

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
NOV 24 2009

In the Matter of the Accusation of

KIM ARNOLD,  
AUDREY ELAINE BROWNLEE,  
AL R. KOHASTEY and  
PETER CARL FOPPIANO,  
Respondents.

\*\*\*

DEPARTMENT OF REAL ESTATE

By *L. Frost*

DRE No. H-10647 SF

DECISION

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code, on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on September 16, 2009, and the findings of fact set forth herein, which are based on one or more of the following: (1) Respondents' express admissions; (2) affidavits; and (3) other evidence.

FINDINGS OF FACT

1

On April 17, 2009, E. J. Haberer II, made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The Accusation, Statement to Respondent, and Notice of Defense were mailed, by certified mail, to Respondents' last known mailing address on file with the Department on April 17, 2009.

On September 16, 2009, no Notice of Defense having been received or filed herein within the time prescribed by Section 11506 of the Government Code, Respondent KIM ARNOLD's default was entered herein. On September 16, 2009, having failed to appear at the duly noticed hearing on September 14, 2009, Respondent AUDREY ELAINE BROWNLEE's default was entered herein.

2

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

KIM ARNOLD (hereinafter "ARNOLD") as a real estate salesperson, and Respondent AUDREY ELAINE BROWNLEE (hereinafter "BROWNLEE") as a real estate salesperson.

3

Beginning in the summer of 2006, Respondent ARNOLD solicited Andrew Smith (hereinafter "Smith") to allow unnamed persons to use his credit to purchase two homes in exchange for \$5,000 for each home.

4

Respondent ARNOLD, in association with Respondent BROWNLEE, who signed the loan application as interviewer, induced Mirad Financial Group to make 1<sup>st</sup> and 2<sup>nd</sup> mortgage loans in the amounts of \$520,000 and \$130,000 respectively, secured by real property at 4552 Brighton Drive, Santa Rosa, California (hereinafter "the Brighton property"), to finance the purchase of the Brighton property by Smith representing to the lender, contrary to fact, that (1) Smith was purchasing the Brighton property as his primary residence and intended to occupy the property as a residential owner; and (2) Smith's income was \$14,200 per month.

5

The representations described in Paragraph 4 above were false and misleading and were known by Respondents ARNOLD and BROWNLEE to be false and misleading when made, or were made by such Respondents with no reasonable grounds for believing said representations to be true. In truth and in fact, Smith did not intend to reside in the Brighton property and his monthly income was only \$2,700 from social security disability payments.

6

Mirad Financial Group would not have given Smith the favorable loan terms for the two loans described in Paragraph 4, above, if they had known that he did not intend to reside in the Brighton property as his principal residence.

7

Respondent BROWNLEE, in association with Respondent ARNOLD, induced Pro Funding to make 1<sup>st</sup> and 2<sup>nd</sup> mortgage loans to Smith in the amounts of \$451,200 and \$112,800 respectively, secured by real property at 534 Emerald Park Court, Santa Rosa, California (hereinafter "the Emerald Park property"), to finance the purchase of the Emerald Park property by Smith representing to the lender, contrary to fact, that (1) Smith was purchasing the Emerald Park property as his primary residence and intended to occupy the property as a residential owner; and (2) Smith was then employed by Big Rig Insurance as an account executive.

The representations described in Paragraph 7, above, were false and misleading and were known by Respondents ARNOLD and BROWNLEE to be false and misleading when made or were made by such Respondents with no reasonable grounds for believing said representations to be true. In truth and in fact, Smith did not intend to reside in the Emerald Park property and was unemployed. His income was only \$2,700 monthly from social security disability payments.

The facts alleged above are grounds for revocation or suspension of the licenses of ARNOLD and BROWNLEE under Sections 10176(a) and 10176(i) of the Code.

### DETERMINATION OF ISSUES

Cause for disciplinary action against Respondents ARNOLD and BROWNLEE exists pursuant to Business and Professions Code Sections 10176(a) and 10176(i).

The standard of proof applied was clear and convincing proof to a reasonable certainty.

