

FILED

JAN 28 2011

DEPARTMENT OF REAL ESTATE

By Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

BENCHMARK INVESTMENT, INC.,
GEORGE NICHOLAS MECHAM, and
FRANS HENRY SCHOLIN,

Respondents.

NO. H-5391 SAC

OAH NO. 2010070888

DECISION

The Proposed Decision dated December 23, 2010, 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

FEB 18 2011

IT IS SO ORDERED

1/27/2011

JEFF DAVI
Real Estate Commissioner

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

BENCHMARK INVESTMENTS, INC.,
and
GEORGE NICHOLAS MECHAM,
Real Estate Broker Licensees,
and
FRANS HENRY SCHON
A Real Estate Salesperson Licensee,

Respondents.

Case No. H-5391 SAC

OAH No. 2010070888

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on November 18, 2010.

Kenneth Espell, Counsel, represented the Department of Real Estate (the Department), State of California.

There was no appearance by or on behalf of Benchmark Investments, Inc., George Nicholas Mecham or Frans Henry Scholin. As set forth below, the matter was conducted as a default with respect to all respondents.

The matter was submitted on November 18, 2010.

FACTUAL FINDINGS

1. Tricia D. Sommers, acting in her official capacity only as a Deputy Real Estate Commissioner of the Department, made the charges and allegations contained in the Accusation and caused it to be filed on May 12, 2010. The Department has jurisdiction to suspend or revoke any real estate license issued in the State of California by the Department upon satisfactory proof that cause exists for the action.¹

¹ Business and Professions Code section 10175.

DEFAULTS

2. The Department served a copy of the Accusation, Statement to Respondent, provisions of the Administrative Procedure Act and a blank copy of a Notice of Defense (the Accusation and notices) in accordance with the provisions of Government Code section 11505 by sending the Accusation and notices by certified and regular first class mail to Mr. Scholin at 15051 Lodestar Drive, Grass Valley, CA 95949. As set forth below, according to the Department's official records as of November 16, 2010, Mr. Scholin's address of record on file with the Department is the same as the address to which the Department sent the Accusation and notices. Mr. Scholin failed to file a Notice of Defense.² Mr. Scholin therefore waived his right to hearing on the allegations contained in the Accusation.

3. Benchmark Investments, Inc., (Benchmark) by and through its sole principal, George Nicholas Mecham, timely filed a Notice of Defense to the Accusation. A Notice of Hearing was served upon Benchmark and Mr. Mecham at their address of record, the same address as disclosed in the Notice of Defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

4. Notice of the date, time and place of the evidentiary hearing on the Accusation was timely served on Benchmark and Mr. Mecham at their address of record with the Department. Counsel for the Department had conversations with Mr. Mecham after service of the Notice of Hearing and before the date of the evidentiary hearing. Counsel asked whether Mr. Mecham had received the Notice of Hearing and whether Mecham intended to attend the hearing, in person or through counsel. Mr. Mecham confirmed receipt of the Notice of Hearing, awareness of the pendency of the evidentiary hearing and told counsel it was "unlikely" he would attend. Consistent with his comment to counsel, Mr. Mecham failed to attend the hearing. The matter proceeded as a default with respect to all respondents, pursuant to Government Code section 11520.

5. All further references here to Mr. Mecham, unless otherwise stated, apply equally to Benchmark, his closely held corporation, which, for the purposes of this Decision, was his alter ego.

LICENSE HISTORIES

6. Respondent Benchmark is, was at all times relevant to this Decision, licensed by the Department and has and had licensing rights as a corporate real estate broker. The Department issued the license to Benchmark on July 29, 1980. Respondent George Nicholas Mecham is the responsible managing principal and individual real estate broker for the corporate brokerage license. The Benchmark license has been continuously renewed and is

² By virtue of his failure to file a Notice of Defense to the Accusation, Mr. Scholin has forfeited his opportunity to have an evidentiary hearing on the allegations of the Accusation, and is in default, subject to the provisions of Government Code section 11520.

in full force and effect. The license is due to expire on December 20, 2012. The Benchmark corporate real estate broker license has been continuously renewed since issuance, is in full force and effect and is due to expire on October 06, 2012. There is no history of any previous disciplinary action by the Department against the Benchmark license.

7. Respondent George Nicholas Mecham was at all times relevant to this Decision, licensed by the Department and has and had licensing rights as a real estate broker. The Department issued the license to Mr. Mecham on a date not proved but before July 29, 1984. Respondent George Nicholas Mecham is the responsible managing principal and individual real estate broker for respondent Benchmark Investments, Inc. Mr. Mecham's real estate broker license has been continuously renewed and is in full force and effect. The license is due to expire on April 14, 2014. There is no history of any previous disciplinary action by the Department against respondent Mecham or any license or entity for which he was the licensee.

8. Respondent Frans Henry Scholin is, was at all times relevant to this Decision, licensed by the Department and has and had licensing rights as a real estate salesperson. The Department issued the salesperson license to Mr. Scholin on February 24, 1988. Respondent Scholin's employing real estate broker was, at all times relevant to this Decision, Benchmark and its responsible managing principal, Mr. Mecham. Mr. Scholin license listed Benchmark and Mr. Mecham as his employing broker as early as 2000, and despite several expirations of either Mr. Scholin's or Benchmark's licenses in the interim, Mr. Scholin remained licensed under the supervision and employ of Benchmark and Mr. Mecham until August 2, 2010.

9. On August 2, 2010, Benchmark and Mr. Mecham discontinued Mr. Scholin's employment. Since August 2, 2010, Mr. Scholin retains licensing rights as a salesperson, but he does not have any licensed broker as employer/supervisor of his activities for which a license is required. Until August 2, 2010, Mr. Scholin's license had been continuously renewed and remained in full force and effect. Mr. Scholin's license and license rights are due to expire on March 23, 2012. There is no history of any previous disciplinary action by the Department against respondent Scholin.

BUSINESS OPERATIONS

10. At all times relevant to this decision, respondent Mecham, through Benchmark and through an unlicensed d.b.a., Frans Scholin & Associates (below), was actively engaged in soliciting, arranging and assembling private lenders and borrowers to arrange loans secured by liens on real property, including soliciting private lenders to lend money to be secured directly or collaterally by liens on real property to be developed and sold, all in expectation of compensation.

11. At all times relevant to this decision, respondent Scholin, under the supervision and oversight of his employing broker, Benchmark and Mr. Mecham, and through an unlicensed entity he controlled, Frans Scholin & Associates, was actively engaged in soliciting, arranging and assembling private lenders and borrowers to arrange

loans secured by liens on real property, including soliciting private lenders to lend money to be secured directly or collaterally by liens on real property to be developed and sold, all in expectation of compensation.

AUDIT

12. The Department's auditor conducted an audit of Benchmark's books and records starting December 16, 2009. The audit concluded February 11, 2010. The audit examined Benchmark's books and accounts for the period January 1, 2007 through December 31, 2009. The purpose of the audit was to determine whether Benchmark's trust funds accounts, required to be kept by the Real Estate Law, were kept in accordance with that law and the Department's Regulations. The auditor reviewed not only the Benchmark trust account records, but also the Benchmark file for a private money loan Benchmark brokered for construction on a parcel of real property (APN 006-080-040) located at 220 Rising Sun Road, Colfax, California (the Rising Sun project). The two private lenders funding the private money loan intended to fund construction on the Rising Sun project complained to the Department, resulting in the audit.

AUDIT-FINDINGS-BUSINESS CHECKING ACCOUNTS AND SIGNATORIES

13. Benchmark maintained three checking accounts at El Dorado Savings Bank, Placerville, California (El Dorado). Mr. Mecham acknowledged in an interview with the auditor that these checking accounts were intended to be used and treated by Benchmark as trust accounts. There was no notation on any of the El Dorado Savings bank records for these "trust" accounts indicating the accounts were identified as trust accounts.

14. The signature card for the first checking account (account #1) listed joint signatories Paul Spiller, Frans Scholin and Nick Mecham. Title to this account was joint tenants with right of survivorship and not as tenants in common. Account #1 was not identified or designated as a trust account with El Dorado. The account records at El Dorado for this account bore a designation of "APN 040," which corresponds with the last four digits of the Placer County Assessor's Parcel Number (APN) for the Rising Sun property. The records confirm that this account was the "Construction Funds Control Account" for the Rising Sun development project (below).

