

FILED

SEP 10 2009

DEPARTMENT OF REAL ESTATE

By *L. Frost*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
 III CREATE, INC., a California Corporation,)
 DAVID GEORGE GRAVELLE and)
 KAREN JANNETTE VARLEY,)
 Respondents.)
_____)

NO. H-10528 SF
OAH NO. 2009050235

DECISION

The Proposed Decision dated August 7, 2009, 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 05 2009.

IT IS SO ORDERED 9-9-09.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

III CREATE, INC., a California Corporation,
DAVID GEORGE GRAVELLE,
and KAREN JANNETTE VARLEY,

Respondents.

Case No. H-10528 SF

OAH No. 2009050235

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 8, 2009.

Assistant Chief Counsel James L. Beaver represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California. Mr. Beaver was assisted by law student Lindsay Beaver.

Respondent III Create, Inc., was represented by David Debus, its designated officer.

Respondent David George Gravelle appeared and represented himself.

At the commencement of the hearing, counsel for complainant stated that Karen Jannette Varley has surrendered her license and that she is no longer a respondent in this case.

The matter was submitted on July 8, 2009.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, filed the accusation against respondent III Create, Inc. (III Create), a corporate real estate broker; respondent David George Gravelle (Gravelle), a real estate broker; and Karen Jannette Varley, at that time a licensed real estate salesperson. The accusation alleges that respondent III Create, through the acts of its employee, Varley, entered into three fraudulent mortgage loan transactions, and that

respondent Gravelle, at that time the designated officer of III Create, failed to supervise the activities of Varley. Respondents filed notices of defense.

2. At all relevant times, respondent III Create was a licensed corporate real estate broker doing business under the fictitious name of RE/MAX Executive.

3. At all relevant times, respondent Gravelle was a licensed real estate broker and the designated officer of III Create.

4. At all relevant times, Karen Jannette Varley was a licensed real estate salesperson employed by respondent III Create.

Varley/Amoroso Transactions.

5. Between July and December 2005, Varley, acting as an agent for III Create, assisted her clients, Charlotte and Rick Amoroso, in the purchase of residential real property at 340 Peoria Street, Daly City; 1837 Potrero Drive, San Jose; and 1292 El Moro Drive, Campbell. Charlotte Amoroso is Varley's mother and Rick Amoroso is her stepfather.

6. On July 30, 2005, the property at 340 Peoria Street was listed for sale for \$559,000. Varley submitted an offer on behalf of the Amorosos to purchase the property for \$620,000. In their offer, the Amorosos represented that they intended to occupy the property as their principal residence. The purchase contract called for the sellers to pay a "credit" of \$35,000 to "Global" at the close of escrow, to be used for "upgrades, general maintenance and renovation on the subject property."

Varley solicited and obtained first and second mortgage loans totaling \$620,000 from Option One Mortgage to finance the Amorosos' purchase of the property. The transaction closed on October 5, 2005. The credit called for in the contract was paid to a company controlled by Varley.

7. On July 13, 2005, the property at 1837 Potrero Drive was listed for sale for \$749,950. Varley submitted an offer on behalf of the Amorosos to purchase the property for \$805,000. In their offer, the Amorosos represented that they intended to occupy the property as their principal residence. The purchase contract called for the sellers to pay a credit of \$45,000 to "Global" at the close of escrow, to be used for "upgrades, general maintenance and renovation on the subject property."

Varley solicited and obtained first and second mortgage loans totaling \$805,000 from Argent Mortgage Company LLC to finance the Amorosos' purchase of the property. The transaction closed on October 7, 2005. The credit called for in the contract was paid to a company controlled by Varley.

8. On October 11, 2005, the property at 1292 El Moro Drive was listed for sale for \$1,375,000. Respondent submitted an offer on behalf of the Amorosos to purchase the

property for \$1,525,000. In their offer, the Amorosos represented that they intended to occupy the property as their principal residence. The purchase contract called for the sellers to pay a credit of \$150,000 at the close of escrow to Minotaur Investments, Inc., a company controlled by Varley, to be used for "upgrades, general maintenance and renovation on the subject property."