### ORDER

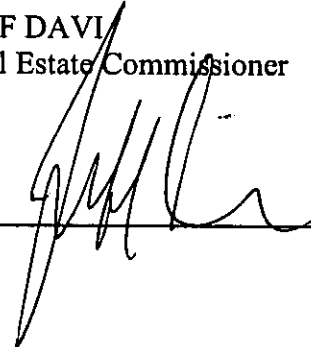
All licenses and licensing rights of Respondents KIM ARNOLD and AUDREY ELAINE BROWNLEE, under the provisions of Part I of Division 4 of the Business and Professions Code are revoked.

This Decision shall become effective at 12 o'clock noon on DEC 14 2009.

DATED: \_\_\_\_\_

11-29-09

JEFF DAVIS  
Real Estate Commissioner



JEFF DAVIS  
Real Estate Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KIM ARNOLD, AUDREY ELAINE  
BROWNLIE, AL R. KOJASTEH, and  
PETER CARL FOPPIANO,

Respondents.

Case No. H-10647 SF

OAH No. 2009060920

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on September 14, 2009.

James L. Beaver, Counsel, Department of Real Estate, represented Complainant E. J. Haberer II, Deputy Real Estate Commissioner.

Respondent Peter Carl Foppiano's case was settled prior to hearing and Complainant requested it be taken off calendar. Respondents Kim Arnold and Audrey Elaine Brownlee failed to appear at the hearing and Complainant requested that their cases be taken off calendar for internal processing by the Department.

Respondent Al R. Kojasteh appeared and represented himself.

The record closed on September 14, 2009.

**FACTUAL FINDINGS**

1. Complainant E. J. Haberer II filed the Accusation in his official capacity as a deputy real estate commissioner for the Department of Real Estate (Department).

2. Al R. Kojasteh (Respondent) is licensed and has license rights under the Real Estate Law as a restricted real estate broker. Respondent's restricted broker license is currently valid and has an expiration date of April 12, 2012. From November 16, 1994, until November 15, 2006, and then from November 16, 2006, until April 11, 2008, (the time period relevant to this matter) Respondent held a restricted real estate salesperson license.

3. On January 30, 2007, Andrew J. Smith filed a complaint with the Department against Respondent and Kim Arnold, a real estate salesperson. The complaint includes Smith's written statement concerning the allegations. In addition, Smith testified at hearing.

4. Smith met Kim Arnold through her relatives in 2006. She was working as a mortgage broker and she helped him refinance his house. After the transaction closed, Arnold told Smith that she could help him make some money. She offered to pay him \$5,000 per transaction for allowing purchasers to use his credit when they purchased a house. As Smith understood it, he would be on the title, but another of Arnold's clients would actually live in the house and make the mortgage payments by depositing the funds into a bank account in Smith's name. The other client would subsequently purchase the house from Smith when he or she was able to qualify for a loan.

Smith signed loan documents and other paperwork in connection with the purchase of 4552 Brighton Drive, Santa Rosa, and of 534 Emerald Park Court, Santa Rosa. The paperwork included statements that he intended to occupy each of the houses as his primary residence, even though Smith resided elsewhere and never intended to reside in either house. Smith was unemployed at the time, but he also signed statements that he was employed and that he had a certain income. This information was also false.

5. The purchases of Brighton and Emerald Park were completed in August 2006 and Smith became the owner of both houses. In mid-November Smith received a telephone call from the lender on the Brighton house, who told him that two month's worth of payments had not been made. Smith attempted to contact Arnold, but her telephone had been disconnected. He contacted the escrow officer on both sales, Melany Collett, and requested copies of the escrow files. Smith testified that Collett told him that there were tenants living at Brighton who were paying rent to Respondent, whom she described as a loan agent with Golden Bear Financial. Collett testified that it was the other way around; that Smith called her office after he received a notice of default and told her about the tenants.

6. Smith drove to the Brighton property, and he claims that a woman there told him that she was paying rent to Respondent. Smith telephoned Respondent, who came to the property. Smith and Respondent went to a bank and Respondent opened an account. Respondent gave Smith \$13,911 and Smith deposited these funds in the account. Smith claimed that the money Respondent gave him represented the rent money for Brighton that Respondent had been collecting illegally.