15. Paul Spiller is not and never has been licensed by the Department as a real estate professional in any capacity. Mr. Spiller was the building contractor on the Rising Sun property development project. At the time of the transactions at issue in this matter, it was assumed by all parties that Mr. Spiller was a licensed general building contractor. Benchmark, Mr. Mecham and Mr. Scholin failed to require that a fidelity bond be obtained that would insure and provide indemnity for any acts or omissions of Mr. Spiller with respect to any trust funds received, held in or disbursed from Account #1.

16. The signature card for the second checking account (Account #2) listed joint signatories Paul Spiller, Frans Scholin and Nick Mecham. Title to Account #2 was joint

tenants with right of survivorship, and not as tenants in common. Account #2 was not designated as a trust account with El Dorado. There was no fidelity bond in place that would cover any acts or omissions of Mr. Spiller with respect to trust funds received, held in or disbursed from Account #2.

17. The signature card for the third checking account (Account #3) listed joint signatories Frans Scholin and Todd Juvinall. Title to this account was joint tenants with right of survivorship and not as tenants in common. Account #3 was not designated as a trust account with El Dorado. Mr. Juvinall is not and never has been licensed by the Department as a real estate professional in any capacity. Mr. Juvinall is another building contractor. There was no fidelity bond in place that would cover any acts or omissions of Mr. Juvinall with respect to trust funds received in, held in or disbursed from Account #3.

AUDIT-FINDINGS-FRANS SCHOLIN & ASSOCIATES FICTITIOUS BUSINESS NAME

18. The audit also revealed that the fictitious business name of Frans Scholin & Associates was used as an entity through which Mr. Scholin, in the period December 2004 through the end of the audit period in 2009, solicited and arranged private money loans secured by real property (below), under the supervision of Mr. Mecham and Benchmark. The fictitious business name of Frans Scholin & Associates has never been registered with the Department.

*SOLICITATION AND BROKERING OF SECURED PRIVATE MONEY LOANS
THE RISING SUN PROPERTY DEVELOPMENT LOAN*

19. Benchmark and Mr. Mecham engaged in the business of assembling pools of funds from private lenders and using those funds to build and later sell small real estate developments, including single family homes, from at least 2004 through 2009.³ One such private money lender contacted by Mr. Mecham was Mr. Christdahl. In December 2004, Mr. Mecham persuaded Mr. Christdahl to invest in the development and construction of a single family home on the Rising Sun property, with the intention of selling the home at a profit upon completion of the construction. Mr. Christdahl agreed to lend \$100,000, upon the representation and with the understanding that Mr. Scholin and his wife were lending \$125,000 to the project for a shared interest in the project.

THE PROMISSORY NOTE

20. On December 6, 2004, a Promissory Note (Note) was executed in the amount of \$225,000. The Note accompanied the execution of a Deed of Trust, granting the

³ Mr. Mecham's comments to the Department's auditor (below) and his letters to the Department raise the clear inference that he and Scholin, through Benchmark and Scholin & Associates, had been arranging similar private money loans well before the December 2004 commencement of the Rising Sun loan, and that there had been numerous such previous loans arranged by these individuals and their entities.

borrowers a security interest in the form of a first lien on the Rising Sun property as part of the transaction. The borrower on the Note and the Trustor on the Deed of Trust was Paul Spiller, an unmarried man. The lenders and beneficiaries of the first lien on the Rising Sun property represented by the Deed of Trust were Mr. Christdahl and his wife, to the extent of a 44.44 per cent interest, and Mr. Scholin and his wife, with a 55.56 per cent interest.

21. The term of the Note was for one year, with interest only from February 1, 2005, at the rate of 10.00 per cent per annum, with all principal due and payable on February 1, 2006. Mr. Christdahl and his wife deposited \$100,000 into an escrow opened for the purpose of the transaction at Placer Title Company. The Christdahl's cash deposit made into the escrow appears to have been simultaneous with the signing of the note by Mr. Spiller on December 16, 2004.

THE CONSTRUCTION LOAN AGREEMENT

22. The Note was executed with an incorporated attachment, a "Construction Loan Agreement and Instructions" (the Construction Loan Agreement) that set forth the governing contractual obligations of the parties toward the obtaining and use of the loan proceeds. The Construction Agreement listed the Christdahls and the Scholins as "Lender" and Mr. Spiller and a Mr. and Mrs. Parkinson as "Borrower."⁴ The Construction Agreement recites that the loan is to be secured by Deed of Trust providing a first lien against the Rising Sun property. The Construction Agreement has a number of terms setting forth obligations of the "Broker"⁵ to act as a fiduciary to protect the financial interests of the "Lenders" against those of the "Borrower," (who was the contractor and subject to strict requirements set forth in the Agreement for earning the right to disbursements from the loan proceeds), by protecting, overseeing and controlling the manner in which loan funds were paid out, once the loan was fully funded. The Construction Loan Agreement and the other governing documents (below), as well as the Christdahls as lenders, assumed the loan would have to be fully funded before any disbursements to the Borrower could be made.

23. The Lenders relied upon the Broker, in the first instance, Mr. Scholin, because he was the main contact person and wrote the checks from Account #1, but also Mr. Mecham and Benchmark as overseers, to enforce the obligations of the Construction Loan Agreement and to require the Borrower to meet all the terms and conditions set forth in the Construction Agreement and its attachments before disbursing any loan funds to the Borrower. The Construction Agreement sets up the Broker as the funds control and guardian of the loan funds, for the benefit of the Lenders.

⁴ Neither Mr. Mecham or Mr. Scholin ever told either the Christdahls or the Challengers who the Parkinsons were or what their role was in this transaction.

⁵ Hereafter all references to "Broker" are to Mecham, Scholin, Scholin & Associates and Benchmark collectively, unless otherwise noted, as each individual and entity had fiduciary responsibilities toward the loan funds, and all the governing documents for the transaction refer to "the Broker" in a plural and collective fashion.

24. The Construction Loan Agreement provides the following, in pertinent parts:

[¶] ... [¶]

2. Upon funding of the loan all expenses including, but not limited to title and escrow fees, loan fees, insurance fees shall [sic] and lien demands shall be paid from the loan proceeds. The balance of the loan proceeds shall be deposited in an interest bearing bank account, in the name of the Broker, as Trustee for Borrower. Borrower shall not have any right to the loan funds except as provided by this agreement....

[¶] ... [¶]

4. Borrower has determined that said loan is sufficient to pay all costs of construction of the house and improvements on the property. If for any reason the loan is insufficient to pay the full costs of such construction, the borrower shall be responsible for paying the additional costs.

5. Borrower has given lender a copy of the floor plans and specifications for the house the Borrower intends to build on the subject property. The house is to be a minimum of 1,780 square feet of living space not including a garage or outbuildings. The proceeds of this loan shall be used solely to pay the cost of construction, the improvements on the property in accordance with the plans shown to Lender or for any other use approved in writing by the Lender...

6. The occurrence of any one or more of the following events shall constitute a material breach of this loan agreement:

[¶] ... [¶]

F. Failure to construct the house in a workmanlike manner in accordance with the plans and specifications and building codes.

G. The use of the loan proceeds for any purpose other than to pay the cost of construction and related expenses and any other expenses approved by the Lender.

H. The violation of any provision of the Contractors Licensing Law by Borrower or any general contractor working on the job.

[¶] ... [¶]

M. Borrower's failure to comply with all State, County and City laws, Building Codes, Rules and Regulations.

[¶] ... [¶]

P. Borrower taking payment for salary out of the construction funds unless it is included in the Cost Breakdown and shown clearly as such. Monthly compensation to the contractor will not Exceed * for * months, payment ending on *to be determined.⁶

Upon the happening of any of the herein above events, the Trust Account holder shall deliver the un-disbursed funds to the Lender...

[¶] ... [¶]

7. Provided Borrower does not breach any of the terms of this Agreement, Borrower shall be entitled to have the loan funds disbursed to him in accordance with the following schedule:

SEE EXHIBIT "B" ATTACHED⁷

a. The final draw shall be withheld until for [sic] the lien clearance period...final approval by the County, issuance of a Certificate of Occupancy, Notice of Completion filed and or completed to the satisfaction of the Lender.

b. Upon completion of each stage of construction and approval by the County, and signed off permit card, Trust Account Holder, at the request of the Borrower, will inspect or cause the building project to be inspected. If all required items have been completed per the Construction Draw Schedule stated herein above Trust Account Holder will immediately fund the requested draw amount.

c. In consideration of this Agreement to insure said Lender's First Trust Deed as a first lien period on the property during the lien period...

d. In the event Borrower breaches any of the terms of this Agreement, Trust Account Holder shall deliver the undisbursed funds to Lender to apply to the Note....