Varley solicited and obtained first and second mortgage loans totaling \$1,372,500 from GreenPoint Mortgage Funding, Inc., to finance the Amorosos' purchase of the property. The transaction closed on December 30, 2005. The credit called for in the contract was ultimately paid to A & S Investment Group, a company associated with Rick Amoroso.

9. In the three transactions described above, the Amorosos and Varley falsely represented to the lenders that the Amorosos intended to occupy each of the properties as their principal residence to induce the lenders to make mortgage loans secured by the properties, to the financial benefit of Varley and/or her family. The Amorosos never occupied any of the three properties they purchased. They reside at 1732 Nash Drive in San Mateo; Charlotte Amoroso has lived there for 30 years and her husband Rick has lived there for 12 years. The Amorosos could not have intended to occupy all three properties, purchased within months of one another, as their principal residence. And the Amorosos and/or Varley realized significant financial benefits on each transaction. Each of the transactions involved a purchase price greater than the listing price, 100 percent or close to 100 percent financing, and a large credit back to the buyers.

Respondents III Create and Gravelle

10. Respondent Gravelle, David Debus, and a third individual formed III Create in 1998. Gravelle has been a licensed broker since 1989. He was the designated officer of III Create from 1998 until January 2007, when he disassociated from the corporation. Debus took over as III Create's designated officer in January 2007. Debus has been a real estate salesperson since 1988 and a broker since 1992. Neither respondent III Create nor respondent Gravelle has suffered any prior license discipline, and no evidence was presented of any prior discipline against Debus.

11. In 2005, III Create's main office was in Livermore and it operated 11 other offices. Each office had an office manager. Respondent Gravelle testified that he delegated supervision of the corporation's salespersons to the managers in each of the offices. Although the evidence on this point is not clear, it appears that respondent Gravelle worked out of the Livermore office. He did not work out of the corporation's Berkeley office.

12. Varley worked out of the Berkeley office, where Kim Cleghorn was the office manager. Cleghorn was never a corporate officer of III Create, and therefore was never assigned supervisory responsibilities pursuant to Business and Professions Code section

10159.2, subdivision (b).¹ The evidence did not establish whether Cleghorn was a licensed broker.

13. Having reviewed the evidence presented by complainant, respondent Gravelle is convinced that Varley and the Amorosos engaged in transactions to defraud mortgage lenders. Gravelle emphasizes, however, that he had no actual knowledge of the transactions at the time they occurred, that he did not review or approve the transaction documents, that he did not profit personally from the transactions, and that III Create did not receive any money from the transactions other than the normal commissions that would have been paid on a transaction involving property of comparable value. (Respondent III Create was paid a total of about \$4,400 for all three transactions.) No contrary evidence was offered, and Gravelle's testimony on these points was credible.

14. Varley was terminated from her employment with respondent III Create in early 2006. Respondent Gravelle testified that Cleghorn brought one of Varley's transactions to him – not one of the three transactions identified above – because Cleghorn was concerned about the large credit involved in the transaction. Respondent Gravelle discussed the issue with the corporation's attorney who told him that the credit was not illegal if it was disclosed to the lender, but that there were "pitfalls" with such a transaction. According to respondent Gravelle, Varley was then "asked to leave." Debus also testified that Varley was terminated because of the large credits associated with her transactions. Neither respondent Gravelle nor Debus explained how or when the transactions identified in Findings 5 through 9, above, came to the attention of III Create's management.

15. Respondent Gravelle believes that he provided full and adequate supervision of Varley's activities and the activities of all the salespersons employed by respondent III Create. He feels that Cleghorn was an excellent manager. Respondent Gravelle notes that despite the thousands of transactions that III Create has performed – in 2005, III Create did about 4,000 transactions and, since 1998, the corporation has done 20,000 to 25,000 transactions – this is the only disciplinary issue that has ever arisen against him or the corporation.