7. Respondent's version of the trip to the bank and surrounding circumstances is different. He stated that the \$13,911 was a loan to Smith to bring the mortgages current, and that they orally agreed that the house would be listed for sale with Respondent as the sales agent. The payments on Brighton were \$4,637 per month; \$13,911 therefore represents the total owed for three months. But Smith listed the property with another agent and never reimbursed Respondent the \$13,911. Smith ultimately lost both Brighton and Emerald Park to foreclosure.

8. Respondent contends that, although the sales documents confirm that Smith purchased Brighton from Richard and Michelle Balcom, Respondent was the actual owner. The Balcoms had previously listed the house for sale with Respondent, and when it did not sell, he bought it subject to the existing loans, but his name did not go on the title. For about one year, the Balcoms remained in the house as a tenant. Respondent gave the Balcoms the difference between what the rent would have been and the mortgage and the Balcoms paid the mortgage. The Balcoms then moved to a less expensive rental, and Respondent obtained a Section 8 tenant. He received rent from that program for three months, until the tenants no longer qualified for Section 8. They remained on the property and paid Respondent "a little bit here or there" until they moved out. Respondent does not recall when this was, except that it was prior to August, when Smith bought Brighton.

9. The Balcoms and Respondent subsequently agreed to sell the house and Arnold brought in Smith as the purchaser. The closing documents corroborate Respondent's testimony that he was "cashed out" with that sale. Respondent was given a total of \$87,631.32, identified as a miscellaneous payment, by the escrow company at close of escrow.

10. The evidence also supports Respondent's explanation that the money he gave Smith was to cover the mortgage, not to reimburse him for rent monies he had illegally collected. If the rent was \$1,500 per month, the total for the three months from August until November would have been \$4,500, an amount nowhere near the \$13,911 Respondent gave Smith. It was not established that Respondent misappropriated rents from Brighton that were owed to Smith.

11. No evidence was introduced that Smith and Respondent entered into a property management agreement. Both Smith and Respondent denied that they ever had such an agreement.

12. Smith acknowledged that he lied on loan documents concerning the purchase of property in exchange for money. The testimony he gave concerning his allegation that Respondent collected the rents on Brighton when he did not own the house was not believable or corroborated. Even his explanation of how he located Respondent was contradicted by the person he said gave him the information. In sum, the truthfulness of Smith's testimony was suspect and was accorded little weight.

### LEGAL CONCLUSIONS

1. The Accusation in this matter contains two allegations against Respondent. Paragraph 8 alleges:

In or about November 2006, Respondent KOJASTEH had been collecting rent on the Brighton Property. However, knowing that Smith was the owner of the Brighton Property, Respondent

KOJASTEH had failed to give those amounts collected to Smith.

Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), provide that a real estate license may be disciplined where it is proven that the licensee has engaged in fraud or dishonest dealing. No cause for discipline of Respondent's license exists under either of these provisions as it was not proven that Respondent received or misappropriated rents from property owned by another, or otherwise engaged in fraud or dishonest dealing.

2. Paragraph 21 of the Accusation alleges:

Shortly after Smith discovered that Respondent KOJASTEH was misappropriating the rents from the Brighton Property, Smith entered into an agreement with Respondent KOJASTEH, then a restricted real estate salesperson, to manage that same property, the compensation for which came from Smith, not Respondent FOPPIANO [Respondent's broker at the time], in violation of Section 10137 of the Code in conjunction with Section 10131(b) of the Code.

Business and Professions Code section 10137 concerns the payment of compensation by licensed real estate brokers and salespersons. Business and Professions Code section 10131, subdivision (b), includes in the definition of a real estate broker:

A person, who, for a compensation or in expectation of a compensation . . . does or negotiates to do one or more of the following acts for another or others:

Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

No cause for discipline of Respondent's license exists pursuant to these provisions as it was not proven that there was a property management agreement between Respondent and Smith or that Smith paid Respondent to manage property.