[¶] ... [¶]

⁶ The asterisked provisions were never completed, and the Lenders never agreed that the Borrower could use loan proceeds for salary, living or personal expenses or any other purpose than labor and material for improvements to the property.

⁷ Exhibit B is the Construction Draw Schedule described below.

CONSTRUCTION DRAW SCHEDULE (EXHIBIT B)

25. Attached as "EXHIBIT 'B'" to the Construction Loan Agreement is a Construction Draw Schedule (The Draw Schedule). The Draw Schedule is a "standard five draw" schedule, according to the testimony of Mr. Christdahl and Mr. Challenger, both long time and very experienced general building contractors.

26. A handwritten modification was made to the draw schedule after the documents were signed by the Lenders. This note is, "*ADVANCE 20K FOR PERMITS, ETC." Mr. Scholin wrote this note at a time after all the documents were signed and before the loan contribution from the Christdahls was transferred from the escrow to Account #1, which served as the Construction Control Account. The \$20,000 payment from the Christdahl's loan contribution was made to the Borrower Mr. Spiller by Mr. Scholin before the Construction Control Account received any funds from the escrow. The Christdahls were not told of the disbursement and knew nothing of it. The Christdahls (the only Lenders who had contributed any money at the time) were not consulted before the advance was made, and they never approved this disbursement of funds. The Christdahls did not discover the handwritten amendment/modification to the Draw Schedule for the advance of the \$20,000 until well after the project failed. Neither Mr. Scholin nor Mr. Mecham ever disclosed to the Christdahls that the draw schedule had been amended and changed, or that loan fees had been disbursed to the contractor in this manner. Neither Mecham nor Scholin required the Borrower to account for the use of the \$20,000, and other than the uncorroborated assumption that the Borrower spent some of the money on "permits," there is no other evidence of how these funds were spent.

27. The Draw Schedule required that in order to earn the first 20 per cent of the construction loan proceeds, the contractor must complete, within trade standards for good and workmanlike construction, certain enumerated phases of construction, with certain benchmarks to measure each, and pass County inspections of those enumerated tasks. The second, third and fourth draws are similar, requiring similar progressive completion of additional construction milestones, except that the second draw releases 30 per cent of the loan funds upon completion and passage of County inspections for that portion of the work. The fifth and final draw of 10 per cent is a "hold back," not to be disbursed until all liens, if any are cleared, all inspections passed, and Certificates of Completion and Occupancy are issued.

LENDER/BORROWER DISCLOSURE STATEMENT

28. The Brokers drafted and provided the Christdahls as Lenders a DRE Form 851A Lender/Purchaser Disclosure Statement (Disclosure Statement). The Form was signed by the Christdahls, Spiller and the Scholins. The Disclosure Statement is rampant with material misrepresentations of fact and was fraudulent.

29. The Disclosure Statement contains the following false statements:

a. In Part 1, the Disclosure Statement states that the amount of the loan is \$225,000. At the time of the disclosure, only the Christdahls had contributed their \$100,000 to the loan.

b. The Disclosure Statement falsely states the "Market Value of the Property" is \$375,000, with a total senior encumbrance of \$150,000. The property was an undeveloped lot at the time, and this statement is what the Brokers hoped the property could be sold for when the construction was complete, using the entire loan. The Promissory Note reflects a \$225,000 senior encumbrance, and the Placer Title documents for the escrow (above and below) reflect an additional first lien in favor of the Parkinsons for an additional \$49,000.

c. The Disclosure Statement identified "Frans Scholin & Associates" as the broker, listing Mr. Scholin's real estate salesperson license as the "real estate id #," and Mr. Scholin as the "Broker Representative." Mr. Scholin and Frans Scholin & Associates is not and never was a licensed real estate broker.

d. In Part 3, the Disclosure Statement advises that the Lenders for this transaction are "Christdahl 44.44%/Scholin 55.56%," and advises there are "No" subordination provisions. The Scholins had not and never did contribute any funds to the loan, much less 55.56 per cent.

e. On Page 4, the Parkinsons of Castro Valley are disclosed as Co-Borrowers to this loan.⁸ None of the other loan or construction documents reflect the Parkinsons as Borrowers and none of these documents obligate the Parkinsons to repay the Lenders on this loan. There exists no Promissory Note in favor of the Lenders signed by the Parkinsons.

f. In Part 7, the Disclosure Statement advises that no taxes on the property were delinquent. Taxes went unpaid on the property from the outset of the transaction and were delinquent for every year the loan was in existence.

g. Part 7 also states that the "Broker's Estimate of Fair Market Value" is \$375,000, and discloses as "Description of Property Improvement" a "New Home," "Wood Frame" of "1,780 Sq. Ft." The home was not constructed at the time of the disclosure, no improvements had been made and the fair market value of the property was far less than \$389,000.

h. Part 9 of the Disclosure Statement, where all the signatures also appear, including that of Mr. Scholin as "Broker" in the "Broker Verification" section, attests that all statements in the Disclosure Statement are true and correct. There is another statement in

⁸ The presence of the Parkinsons in this transaction, not disclosed to the Christdahls and having no shred of materiality to the contemplated construction of the Rising Sun property, has all the earmarks of a sham and a scheme to launder money through this escrow.

Part 9 that the fair market value of the property securing the loan is \$375,000 and that the ratio of the loan amount to the fair market value of the property is "60%." At the time of the Disclosure Statement, the loan amount far exceeded the fair market value of the undeveloped and unimproved lot.

FINAL SETTLEMENT STATEMENT

30. Placer Title Company drafted and issued a "Final Settlement Statement" (the Settlement Statement) on a U.S. Housing and Urban Development form dated December 23, 2004 for the Rising Sun property development loan. This Settlement Statement reflected the escrow for this loan opened by Mr. Scholin as loan broker at Placer Title. This Settlement Statement disclosed a deposit of earnest money of \$712.00, to the escrow, and loan amounts of \$225,000 for "Principal Amount of New Loan no. 1," and \$49,000 as the "Principal Amount of New Loan No. 2."⁹ The Settlement Statement lists \$274,712.50 as "Total Paid By/For Borrower (only Spiller is listed as Borrower) and \$274,694.50 as "Gross Amount due from Borrower," and \$274,712.50 as "Less Amount paid by/for Borrower," leaving \$18.00 as "Cash to Borrower." Page 2 of this Settlement Statement reflects a Loan Origination Fee of \$4500 and \$200 document preparation fees payable to Frans Scholin and Associates. In the section of the Settlement Statement, it lists "Funds Held for Construction" to the Christdahls of \$216,211.02, and loan proceeds to the Parkinsons of \$49,000. A hazard insurance fee, title insurance, prorated property taxes and escrow charges were also deducted.

31. The Settlement Statement is also laden with materially false statements and misrepresentations. It reflects two loans, when the lenders agreed to a single loan with two contributors. It reflects loan contributions that were never made by the Scholins and a loan balance and disbursement to "Funds Held for Construction" that did not exist and in an amount far in excess of money actually contributed. It appears to launder funds for a transaction with an unrelated borrower, the Parkinsons, who evidently had unrelated business dealings with the Brokers, through this transaction.

SCHOLINS FAIL TO DEPOSIT THEIR ALLOCATED 55.56%

32. Mr. Scholin wrote Mr. Spiller (the Borrower) a letter dated December 29, 2004, thanking Mr. Spiller for doing business with Frans Scholin & Associates. The letter provides information to the Borrower Mr. Spiller about the loan, and directed the Borrower to make all monthly interest only payments to the Christdahls. The letter also states, "At present your loan has been funded for \$100,000, and when the additional \$125,000 has been deposited into the Construction Account I will update your payment information with another letter." A copy of this letter was sent to the Christdahls.

33. Mr. Scholin wrote Mr. Spiller another letter dated August 22, 2005, in which Mr. Scholin advised Mr. Spiller that the loan was now "fully funded," because "the

⁹ This entry is the first disclosure in any document of a second loan.

remaining \$125,000 has been deposited into the Construction Control Account on August 22, 2005.”¹⁰ Updated monthly loan payment information was provided, with direction to make payments to new Lenders the Challengers, as well as to continue to make payments to the Christdahls as before. There is no evidence the Christdahls were provided a copy of the August 22 letter.

