent
14 COLE had not met with the Borrowers at any time, had not spoken
15 to the Borrowers at any time, and had not taken any information
16 from the Borrowers.

17 XXXIV

18 Respondent COLE's representation on the Application
19 that he had interviewed the Borrowers by telephone and had
20 obtained the Borrowers refusal to provide the ethnicity and race
21 information was false, and was known by Respondent COLE to be
22 false at the time he made it.

23 XXXV

24 The acts and/or omissions of Respondent described
25 above are grounds for the revocation or suspension of all
26 Respondent's licenses under Sections 10176(a) and (i) and/or
27 10177(g) and/or (j) of the Code.

1 FIFTH CAUSE OF ACTION

2 XXXVI

3 There is hereby incorporated in this Fifth, separate
4 and distinct, Cause of Accusation, all of the allegations
5 contained in Paragraphs I through XXXV, inclusive, of the First,
6 Second, third and Fourth Causes of Accusation with the same
7 force and effect as if herein fully set forth.

8 XXXVII


9 At all times above mentioned, Respondent COLE was
10 responsible, as the designated broker/officer of Respondent
11 TOWER, for the supervision and control of the activities
12 conducted on behalf of the corporation by its officers and
13 employees. Respondent COLE failed to exercise reasonable
14 supervision and control over the real property listing, sales
15 and purchase activities and the employment activities of
16 Respondent TOWER. In particular, Respondent COLE permitted,
17 ratified and/or caused the conduct described in the First,
18 Second, Third, and Fourth Causes of Accusation, above, to occur,
19 and failed to take reasonable steps, including but not limited
20 to preventing the employment of an unlicensed person to act as a
21 real estate salesperson, to implement policies, rules,
22 procedures, and systems to ensure the compliance of Respondent
23 TOWER with the Real Estate Law.

24 XXXVIII

25 The above acts and/or omissions of Respondent COLE
26 constitute grounds for suspension or revocation of his real
27 estate broker license under the provisions of Section 10177(h)

1 of the Code and/or Section 10159.2(a) of the Code in conjunction
2 with Section 10177(d) of the Code.

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof a decision be rendered imposing disciplinary
6 action against all licenses and license rights of Respondent
7 under the Real Estate Law (Part 1 of Division 4 of the Business
8 and Professions Code) and for such other and further relief as
9 may be proper under other applicable provisions of law.

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12 
13 JOHN W. SWEENEY
14 Deputy Real Estate Commissioner

15 Dated at Fresno, California,
16 this 1ST day of February, 2007.

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