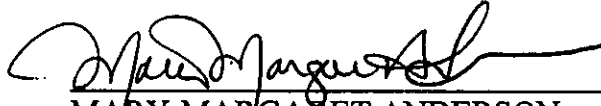
3. Neither of the two allegations against Respondent was proven. The Accusation must therefore be dismissed.



ORDER

The Accusation against Al R. Kojasteh is dismissed.

DATED: October 14, 2009



MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
6  
7

**FILED**

OCT 22 2009

DEPARTMENT OF REAL ESTATE  
By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9  
10 STATE OF CALIFORNIA  
11

12 \* \* \*

11 In the Matter of the Accusation of ) DRE No. H-10647 SF  
12 )  
13 PETER CARL FOPPIANO, ) STIPULATION AND AGREEMENT  
14 )  
15 Respondent. )  
16 )

15 It is hereby stipulated by and between Respondent  
16 PETER CARL FOPPIANO, individually and by and through  
17 Edgardo Gonzalez, Esq., Respondent's attorney of record herein  
18 and the Complainant, acting by and through James L. Beaver,  
19 Counsel for the Department of Real Estate (herein "the  
20 Department"), as follows for the purpose of settling and  
21 disposing of the Accusation filed on April 17, 2009 in this  
22 matter (herein "the Accusation"):  
23

24 1. All issues which were to be contested and all  
25 evidence which was to be presented by Complainant and Respondent  
26 at a formal hearing on the Accusation, which hearing was to be  
27

DRE No. H-10647 SF

PETER CARL FOPPIANO

1 held in accordance with the provisions of the Administrative  
2 Procedure Act (APA), shall instead and in place thereof be  
3 submitted solely on the basis of the provisions of this  
4 Stipulation and Agreement.

5 2. Respondent has received, read and understands the  
6 Statement to Respondent, the Discovery Provisions of the APA and  
7 the Accusation filed by the Department in this proceeding.

8 3. On April 28, 2009, Respondent filed a Notice of  
9 Defense pursuant to Section 11505 of the Government Code for the  
10 purpose of requesting a hearing on the allegations in the  
11 Accusation. Respondent hereby freely and voluntarily withdraws  
12 said Notice of Defense. Respondent acknowledges that Respondent  
13 understands that by withdrawing said Notice of Defense Respondent  
14 will thereby waive Respondent's right to require the Real Estate  
15 Commissioner (herein "the Commissioner") to prove the allegations  
16 in the Accusation at a contested hearing held in accordance with  
17 the provisions of the APA and that Respondents will waive other  
18 rights afforded to Respondents in connection with the hearing  
19 such as the right to present evidence in defense of the  
20 allegations in the Accusation and the right to cross-examine  
21 witnesses.  
22

23 4. This stipulation is based on the factual  
24 allegations contained in the Accusation. In the interest of  
25 expediency and economy, Respondents choose not to contest these  
26 factual allegations, but to remain silent and understand that, as  
27

DRE No. H-10647 SF

PETER CARL FOPPIANO

1 a result thereof, these factual statements will serve as a prima  
2 facie basis for the "Determination of Issues" and "Order" set  
3 forth below. The Real Estate Commissioner shall not be required  
4 to provide further evidence to prove such allegations.

5 5. This Stipulation and Respondents' decision not to  
6 contest the Accusation are made for the purpose of reaching an  
7 agreed disposition of this proceeding and are expressly limited  
8 to this proceeding and any other proceeding or case in which the  
9 Department of Real Estate (herein "the Department"), the state or  
10 federal government, an agency of this state, or an agency of  
11 another state is involved.

12 6. It is understood by the parties that the  
13 Commissioner may adopt the Stipulation and Agreement as his  
14 decision in this matter, thereby imposing the penalty and  
15 sanctions on Respondent's real estate license and license rights  
16 as set forth in the "Order" below. In the event that the  
17 Commissioner in his discretion does not adopt the Stipulation and  
18 Agreement, it shall be void and of no effect, and Respondent  
19 shall retain the right to a hearing and proceeding on the  
20 Accusation under all the provisions of the APA and shall not be  
21 bound by any admission or waiver made herein.