UNDISCLOSED AND UNCONSENTED SUBSTITUTION OF BORROWERS

35. The Scholins never performed on their note obligation, and there is no indication in this record they ever intended to do so. There are statements by Mr. Mecham, made to the Department’s auditor during the process of the audit of Benchmark’s books and records that tends to support the inference the Scholins never intended to contribute any money to the transaction, and that Mr. Mécham was aware of and approved of this fact.

36. Although the Promissory Note was signed December 6, 2004, and the Deed of Trust providing the security for the note was executed December 16, 2004, and the Placer Title escrow for the loan was closed December 23, 2004, the loan was not fully funded until August 22, 2005.

37. The \$100,000 loan funds the Christdahls contributed to the loan were distributed to the “Construction Control Account” on December 23, 2004, less the costs and brokerage fee to Mr. Scholin listed, which left only \$91,000 of the Christdahl’s money that made it into the Construction Control Account (Account # 1). This \$91,000 was further reduced by the unauthorized payment of the \$20,000, paid out to Mr. Spiller by Mr. Scholin to pay for “permits etc.,” before any funds were deposited into the Construction Control Account, in direct contravention of the Construction Draw Agreement. The Construction Control Account was opened with the funds remaining, \$72,836.02.

38. The Scholins failed to deposit any part of their \$125,000 obligation under the December 6, 2004 Promissory Note. The Scholins continued in default of their obligation from December 6, 2004 through August 22, 2005, when Mr. Scholin produced a new Lender, the Challengers, to substitute into his defaulted obligations. The remainder of the loan was not funded until almost nine months after the close of the escrow for the loan at Placer Title and disbursement of the loan funds to the Construction Control Account, less the amounts reflected above.

¹⁰ The “Construction Control Account is not the Placer Title Company escrow for this loan, but “Account 1,” the checking account referred to above maintained at El Dorado Savings Bank, where the Borrower, Mr. Spiller, the Brokers, Mr. Scholin and Mr. Mecham, are co-signatories, with equal rights to control the funds and demand disbursement, so long as two of the three sign.

FRAUD IN INDUCEMENTS TO LEND

39. The Christdahls were solicited to lend to the Rising Sun development project by Mr. Mecham and Mr. Scholin. Mr. Christdahl and Mr. Scholin were acquainted and had several conversations about the proposed loans, during which Mr. Scholin assured Mr. Christdahl that the development project was a worthy project with good potential to make a profit, and that Mr. Christdahl should not worry about his contribution to the loan funds because Mr. Scholin said more than once to Mr. Christdahl that he had "loaned more than you" to the deal. On the strength that Mr. Scholin had indeed contributed "more than me" to the transaction, and upon the representations made on the Promissory Note of December 6, 2004, that the Scholins were actually contributing the stated \$125,000 to the loan, the Christdahls went ahead and contributed their stated portion of \$100,000.

40. Similarly, the Challengers were solicited by Mr. Scholin to contribute to the transaction upon the understanding that the Scholins had actually contributed the \$125,000 to the loan many months previous, as shown in the Promissory Note, Deed of Trust and DRE Disclosure Statement. Mr. Scholin solicited the Challengers to lend and to "take our place" in the loan.

41. Before agreeing to lend, Mr. Challenger asked Mr. Scholin for information regarding the state of the project's development and what controls were in place to assure the loan proceeds went into the development. Mr. Scholin gave Mr. Challenger copies of the transaction documents identified above, including the Construction Draw Agreement, and Construction Management Agreement. The copy of the Construction Draw Agreement given to Mr. Challenger did not have the handwritten notation regarding the preconstruction \$20,000 payment to the contractor for "permits, etc." Mr. Scholin led Mr. Challenger to believe construction was on schedule, was being accomplished according to accepted trade standards for good and workmanlike construction, that inspections required had been passed, that all taxes and insurance were paid and current, that the Draw Schedule had been carefully followed, that the Broker had diligently acted as fiduciary for the loan funds, and funds had been disbursed to the contractor only when all the Draw requirements for payment had been met. Mr. Scholin also led Mr. Challenger to believe that all construction funds had been spent to furnish labor and materials to the construction on the Rising Sun property contemplated by the loan and transaction documents. None of these representations were true.

42. Mr. Challenger was materially and substantially misled to enter the transaction. The Challengers loaned \$125,000 to take the place of a participant who never made his required contribution, and to participate in a development transaction that was already substantially failing. The failure of the project was not due to a poor economy, but because a great deal of what at that time was the Christdahl's money never found its way into labor and material invested in developing the property.

FAILURES TO DISCLOSE MATERIAL FACTS

43. Mr. Scholin did not disclose to the Challengers that there was no funds control in place to assure that the Borrower did not receive loan proceeds until he had earned the right to payment according to the Construction Management Agreement and Draw Schedule. He did not disclose that no one was acting as a fiduciary toward the Lenders to protect the disbursement of loan funds to the Borrower until such time as the Borrower had earned the right to payment in accordance with the provisions of the Construction Management Agreement and Draw Schedule. Mr. Scholin did not disclose that the Brokers, he and Mr. Mecham, gave the Borrower/contractor loan funds any time the Borrower/contractor asked for money, and that no effort had ever been made to determine whether work milestones required for payment under the Construction Management Agreement and Draw Schedule had been satisfactorily met. Mr. Scholin did not disclose that, at the time the Challengers were solicited by Mr. Scholin to lend the \$125,000 the Scholins were obligated to contribute to the loan but never did, that the Construction Management Agreement and Draw Schedule had been materially breached several times, and the Brokers had done nothing to enforce the terms of these agreements.

44. Had the Brokers performed their fiduciary obligations under the Construction Management Agreement and Draw Schedule, the Challengers would never have been involved in the transaction. The Construction Management Agreement required the Brokers to terminate the transaction and disburse all unearned and unspent loan funds back to the Borrowers immediately upon discovery of a material breach. At the point the Challengers were contacted by the Scholins, the transaction would have been terminated and all funds disbursed back to the Christdahls, had the terms and conditions of the Construction management Agreement been followed by the Brokers. Had the Brokers faithfully discharged their Construction Management Agreement obligations, any solicitation or contribution from the Challengers would have been obviated.

"FREE-RIDING"

45. The structure and operation of the Rising Sun property loan/development transaction, solicited, arranged and overseen largely by Mr. Scholin, and reviewed and approved by Mr. Mecham, allowed Mr. Scholin to "free ride" the transaction and get paid to broker a loan transaction in which he never invested as represented and served as a straw man. Mr. Scholin rode this development loan transaction for nine months without cost, allowing the construction and development of improvements on the Rising Sun property to proceed, funded entirely by the Christdahls' money for the nine months. This "free ride" occurred because the Christdahls never had any idea that they were the sole funding source of the property development, and the Brokers actively and passively allowed the Christdahls to labor under the illusion that the Brokers were meeting their contractual and fiduciary duties, including assuring the Scholins' representation that they had contributed funds to the loan, and that the Brokers were diligently and faithfully discharging their duties to protect and oversee the release and expenditure of their money and insure that all of it found its way into labor and materials for improvement of the Rising Sun property. All the while the

Brokers were representing to the Christdahls that the Scholins were, for the first nine months of the development, the majority lender and had contributed their portion of the construction funds, when nothing of the sort was true. Had the construction been completed within the nine months, which, according to the testimony of both Mr. Christdahl and Mr. Challenger¹¹, is common and to be expected, Mr. Scholin could have claimed a 55.56 per cent portion of any gain on the sale without having contributed a dime, and with his co-Lenders none the wiser until closing.

ASSIGNMENT OF 55.56 % OF LOAN AND DEED OF TRUST

46. The construction was not completed in nine months, and was in fact, substantially incomplete in mid-August 2005. On September 1, 2005, an Assignment of Deed of Trust was executed, transferring the Scholins' 55.56% interest in the Rising Sun project to the Challengers. The Brokers repeatedly told the Challengers that the construction was proceeding well, was on schedule and inspections had been passed, and that Mr. Scholin had personally inspecting the work. Upon these active material misrepresentations, as well as the manifold failures to disclose material facts set forth above, the Challengers agreed to contribute the \$125,000 the Scholins had obligated themselves to contribute back in December 2004.