16. Debus also believes that respondent III Create provided adequate supervision of Varley's activities. Debus, like respondent Gravelle, believes that Cleghorn is an excellent manager. Debus feels that III Create caught on to Varley's activities "faster than anyone else."

17. There is no evidence that respondent Gravelle, during the time he was the designated broker for III Create, established policies, rules, procedures and systems to review

¹ Section 10159.2, subdivision (b), provides: "A corporate broker licensee that has procured additional licenses . . . through officers other than [its designated broker] may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its brokers-officers."

and oversee transactions requiring a real estate license, or that he established a system to monitor compliance with such policies, rules, procedures and systems.

LEGAL CONCLUSIONS

1. The standard of proof applied to this proceeding is clear and convincing evidence to a reasonable certainty.

Respondent III Create

2. Under Business and Professions Code section 10176, a real estate license may be suspended or revoked if the licensee has been guilty of “[m]aking any substantial misrepresentation” (subd. (a)), “[a] continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons” (subd. (c)), or “[a]ny other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing” (subd. (i)). Varley, while employed by respondent III Create as a real estate salesperson and while acting as a real estate salesperson, made substantial misrepresentations, engaged in a continued and flagrant course of misrepresentation and engaged in conduct which constitutes fraud or dishonest dealing. (Findings 4 through 9.) Insofar as its relationship to the Real Estate Commissioner is concerned, respondent III Create is responsible for the acts of Varley. (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 193.) Cause exists to suspend or revoke the corporate broker license of respondent III Create pursuant to Business and Professions Code section 10176, subdivisions (a), (c), and (i).

3. Under Business and Professions Code section 10177, subdivision (g), a real estate license may be suspended or revoked if the licensee has “[d]emonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.” The accusation alleges that respondent III Create demonstrated negligence or incompetence in connection with the matters set forth in Findings 5 through 9. The evidence, however, established that Varley’s misconduct was intentional, not negligent or incompetent. No cause exists to discipline the corporate broker license of respondent III Create pursuant to Business and Professions Code section 10177, subdivision (g).

Respondent Gravelle

4. As the designated officer of III Create, respondent Gravelle was “responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.” (Bus. & Prof. Code, § 10159.2, subd. (a); the reference to “this division” is to section 10000 et seq. of the Business and Professions Code.)

5. Under Business and Professions Code section 10177, a real estate license may be suspended or revoked if the licensee has "willfully disregarded or violated the Real Estate Law [Bus. & Prof. Code, § 10000 et seq.] . . ." (subd. (d)), "[d]emonstrated negligence or incompetence in performing any act for which he . . . is required to hold a license" (subd. (g)), or "as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required" (subd. (h)).

6. The Real Estate Law contemplates active supervision by the designated officer of a corporate broker. (*Milner v. Fox* (1980) 102 Cal.App.3d 567, 575.) Under the department's regulations,

[r]easonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage:

- (a) Transactions requiring a real estate license.
- (b) Documents which may have a material effect upon the rights or obligations of a party to the transaction.

[¶] . . . [¶]

- (g) Regular and consistent reports of licensed activities of salespersons.

[¶]

A broker shall establish a system for monitoring compliance with such policies, rules, procedures and systems. A broker may use the services of brokers and salespersons to assist in administering the provisions of this section so long as the broker does not relinquish overall responsibility for supervision of the acts of salespersons licensed to the broker.

(Cal. Code Regs., tit. 10, § 2725.)

7. As the designated officer of III Create, respondent Gravelle failed to exercise reasonable supervision and control of Varley's activities. There is no evidence that Gravelle established any policies, rules, procedures or systems to oversee real estate transactions and to review critical documents, or that he created a system to monitor compliance with such policies, rules, procedures and systems. Respondent Gravelle did not actively supervise Varley's activities. He relinquished his supervisory responsibilities to Cleghorn, Varley's office manager. Cause exists to suspend or revoke the broker license of respondent Gravelle pursuant to Business and Professions Code section 10177, subdivisions (d), (g), and (h).