22 7. This Stipulation and Agreement shall not  
23 constitute an estoppel, merger or bar to any further  
24 administrative or civil proceedings by the Department with  
25 respect to any matters which were not specifically alleged to be  
26

27 DRE No. H-10647 SF

PETER CARL FOPPIANO

1 causes for accusation in this proceeding. This Stipulation and  
2 Agreement shall constitute an estoppel, merger and bar to any  
3 further administrative or civil proceedings by the Department  
4 with respect to any events which were specifically alleged to be  
5 causes for accusation in this proceeding.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, admissions and  
8 waivers and solely for the purpose of settlement of the pending  
9 Accusation without hearing, it is stipulated and agreed that the  
10 following Determination of Issues shall be made:

11 I

12 The acts and omissions of Respondent as described in  
13 the Accusation are grounds for the suspension or revocation of  
14 the licenses and license rights of Respondent PETER CARL FOPPIANO  
15 under the following provisions of Sections 10137, 10177(h),  
16 10178, 10176(i) and 10177(d) in conjunction with Sections  
17 10161.8(a) and 10240 of the California Business and Professions  
18 Code (herein "the Code"). and Sections 2725 and 2726 of Chapter  
19 6, Title 10, California Code of Regulations. (herein "The  
20 Regulations").  
21

22 ORDER

23 I

24 All licenses and licensing rights of Respondent PETER  
25 CARL FOPPIANO under the Real Estate Law are suspended for a  
26 period of thirty (30) days from the effective date of the  
27

DRE No. H-10647 SF

PETER CARL FOPPIANO

1 Decision herein; provided, however:

2 If Respondent FOPPIANO petitions, thirty (30) days of  
3 said thirty (30) day suspension (or a portion thereof) shall be  
4 stayed upon condition that:

5 (a) Respondent pays a monetary penalty pursuant to  
6 Section 10175.2 of the Code at the rate of \$75.00 for each day of  
7 the suspension for a total monetary penalty of \$2,250.00.

8 (b) Said payment shall be in the form of a cashier's  
9 check or certified check made payable to the Recovery Account of  
10 the Real Estate Fund. Said check must be received by the  
11 Department prior to the effective date of the Decision in this  
12 matter.

13 (c) If Respondent fails to pay the monetary penalty in  
14 accordance with the terms and conditions of the Decision, the  
15 Commissioner may, without a hearing, vacate and set aside the  
16 stay order, and order the immediate execution of all or any part  
17 of the stayed suspension.

18 (d) No final subsequent determination be made, after  
19 hearing or upon sti occurred within two (2) years of the  
20 effective date of the Decision herein. Should such a  
21 determination be made, the Commissioner may, in his or her  
22 discretion, vacate and set aside the stay order, and order the  
23 execution of all or any part of the stayed suspension, in which  
24 event the Respondent shall not be entitled to any repayment nor  
25 credit, prorated or otherwise, for money paid to the Department  
26

27 DRE No. H-10647 SF

PETER CARL FOPPIANO

SEP-9-2009 10:10A FROM:

TO: 5103519292

P.7

09/09/2009 10:04 0103519292

ED GONZALEZ

P.7

09/08/2009 08:48 FAX 8182278458

DRE LEGAL/RECOVERY

0007/008

1 under the terms of this Decision.

2 (c) If Respondent pays the monetary penalty and if no  
3 further cause for disciplinary action against the real estate  
4 license of Respondent occurs within two (2) years from the  
5 effective date of the Decision herein, then the stay hereby  
6 granted shall become permanent.

7 9.9.09  
8 DATED

JAMES L. BEAVER, Counsel  
Department of Real Estate

9 \* \* \*

10 I have read the Stipulation and Agreement and discussed  
11 it with my attorney and its terms are understood by me and are  
12 agreeable and acceptable to me. I understand that I am waiving  
13 rights given to me by the California Administrative Procedure Act  
14 (including but not limited to Sections 11506, 11508, 11509, and  
15 11512 of the Government Code), and I willingly, intelligently,  
16 and voluntarily waive those rights, including the right of  
17 requiring the Commissioner to prove the allegations in the  
18 accusation at a hearing at which I would have the right to cross-  
19 examine witnesses against me and to present evidence in defense  
20 and mitigation of the charges.