47. By the time the Challengers substituted into the deal, the Borrower, supposedly working under the watchful eye of the Brokers, had made a mockery of the Construction Management Agreement and disbursement Draw Schedule by all but completely ignoring it. Taxes had not been paid from 2004 forward and delinquency notices had been filed by Placer County, placing the County ahead of the Lenders in encumbrance against the property. There is no evidence of what happened to the second, \$49,000 loan and Deed of Trust encumbering the property in favor of the Parkinsons, or whether that Deed of Trust was ever recorded. There was no evidence that inspections by the County Building Department had taken place, or what the results of those inspections were. Considering the condition of the construction when the Challengers and Christdahls foreclosed and inspected the construction (below), it is unlikely any inspections were passed.¹²

¹¹ Both Mr. Christdahl and Mr. Challenger revealed in their respective testimony more than sufficient training, experience, professional licensure and qualifications to testify as experts in general contracting. Evidence Code section 720.

¹² For example, the first inspection by the County, and payment under the first draw required, among other things, that the rough plumbing be completed. Since the sewer was never completed and connected as required, it would have been impossible to pass the first inspection or obtain disbursement of the first draw's 20 per cent of the loan funds without completing this portion of the work. This is but one of numerous construction deficiencies found by the Christdahls and Challengers when they took over the property, which would have made it impossible to pass any inspection, as there were material deficiencies in at least one aspect of each of the first four phases of construction enumerated in the Draw Schedule.

FORECLOSURE AND PROPERTY INSPECTION

48. The Borrower/contractor asked the Lenders to extend the loan for an additional one year in December 2005. The Lenders agreed, not knowing at the time the true facts regarding the loan or the progress of the development set forth above. An equally uninformed additional extension was granted in December 2006. The Borrower/contractor defaulted on the loan in December 2007, requiring the Lenders to foreclose. The process of foreclosure produced an ugly unraveling of the fraudulent nature of the loans and the sorry state of the development project, as well as a slow and piecemeal revelation of the true facts and details of which the Lenders were, as of the time of the foreclosure, still unaware.¹³

49. After having cleared and obtained title to the Rising Sun property, the Lenders inspected the construction on the property in an effort to determine how much work needed to be completed to obtain Certificates of Occupancy and Completion so they could sell the project. At the same time, the Lenders demanded an accounting of the Brokers for remaining loan funds. The results of these efforts were a shock to the Lenders.

50. The Lenders also obtained access to the checkbook and El Dorado Bank records for Account # 1, the alleged Construction Control Account. They discovered the Brokers exercised no funds control whatsoever and completely disregarded the Construction Management Agreement and Draw Schedule. The Lenders discovered and identified that 12 of the 17 terms of the Construction Management Agreement were ignored and had been violated. Account #1 shows only two deposits, one for \$72,836.02, on December 27, 2004, and the full amount of the Challenger contribution of \$125,000 on August 21, 2005. Within three weeks of that second deposit, Mr. Scholin wrote a check to the contractor/Borrower for \$15,000.00. There is no evidence what this disbursement was for, other than the fact that the contractor/Borrower asked for it. Over the following 15 months, the account was drained with 13 separate payments to the contractor/Borrower pursuant to a contractual agreement that permitted only four payments with a hold back on the fifth and final. Less than \$6000 remained in the "trust" account at foreclosure.

51. Mr. Christdahl made an inspection of the construction and took photographs in December 2007. He documented numerous construction deficiencies, where the workmanship fell well beneath accepted trade standards for good and workmanlike construction. He determined that the first draw should not have been paid, because the rough plumbing was not completed, a prerequisite for payment and receipt of the first draw payment from the loan proceeds. He found no evidence of either County inspection of the work or the independent, third party verification of the successful, within accepted trade

¹³ The Lenders live in cities distant from the project and the Brokers, and had no reason to not trust the Brokers to keep their promises and look after their interests, or to pass by the property and see the work for themselves. Each had participated in many previous development and private lending transactions with other brokers and contractor/developers where the contractual representations in Construction Management and Draw Schedule agreements were faithfully kept.

standards completion of the work required to by the Construction Management Agreement and the Draw Schedule. He found none of the other draws had been earned or should have been paid. He estimated that, based upon the value of the labor and materials furnished to the work, there should have been approximately \$67,000 in construction funds still in the Construction Control Account and not yet paid out.

DEFECTIVE WORKMANSHIP AND MISSING MATERIALS

52. During his inspection, Mr. Christdahl also discovered that the \$2200 fireplace insert that was paid for by construction loan funds, and that he was able to confirm had actually been delivered to the job site, was missing, presumably stolen by the defaulting contractor. He also discovered that the kitchen tiling, the supports under the steps leading from the front door to the sloping downward ground beneath the door, and the supporting blocks under the garage were not only incomplete, but so incompetently constructed the work would require tearing out and replacement. The steps from the front of the house were left hanging unsupported in mid air. The bearing wall in the garage had less than one and a half inches of support on hollow, unfilled, unreinforced concrete blocks. The sewer was not completed and had not been connected to the County sewer system. The courses in the kitchen counter tile work were so crooked, and the courses so out of trim, that all the tile had to be torn out and replaced. A huge stump was left in place in the front yard. The outside hillside slope required retention. This retention, plus the incomplete front steps and the inadequately supported garage bearing wall all required engineered drawings before construction could proceed, as these portions of the construction were structurally insufficient and could not pass inspection.

MEETING WITH THE BROKERS

53. Mr. Christdahl and Mr. Challenger met with Mr. Mecham and Mr. Scholin and demanded an explanation of the transaction and the Brokers' obvious failures to protect the Lenders' money. Mr. Scholin told Mr. Christdahl and Mr. Challenger that Mr. Mecham had structured several previous loans and development projects the same way, and that Mr. Mecham always "did his deals this way." Mr. Mecham told the men that another licensed real estate broker, "a guy named Hassert" arranged all his transactions "this way," and that therefore the manner in which the Rising Sun loan and development was structured and performed was "ok." Mr. Scholin again stated that "this is how Nick arranges all his loans," that there had been "no previous problems" and that he (Scholin) thought this (the manner in which the loan was arranged and disbursed) "was perfectly ok because everyone else was doing it this way." Other than Mr. Mecham and Mr. Hassert, he did not mention who "everyone else" was. Both Mecham and Scholin stated, "we never follow the draws." Mr. Scholin admitted he "rarely" pays attention to the Draw Schedule and the Construction Management Agreement, and he "often has to give extra money to the contractor." Mr. Scholin expressed his opinion, and Mr. Mecham did not disagree, that "the loan money belongs to the contractor." Both Mr. Mecham and Mr. Scholin admitted that they give loan money to the contractor upon his request at any time request is made, without questioning what the money is for or inspecting the work. Mr. Challenger and Mr. Christdahl understood

at that point that Mr. Scholin and Mr. Meacham view of when construction loan disbursements occurred when the contractor asked for the money, not as the contractor earned it.

54. When both Mr. Challenger and Mr. Christdahl took exception to these comments, and began to point out how the Brokers had utterly failed in their fiduciary and Construction Management Agreement/Draw Schedule duties to guard the expenditure of the loan funds, Mr. Mecham took exception, argued and told Mr. Christdahl and Mr. Challenger that since "nothing happened to Hassert, nothing will happen to me." Mr. Mecham told the men he had a "very good lawyer," and challenged the men to "sue me" if you think there was something wrong with what he and Scholin did.

55. At the end of the meeting, Mr. Scholin wrote Mr. Christdahl a check for \$2,228.21, and Mr. Challenger a check for \$2,785.77, and closed Account #1, the "trust" account, closing out the remaining balance of \$5,828.

AUDIT- OTHER SIMILAR TRANSACTIONS

56. The Department's auditor was not tasked with looking for previous or contemporaneous similar loan and development transactions such as the Christdahl/Challenger Rising Sun transaction. Even so, she found evidence of at least two such similar transactions, and additional documents evidencing further violation of the Construction Management Agreement in the Rising Sun transaction. This latter document was a grant deed, deed of trust and a 30 month promissory note from Mr. Spiller to the Parkinsons dated December 14, 2004, giving the Parkinsons an unencumbered first lien on the Rising Sun property in exchange for their loan of \$49,000.