Disciplinary Considerations

8. The evidence revealed that respondent Gravelle did not adequately supervise the activities of Varley. He did not establish the supervisory controls required by the

department's regulations and, instead of actively supervising salespersons' activities himself as the designated officer, he delegated that responsibility to office managers. It is not clear whether respondent Gravelle is aware of the full extent of a designated officer's supervisory responsibilities, or whether appropriate controls have now been established by respondent III Create. However, the evidence established that respondent Gravelle was not involved in Varley's fraudulent transactions and had no knowledge of them, and that respondent III Create did not profit from Varley's misconduct. There is no evidence that respondent Gravelle or Debus, the new designated officer of III Create, is dishonest. Respondent Gravelle has been involved in thousands of transactions since he was licensed as a broker in 1989 and has never been the subject of a prior disciplinary matter. Respondent III Create also has no prior disciplinary history. Under these circumstances, it would not be contrary to the public interest to permit respondents Gravelle and III Create to retain restricted licenses.

ORDER

1. All licenses and licensing rights of respondent David George Gravelle under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

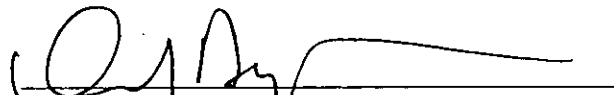
- a. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- b. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
- c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.
- d. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of

Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

2. All licenses and licensing rights of respondent III Create, Inc., under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

- a. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event that an officer or director of respondent or a person owning or controlling 10 percent or more of the corporation's stock is convicted of or enters a plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- b. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
- c. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

DATED: August 7, 2009



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

FILED

AUG - 6 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

1 Voluntary Lic Surrender: Salesperson
2 Revised 2/1/00
3 ACC Filed

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of

13 III CREATE, INC., a California Corporation,
14 DAVID GEORGE GRAVELLE, and KAREN
15 JANNETTE VARLEY,

16 Respondents.

No. H-10528 SF

17
18 ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

19 On September 22, 2008, an Accusation was filed in this matter against
20 Respondent KAREN JANNETTE VARLEY.

21 On July 7, 2009, Respondent petitioned the Commissioner to voluntarily
22 surrender her real estate salesperson license pursuant to Section 10100.2 of the Business and
23 Professions Code.

24 IT IS HEREBY ORDERED that Respondent KAREN JANNETTE VARLEY's
25 petition for voluntary surrender of her real estate salesperson license is accepted as of the
26 effective date of this Order as set forth below, based upon the understanding and agreement
27 expressed in Respondent's Declaration dated July 7, 2009 (attached as Exhibit "A" hereto).

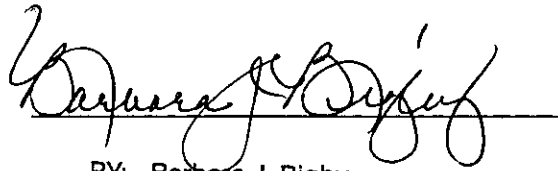
1 Respondent's license certificate and pocket card shall be sent to the below listed address so that
2 they reach the Department on or before the effective date of this Order:

3
4 DEPARTMENT OF REAL ESTATE
5 Attn: Licensing Flag Section
6 P. O. Box 187000
7 Sacramento, CA 95818-7000

8 This Order shall become effective at 12 o'clock noon on AUG 27 2009

9 DATED: 7-31-09

10 JEFF DAVI
11 Real Estate Commissioner

12 
13 _____

14 BY: Barbara J. Bigby
15 Chief Deputy Commissioner
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-10528 SF

KAREN J. VARLEY,)

Respondent.)