57. The documents evidencing these other similar transactions are found in the auditor's report (Exhibit 5), starting at Bates page no. 317, a transaction regarding a project on Schott Road in Bieber, California; p. 318, a transaction regarding a project on King Coats Way in Dobbins, California; and at p. 427, a transaction on Starglow Circle in Sacramento, California. Each of these accidentally discovered similar transactions had in common a loan origination fee paid to Frans Scholin & Associates, approved and overseen by Benchmark and Mr. Mecham.

58. Additionally, Mr. Mecham acknowledged that with respect to Account #3 at El Dorado Savings Bank, one of the cosignatories on that account, Mr. Juvinall, is a borrower/contractor for another loan/development project similar to the Rising Sun loan and project. The evidence was not clear whether this account and contractor cosigner corresponded to one of the three other similar projects identified above.

MECHAM RESPONSE TO AUDIT

59. Mr. Mecham wrote two responses to the auditor and her findings and conclusions, all of which were discussed with Mr. Mecham personally during an exit interview. During the exit interview, Mr. Mecham told the auditor he was no longer arranging loans or development deals funded by such loans.

60. Mr. Mecham's written responses were substantially similar to his comments to the auditor during the exit interview. The most recent in time of these written responses is dated February 18, 2010, and incorporates the earlier letter with some additions.

61. Mr. Mecham wrote in the February 18, 2010 letter that he took exception to the auditor's findings that the trust fund (Account #1 at El Dorado Savings Bank for the Rising Sun project) violated Department Regulations and failed to meet the legal and fiduciary requirements for a trust account. Mr. Mecham wrote,

The accounts we maintained and that you reviewed had all the characteristics of a 'trust account' other than having the word 'trust' in their name. Although the borrower was on the account, there was always another party from benchmark on the account and, with the bank's consent, two signatures were required for disbursements. In addition, there was a well-kept record of deposits and withdrawals.

62. Mr. Mecham also took exception to the auditor's conclusion that the Brokers violated law and regulations with the manner in which the Construction Management Agreement and Draw Schedule was violated with disbursements from the "trust" account. Mr. Mecham wrote,

It is very common in construction loans to stage the funding to avoid having the borrower pay interest on funds that are not needed for many months. Banks do that regularly. We followed that pattern. There never was any delay in either completing the funding or disbursing funds to the borrower. This was all done with consent of the borrower and the initial lender.

63. Mr. Mecham also took exception to the auditor's conclusion that the use of the unlicensed dba of Frans Scholin & Associates under Benchmark's broker's license violated law and regulations. Mr. Mecham wrote,

Although the DBA was apparently not filed, there never was any misunderstanding in the documentation to the parties as to who Benchmark Investments was and who Frans Scholin was. The purpose of the law is to give notice. That was included in the documentation.

64. Mr. Mecham closed his letter with the comment that his signing the form accepting a copy of the audit report's conclusions was "conditioned on a copy of this letter

accompanying your report." And so it was, complete with false statements and statements acknowledging no understanding of what the real problem was with the Rising Sun property or the manner in which he was brokering loans.

EVIDENCE IN MITIGATION, JUSTIFICATION OR REHABILITATION

65. The only evidence in mitigation is the fact that there is no history of any previous disciplinary action by the Department against the respondents, and no evidence that they have been civilly sued for any misconduct related to their practice of professional real property transactions. However, based upon Mr. Mecham's defiant comments that the Rising Sun transaction was reflective of his customary method of brokering and structuring construction loan transactions, the fact that there has been no previous disciplinary action against respondents appears to be far more fortuitous than mitigating. There was no evidence in justification of the conduct, acts and omissions and failures to disclose material facts set forth above in the Factual Findings. There was no evidence of rehabilitation, as Mr. Mecham insisted he did nothing wrong, and there can be no rehabilitation from conduct not acknowledged to have been in error.

LEGAL CONCLUSIONS

FIRST CAUSE OF ACTION

1. Respondents violated California Code of Regulations (CCR), title 10, sections 2832, 2834 and 2731 with respect to the three "trust" accounts maintained by respondents at El Dorado Savings Bank identified in the Factual Findings. As set forth in the Factual Findings, Accounts #1, #2 and #3 were not designated as trust accounts, in violation of Regulation section 2832. As set forth in the Factual Findings, respondents maintained accounts with unlicensed signatories without having fidelity bond coverage for the unlicensed persons in place, in violation of Regulations section 2834. As set forth in the Factual Findings, respondents violated Regulation section 2731 by failing to register the fictitious business name of Frans Scholin & Associates and allowing that fictitious business entity to operate under the Benchmark and Mecham brokerage licenses without such registration. These violations of the Regulations constitute violations of Business and Professions Code sections 10176 and 10177, subdivision (d), and thus constitute legal cause to revoke or suspend respondents' licenses.

SECOND CAUSE OF ACTION

2. Respondents violated Business and Professions Code sections 10176, subdivisions (a), (c), and (j), and 10177(j) with respect to the manner in which respondents acted and failed to act with respect to the Rising Sun property development private money loan and the manner in which the loan was solicited, arranged, consummated and managed.

3. Respondents made substantial misrepresentations, within the meaning of section 10176, subdivision (a), engaged in a continued and flagrant course of

misrepresentation and making of false promises through a real estate salesperson, within the meaning of section 10176, subdivision (c) and engaged in fraudulent conduct and dishonest dealing, within the meaning of section 10176, subdivision (i). As set forth in the Factual Findings, respondent Scholin, and with the knowledge, review and approval of respondent Mecham and his firm Benchmark, made manifold misrepresentations, engaged in fraud and dishonest dealing with the Rising Sun loan and project by act or by failure to act, and/or failure to disclose material facts as follows:

1. Respondents told the Christdahls that the Scholins were to contribute "more than them," to wit, the sum of \$125,000, to the loan, when the Scholins never did so and had no such intention;
2. Respondents represented orally and in writing repeatedly that the loan proceeds would be protected and disbursed only in strict accord with the Construction Management Agreement and Draw Schedule, and all funds to be held in a neutral escrow depository, which respondents had no intention of doing, and did not do;
3. Respondents opened and closed a sham escrow to cover the Scholins failure to contribute their portion of the loan, to conceal the fact that the loan proceeds from the Christdahls were deposited into a checking account with the Borrower having signature authority and access to the funds without the contemplated and contracted for controls for disbursement, to conceal the unauthorized disbursement of \$20,000 to the Borrower after the escrow closed but before the Construction Control Account #1 was opened, and the movement of the mysterious \$49,000 into and out of the escrow from an unrelated third party, the Parkinsons;
4. Respondents repeatedly assured the Lenders that the Borrower could only obtain payment of loan funds upon meeting the requirements set forth in the Draw Schedule and upon the Lenders' approval in writing;
5. Respondents repeatedly assured orally and in writing that the respondents would arrange for periodic inspection by a neutral third party of the progress of the construction and that this neutral third person would be required to confirm that satisfactory progress had been made and loan proceeds earned before staged payments could be made, when none of the respondents had any intention of following this process;
6. Respondents assured the Challengers that the Challengers were lending in order to "take the Scholins' place" in the existing loan, when the Scholins had never invested a dime, even though the loan transaction had been in existence more than eight months at the time;

7. Respondents repeatedly assured the Lenders that construction was progressing according to schedule, and that there were no problems with the work, that inspections had been passed, and that all taxes had been paid, when there was no reasonable or factual basis for making such statements, and that those statements and assurances were made both to induce the Challengers to lend and to prevent the Challengers and the Christdahls from learning the true facts about the state of the work;

8. Respondents permitted the disbursement of \$20,000 to the Borrower for "permits, etc." before the "trust" account was ever opened, without the knowledge or consent of the Lenders;

9. Respondents repeatedly assured and led the Lenders to believe that respondents were faithfully and diligently executing their duties as fiduciaries and guardians of the loan funds according to the terms of the Construction Management Agreement and the Draw Schedule. None of these assurances were true. At the same time respondents were making these false assurances of fealty to the terms of the agreements and to their general fiduciary duties, respondents were disbursing funds to the Borrower upon nothing more than an unsubstantiated request for money. Respondents thus acting as little more than accomplices in the Borrower's self-dealing and misappropriation of a significant portion of the Lenders' money;

10. Respondents drafted and submitted a DRE Lender Disclosure Statement laden with false representations, enumerated in the Factual Findings above. Among other materially false statements, the Disclosure fraudulently stated the real property was worth \$375,000 before construction began, that the proposed loan was 60 per cent of the value of the property, and that the Scholins had loaned money to the transaction; and

11. As Mr. Mecham put it in his letter to the Department's auditor of February 16, 2010, the Lenders "knew and approved" of the manner in which respondents were conducting the transaction, a flagrantly false statement.

As a result, separate legal cause exists to revoke or suspend respondents' real estate licenses.

THIRD CAUSE OF ACTION

4. Each of the acts, failures to act, omissions and failures to disclose set forth in the Factual Findings and particularly in the Legal Conclusion for the Second Cause of Action, constituted negligence and incompetence in the performance of acts for which a real estate license is required, within the meaning of Business and Professions Code section 10177, subdivision (g). In particular, Mr. Mecham's statements to the Lenders and to the

Department's auditor regarding the deficiencies pointed out in the Rising Sun transaction and his conduct of private money loan arranging for development were quite revealing of either a gross lack of knowledge of the legal requirements for such transactions, or a cavalier and flagrant disregard of those requirements. As a result, separate legal cause exists to revoke or suspend respondents' real estate licenses.

FOURTH CAUSE OF ACTION

5. Frans Scholin & Associates is an unlicensed entity. Respondents violated Business and Professions Code sections 10130 and 10137 by permitting Mr. Scholin to operate an unlicensed entity under the supervision of Mr. Mecham and Benchmark, to wit; arranging and originating private money loans secured by real property, and receiving brokerage commissions for arranging such loans, all activity for which a real estate broker license is required. As a result, separate legal cause exists to revoke or suspend respondents' real estate licenses.

FIFTH CAUSE OF ACTION

6. Respondent Mecham violated Business and Professions Code sections 10159.2 by his failure to exercise reasonable supervision over the acts of Scholin and Benchmark such that the acts and omissions set forth in the Factual Findings and in the Legal Conclusion for the Second Cause of Action occurred.

OUTCOME

7. There are few facts in mitigation and none in justification. There is no evidence of rehabilitation. Mr. Mecham believes he has done nothing wrong and has remained defiant toward the Lenders and the Department.

8. The Lenders, the Christdahls and the Challengers, were greatly harmed by the egregious misconduct of the respondents. The Lenders sustained these losses as a direct and proximate result of the respondents' manifold active and passive falsehoods and serial failures to perform as the respondents agreed. Respondents remain unrepentant and defiant in their denials that they did anything illegal or unethical.

9. The Rising Sun property private money loan and development project was dishonest in every conceivable fashion. The Lenders were misled and deceived at every material stage of the transaction. The Brokers completely failed in every material respect in their duties to conduct themselves as fiduciaries. Instead, the Brokers behaved more as accomplices as the Borrower/contractor looted the loan proceeds and left the Lenders with an incompetently, partly constructed mess; like a half-eaten sandwich, where it appears to be a push between whether there is enough existing value to correct and finish the work, or to walk away and dispose of the mess as is. The costs to bring the property to completion within all applicable building standards, along with potential loss of value due to the passage of time, interest on the money lost and for legal, unpaid taxes, fees and associated costs to

foreclose on the property and to pursue this matter, has yet to be fully and accurately computed, and may well eclipse the total value of the originally contemplated loan.

10. The primary purpose of professional licensing laws is the protection of the public, and the prevention of future harm to consumers.¹⁴ "The purpose of [the Real Estate License Law] is to protect the public by requiring and maintaining professional standards of conduct on the part of all persons licensed hereunder."¹⁵ These statutes are designed with the purpose of protecting the public from fraud, misrepresentation, incompetence, and sharp practice.¹⁶ "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee."¹⁷ "If (the) offenses reflect unfavorably on his honesty, it may be said that he lacks the necessary qualifications to become a real estate salesperson."¹⁸ "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear."¹⁹

11. Neither of these persons should ever again be permitted to serve in a capacity of trust and responsibility under the rubric of professional licensure, absent payment of full restitution, plus interest and legal costs to these Lenders, and additionally, full investigation and payment of restitution and interest for all other similar such transactions in which they engaged in which the lenders in those transactions were deceived or suffered actual harm. Mr. Mecham in particular made comments reflective of his striking lack of knowledge, or cavalier disregard of his fiduciary responsibilities in loan solicitation and brokerage, as well as loan administration. A licensed real estate professional is required to be cognizant of his/her fiduciary responsibilities and the weighty matter of the position of trust licensure authorizes. Mr. Mecham disingenuously abused that trust and his fiduciary responsibilities here. There is no other option but to revoke all respondent's licenses and licensing rights.

¹⁴ *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476, *In re Kelly* (1990) 52 Cal.3d 487, 496.

¹⁵ Insurance Code section 1737 (a very similar licensing scheme to the Real Estate Law, with similar consumer protection goals and good character and integrity licensing requirements).

¹⁶ *Goldberg v. Barger* (1974) 37 Cal.App.3d 987.

¹⁷ *Harrington v. Department of Real Estate* (1989) 214 Cal.App. 3d 394, 402.

¹⁸ *Harrington, supra* p. 402.

¹⁹ *Id., Ring v. Smith* (1970) 5 Cal.App. 3d 197, 205.

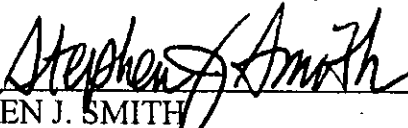
ORDER

The real estate broker license issued by the Department of Real Estate to Benchmark Investments, Inc., and all licensing rights appurtenant to this license, are REVOKED.

The real estate broker license issued by the Department of Real Estate to George Nicholas Mecham, and all licensing rights appurtenant to this license, are REVOKED.

The real estate salesperson license issued by the Department of Real Estate to Frans Scholin, and all licensing rights appurtenant to this license, are REVOKED.

DATED: December 23, 2010



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

FILED

MAY 12 2010

DEPARTMENT OF REAL ESTATE

By K. Henry

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
BENCHMARK INVESTMENTS, INC.,)	NO. H-5391 SAC
GEORGE NICHOLAS MECHAM, and,)	
FRANS HENRY SCHOLIN,)	<u>ACCUSATION</u>
)	
Respondents.)	
)	

The Complainant, TRICIA D. SOMMERS, in her official capacity as Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BENCHMARK INVESTMENTS, INC (herein "BENCHMARK") and GEORGE NICHOLAS MECHAM (herein "MECHAM") and FRANS HENRY SCHOLIN (herein "SCHOLIN"), is informed and alleges as follows:

THE RESPONDENTS

1

At all times herein mentioned, Respondents BENCHMARK, MECHAN and SCHOLIN (herein "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

2

At all times herein mentioned herein BENCHMARK was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through MECHAM as its designated officer-broker.

3

At all times herein mentioned, MECHAM was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of BENCHMARK. As the designated officer-broker, MECHAM 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 BENCHMARK for which a license is required.

4

At all times herein mentioned, SCHOLIN was and now is licensed by the Department as a real estate salesperson under the employ of BENCHMARK.

5

Whenever reference is made in an allegation in this Accusation to an act or omission of BENCHMARK, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with BENCHMARK committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

6

At all times mentioned, Respondents 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 Sections 10131(d) and 10131(e) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondents solicited private money lenders and private borrowers for loans secured directly or collaterally by liens on

1 real property or a business opportunity, and wherein such loans were arranged, negotiated,
2 processed, and consummated by Respondent on behalf of others and wherein promissory notes
3 or interests therein were sold or purchased on behalf of another or others for compensation or in
4 expectation of compensation.

5 FIRST CAUSE OF ACTION

6 Audit Violations

7 7

8 Each and every allegation in Paragraphs 1 through 6, inclusive, above, is
9 incorporated by this reference as if fully set forth herein.

10 8

11 On December 16, 2009, an audit was conducted at BENCHMARK's main office
12 located 2412 Lindberg Street, Auburn, California, wherein the auditor examined records for the
13 period January 1, 2007 through December 31, 2009 (the audit period).

14 9

15 In so acting as real estate brokers, Respondents accepted or received funds in
16 trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in
17 connection with the mortgage loan brokerage activities described in Paragraph 6, above, and
18 thereafter from time to time made disbursements of the trust funds.