DECLARATION

My name is KAREN J. VARLEY and that I currently have license rights with respect to my license as a real estate salesperson. I am not represented by counsel in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Business and Professions Code), I wish to voluntarily surrender my real estate license issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

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07/06/2009 15:56 510 534 1031

CAPITAL ASSET PLANNERS NA

#0722 P.004 /005

1 I understand that by so voluntarily surrendering my
2 license, that I can only be relicensed as a real estate broker
3 or as a real estate salesperson in accordance with the
4 provisions of Section 11522 of the Government Code. I also
5 understand that by so voluntarily surrendering my license, I
6 agree to the following:

7 The filing of this Declaration shall be deemed as my
8 petition for voluntary surrender. It shall also be deemed to be
9 an understanding and agreement by me that, I waive all rights I
10 have to require the Commissioner to prove the allegations
11 contained in the Accusation filed in this matter at a hearing
12 held in accordance with the provisions of the Administrative
13 Procedures Act (Government Code Sections 11400 et seq.), and
14 that I also waive other rights afforded to me in connection with
15 the hearing such as the right to discovery, the right to present
16 evidence in defense of the allegations in the Accusation and the
17 right to cross examine witnesses. I further agree that upon
18 acceptance by the Commissioner, as evidenced by an appropriate
19 order, all affidavits and all relevant evidence obtained by the
20 Department in this matter prior to the Commissioner's
21 acceptance, and all allegations contained in the Accusation
22 filed in the Department Case No. H-10528 SF, may be considered
23 by the Department to be true and correct for the purpose of
24 deciding whether or not to grant reinstatement of my license
25 pursuant to Government Code Section 11522.

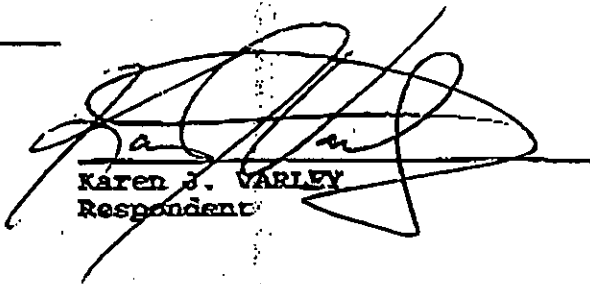
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2 I declare under penalty of perjury under the laws of
3 the State of California that the above is true and correct, and
4 that I freely and voluntarily surrender my license and all
5 license rights attached thereto.

6 DATED: 7/7/09

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9 Karen S. VARLEY
10 Respondent

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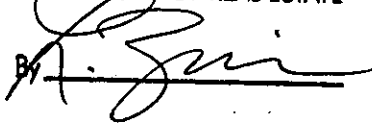
ANGELA L. CASH, Counsel (SBN 230882)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-0805 (Direct)

FILED

SEP 22 2008

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	H- 10528 SF
III CREATE, INC. a)	
California Corporation,)	<u>ACCUSATION</u>
DAVID GEORGE GRAVELLE,)	
and KAREN JANNETTE VARLEY,)	
)	
Respondents.)	

The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against Respondents III CREATE, INC. (hereinafter "III CREATE"), DAVID GEORGE GRAVELLE (hereinafter "GRAVELLE"), and KAREN JANNETTE VARLEY (hereinafter "VARLEY") (collectively referred to as "Respondents"), is informed and allèges as follows:

1

The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2

Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "the Code").

1 3

2 At all times herein mentioned, Respondent III CREATE was and now is licensed
3 by the Department of Real Estate of the State of California (herein "the Department") as a
4 corporate real estate broker by and through Respondent GRAVELLE as designated officer-broker
5 of Respondent III CREATE to qualify said corporation and to act for said corporation as a real
6 estate broker.

7 4

8 At all times herein mentioned, Respondent GRAVELLE was and now is licensed
9 by the Department as a real estate broker, individually and as designated officer-broker of
10 Respondent III CREATE. As said designated officer-broker, Respondent GRAVELLE was at all
11 times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision
12 of the activities of the officers, agents, real estate licensees and employees of Respondent III
13 CREATE for which a license is required.

14 5

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

21 6

22 At all times herein mentioned, Respondent III CREATE, a licensed corporate
23 real estate broker, engaged in the business of, acted in the capacity of, advertised or assumed to
24 act as a real estate broker in the State of California within the meaning of Section 10131(a) of
25 the Code, including the operation and conduct of a real estate resale brokerage businesses with
26 the public wherein, on behalf of others, for compensation or in expectation of compensation,
27 Respondent III CREATE sold and offered to sell, bought and offered to buy, solicited

1 prospective sellers and purchases of, solicited and obtained listings of, and negotiated the
2 purchase and sale of real property..