19 10

20 The aforementioned trust funds accepted or received by Respondents were
21 deposited or caused to be deposited by Respondents into one or more bank accounts (herein
22 "trust fund accounts") maintained by Respondents for the handling of trust funds, including but
23 not necessarily limited to the following accounts maintained by Respondents at El Dorado
24 Savings Bank, 4040 El Dorado Road, P.O. Box 1208, Placerville, CA 95667:

25 (a) Paul Spiller, Frans Scholin & Nick Mecham, Account Number
26 0032301424 ("Account #1");

27 (b) Paul Spiller, Frank Scholin & Nick Mecham, Account Number 32301424
(Account #2) and,

1 (c) Frans Scholin and Todd Juvinal Account number 32301906 ("Account
2 #3").

3 11

4 In the course of the activities described in Paragraph 5, above, for the audit
5 period:

6 (a) Account #1, Account #2 and Account #3 were not designated as trust
7 accounts in violation of Section 2832 of Chapter 6, Title 10, California Code of
8 Regulations ("Regulations");

9 (b) Paul Spiller and Todd Juvinal, unlicensed individuals, were signatories
10 of Account #1, #2 and #3 without fidelity bond coverage in violation of Section
11 2834 of the Regulations; and,

12 (c) Respondents failed to register the fictitious business name of Frans
13 Scholin & Associates with the Department in violation of Section 2731 of the
14 Regulations;

15 12

16 The acts and/or omissions of BENCHMARK as alleged above violated Sections,
17 2832, 2834 and 2731 of the Regulations, and are grounds for discipline under Sections 10176
18 and 10177(d) of the Code.

19 SECOND CAUSE OF ACTION

20 Fraud or Dishonest Dealing

21 13

22 Each and every allegation in Paragraphs 1 through 12, inclusive, above, is
23 incorporated by this reference as if fully set forth herein. At all times relevant herein
24 BENCHMARK, MECHAN and/or SCHOLIN were acting as the agents of Richard Cristdahl and
25 Ilene Cristdahl and therefore owed a fiduciary duty to them.

26 ///

On or during December 2004, Richard Cristdahl and Ilene Cristdahl (hereinafter collectively ("THE CRISTDAHLS")), were approached by MECHAN to make private money construction loans. One such loan was for the construction of a home which was to be located at 220 Rising Sun Road, Colfax, California (the "SUN ROAD PROPERTY").

On or about December 6, 2004, THE CRISTDAHLS invested \$100,000 in the SUN ROAD PROPERTY construction. Respondents represented to them that SCHOLIN and Sandra Scholin (collectively "THE SCHOLINS") were to make an additional \$125,000 investment in the construction loan. In exchange for the \$100,000 investment by the CRISTDAHLS and the purported \$125,000 contribution by THE SCHOLINS, Paul Spiller executed a promissory note in favor of THE CRISTDAHLS and THE SCHOLINS (the "SPILLER NOTE"); a note which was secured by a deed of trust recorded against the SUN ROAD PROPERTY. The SPILLER NOTE was to be repaid by or before December 2005. However, the note due date was twice extended for an additional one year each time and remained due and owing until Spiller defaulted on the SPILLER NOTE in December 2007.

In exchange for the SPILLER NOTE and security interest THE CRISTDAHLS gave BENCHMARK \$100,000 which was deposited into BENCHMARK's business account identified herein as Account #1. However, despite representations made to THE CRISTDAHLS, THE SCHOLINS never made the purported \$125,000 investment and the note went underfunded until August 15, 2005 when Bill Challenger deposited with BENCHMARK, the sum of \$125,000 as an investment in the SUN ROAD PROPERTY construction loan and received THE SCHOLIN's assignment of their unfunded interest in the SPILLER NOTE.

Attached to the SPILLER NOTE as an exhibit was a five (5) draw construction draw schedule setting forth the draws and when the draws against the SPILLER NOTE could be made by Spiller.

In addition to the other representations concerning the SPILLER NOTE, as stated herein and in further reliance on the representations made by BECHMARK concerning the 5-payment draw schedule, THE CRISTDAHLS made their \$100,000 investment.

However SCHOLIN, on behalf of BENCHMARK, ignored the draw schedule entirely. Commencing on January 11, 2005 and continuing until February 14, 2008, Spiller was permitted to make 15 separate draws against the SPILLER NOTE. Further, it was not disclosed to the CHRISTDAHLS that BENCHMARK had loaned to Spiller funds provided by the CHRISTDAHLS in advance of the draw schedule and before THE CRISTDAHLS' loan funds were deposited in a Benchmark bank account. Repayment of this advance to Spiller was secured by the SPILLER NOTE.

THE CRISTDAHLS and Mr. Challenger foreclosed upon the security behind the note beginning in January 2008 eventually gaining possession of the note's security, the SUN ROAD PROPERTY, in or about April 2008. At no time during the life of the note and up to the foreclosure proceedings of the SUN ROAD PROPERTY which began in January 2008 did SCHOLIN or BENCHMARK disclose to THE CRISTDAHLS that the draw schedule shown to them had been changed and that Spiller had obtained funds in advance of the draw schedule contained in the SPILLER NOTE, the repayment of which was secured by THE SPILLER NOTE.

The acts and omissions of Respondents BENCHMARK, MECHAN and/or SCHOLIN, and each of them, described in paragraphs 13 through 20, above, constitutes fraud and/or dishonest dealing, and/or a breach of fiduciary duties owed by Respondents BENCHMARK, MECHAN and/or SCHOLIN, and each of them, to THE CRISTDAHLS and therefore constitutes cause to suspend or revoke all licenses and license rights of Respondents

1 BENCHMARK, MECHAN and/or SCHOLIN, and each of them, pursuant to the provisions of
2 Sections 10176(a), 10176(c), 10176(i) and/or 10177(j) of the Code.

3 THIRD CAUSE OF ACTION

4 Negligence and/or Incompetence

5 22

6 Each and every allegation in Paragraphs 1 through 21, inclusive, above are
7 incorporated by this reference as if fully set forth herein.

8 23

9 The acts and omissions of Respondents BENCHMARK, MECHAN and/or
10 SCHOLIN, and each of them, described in paragraphs 1 through 19, above, in the alternative,
11 constitute negligence or incompetence in performing acts requiring a real estate license, and
12 therefore is cause under Section 10177(g) of the Code for suspension or revocation of all
13 licenses and license rights of Respondents BENCHMARK, MECHAN and/or SCHOLIN, and
14 each of them.

15 FOURTH CAUSE OF ACTION

16 Unlicensed Activities

17 24

18 Each and every allegation in Paragraphs 1 through 23, inclusive, above are
19 incorporated by this reference as if fully set forth herein.

20 25

21 During the course of the aforementioned audit it was discovered that SCHOLIN
22 was conducting business under the fictitious business name, Frans Scholin and Associates. On at
23 least one occasion, Frans Scholin and Associates received a loan origination fee in connection
24 with a March 2008 mortgage secured by a property located in Dobbins, California. In addition,
25 in connection with the SPILLER NOTE, Frans Scholin and Associates provided the
26 CRISTDAHLS with a lender purchaser Disclosure Statement which contained information which
27

1 identified the broker as Frans Scholin & Associates and provided SCHOLIN's real estate license
2 number 00981378 as the license number for Frans Scholin & Associates. The Disclosure was
3 signed by SCHOLIN on behalf of Frans Scholin & Associates.

4 26

5 In acting as described in Paragraph 25, above, SCHOLIN violated and/or willfully
6 disregarded the provisions of Sections 10130 and 10137 of the Code.

7 27

8 The facts described above as to the FOURTH CAUSE OF ACTION of
9 Accusation constitute cause to suspend or revoke all licenses and license rights of Respondent
10 SCHOLIN pursuant to the provisions of Sections 10130 of the Code in conjunction with Section
11 10177(d) and Section 10137 of the Code.

12 FIFTH CAUSE OF ACTION

13 Failure to Supervise

14 28

15 Each and every allegation in Paragraphs 1 through 27, inclusive, above, is
16 incorporated by this reference as if fully set forth herein.

17 29

18 Respondent MECHAN, as the designated officer/broker of Respondent
19 BENCHMARK, was required to exercise reasonable supervision and control over the activities
20 of Respondents BENCHMARK and SCHOLIN. Respondent MECHAN failed to exercise
21 reasonable supervision over the acts of BENCHMARK and SCHOLIN in such a manner as to
22 allow the acts and omissions as described above to occur, all in violation of Section 10159.2 of
23 the Code, which constitute cause for suspension or revocation of all licenses and license rights of
24 Respondent MECHAN under Sections 10177(d) and 10177(h) of the Code.

25 ///

26 ///

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


TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 10th day of May, 2010.