3 7

4 At all times herein mentioned, Respondent VARLEY was and now is licensed by
5 the Department as a real estate salesperson in the employ of Respondent III CREATE.

6 8

7 Between approximately August 1, 2005 through October 31, 2005, Respondents
8 III CREATE and VARLEY, in association with Alicia Powell (hereinafter "Powell"), entered
9 into and participated in a fraudulent plan or scheme to use deceit and misrepresentation to induce
10 mortgage lenders to make mortgage loans to finance purchases of residential real property with
11 the intent to substantially benefit themselves and without disclosing their true intentions to the
12 mortgage lenders.

13 9

14 The plan and scheme described in Paragraph 8 contemplated in essence that
15 Respondents III CREATE and VARLEY would earn commissions and/or fees by inducing three
16 different mortgage lenders to make mortgage loans to Respondent VARLEY's parents, Rick and
17 Charlotte Amoroso (hereinafter "the Amorosos") to finance the purchase of three different
18 residences by concealing the other two purchases and loans from each lender. In addition, the
19 plan and scheme involved the Amorosos concealing from each lender that they had falsely
20 represented to the other two lenders that they intended to occupy the property securing the loan as
21 their primary residence.

22 10

23 Between approximately August 1, 2005 through October 31, 2005, Respondents
24 III CREATE and VARLEY committed the following acts in furtherance of the fraudulent plan or
25 scheme described in Paragraphs 8 and 9, above:

26 (a) solicited and obtained first and second mortgage loans for \$496,000 and
27 \$124,000 from Option One Mortgage to finance the Amorosos purchase of property located at

1 340 Peoria Street, Daly City, California by representing to the mortgage lender, contrary to fact,
2 that the property securing the loan would be the primary residence of the Amorosos;

3 (b) Solicited and obtained first and second mortgage loans for \$644,000 and
4 \$161,000 from Argent Mortgage Company LLC to finance the Amorosos purchase of property
5 located at 1837 Potrero Drive, San Jose, California by representing to the mortgage lender,
6 contrary to fact, that the property securing the loan would be the primary residence of the
7 Amorosos;

8 (c) Solicited and obtained first and second mortgage loans for \$1,220,000 and
9 \$152,500 from GreenPointe Mortgage Funding, Inc. to finance the Amorosos purchase of
10 property located at 1292 El Moro Drive, Campbell, California by representing to the mortgage
11 lender, contrary to fact, that the property securing the loan would be the primary residence of the
12 Amorosos; and

13 (d) Concealed from each of the three mortgage lenders the other two purchase
14 and mortgage loan transactions identified above.

15 11

16 In truth and fact, Respondents III CREATE and VARLEY knew the Amorosos
17 were not buying any of the subject properties as their primary residence.

18 12

19 The acts and omissions of Respondents III CREATE and VARLEY, described
20 above, constitute the substantial misrepresentation of a material fact, a continued and flagrant
21 course of misrepresentation through agents, and/or fraud and/or dishonest dealing.

22 13

23 Respondent GRAVELLE failed to exercise reasonable supervision over the acts
24 of Respondents III CREATE and VARLEY in such a manner as to allow the acts and events
25 described above to occur.

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1
2 The acts and/or omissions of Respondents III CREATE and VARLEY described
3 in Paragraphs 8 through 12 above, constitute grounds for discipline under Sections 10176(a),
4 10176(c), 10176(i) and/or 10177(g) of the Code.

15

5
6 The acts and/or omissions of Respondent GRAVELLE described in Paragraph 13
7 above, violate Section 10159.2 of the Code and are grounds for discipline under Sections
8 10177(d), (g), and (h) of the Code.

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

14
15 
16 E. J. HABERER II
Deputy Real Estate Commissioner

17 Dated at Oakland, California

18 this 17th day of September, 2008.