21 9/9/09  
22 DATED

PETER CARL POPPIANO  
Respondent

23 \* \* \*

24 I have reviewed the Stipulation and Agreement as to  
25

26 DRE No. M-10647 SF  
27

PETER CARL POPPIANO

1 form and content and have advised my client accordingly.

2 9/9/09  
DATED

Edgardo Gonzalez  
EDGARDO GONZALEZ  
Attorney for Respondent

3 \* \* \*

4  
5 The foregoing Stipulation and Agreement is hereby  
6 adopted by me as my Decision as to Respondent Peter Carl Foppiano  
7 in this matter and shall become effective at 12 o'clock noon on

8 NOV 23 2009

9 IT IS SO ORDERED Jeff Davi, 2009.

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11 JEFF DAVI  
Real Estate Commissioner

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26  
27 DRE No. H-10647 SF

PETER CARL FOPPIANO



FILED

APR 17 2009

DEPARTMENT OF REAL ESTATE

By *R. Henry*

DAVID B. SEALS, Counsel (SBN 69378)  
Department of Real Estate  
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Sacramento, CA 95818-7007

Telephone: (916) 227-0791  
-or- (916) 227-0792 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

No. H- 10647 SF

ACCUSATION

KIM ARNOLD, AUDREY ELAINE BROWNLEE,  
AL R. KOJASTEH and PETER CARL FOPPIANO,

Respondents.

The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California for cause of Accusation against KIM ARNOLD (hereinafter Respondent "ARNOLD"), AUDREY ELAINE BROWNLEE (hereinafter Respondent "BROWNLEE"), AL R. KOJASTEH (hereinafter Respondent "KOJASTEH") and PETER CARL FOPPIANO (hereinafter Respondent "FOPPIANO") is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

1

The Complainant makes this Accusation against Respondents in his official capacity.

///

2

Respondent ARNOLD is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code") as a real estate salesperson.

3

Respondent BROWNLEE is presently licensed and/or has license rights under the Code as a real estate salesperson.

4

Respondent KOJASTEH is presently licensed and/or has license rights under the Code as a restricted real estate broker. However, at all times mentioned herein until April 11, 2008, Respondent KOJASTEH was licensed as a restricted real estate salesperson.

5

Respondent FOPPIANO is presently licensed and/or has license rights under the Code as a real estate broker dba Golden Bear Financial, Golden Bear Mortgage, and until October 5, 2006, Realty World.

6

Beginning in the summer of 2006, Respondent ARNOLD solicited Andrew Smith (hereinafter "Smith") to allow unnamed persons to use his credit to purchase two homes in exchange for \$5,000 for each home.

7

Respondent ARNOLD, in association with Respondent BROWNLEE, who signed the loan applications as the interviewer, induced Mirad Financial Group to make 1<sup>st</sup> and 2<sup>nd</sup> mortgage loans in the amounts of \$520,000.00 and \$130,000.00, respectively, secured by real property at 4552 Brighton Drive, Santa Rosa, California, (hereinafter the "Brighton Property") to finance the purchase of said real property by Smith by representing to the lender, contrary to fact, that (1) Smith was purchasing the Brighton Property as his primary residence and intended to occupy the property as a residential owner; and (2) Smith's income was \$14,200.00 per month.

8

In or about November 2006, Respondent KOJASTEY had been collecting rent on the Brighton Property. However, knowing that Smith was the owner of the Brighton Property, Respondent KOJASTEY had failed to give those amounts collected to Smith.

9

The representations described in Paragraph 7 above, were false and misleading and were known by Respondents ARNOLD and BROWNLEE to be false and misleading when made or were made by such Respondents with no reasonable grounds for believing said representations to be true. In truth and in fact, Smith did not intend to reside in the Brighton Property and his monthly income was only \$2,700.00 per month from Social Security Disability payments.

10

Mirad Financial Group would not have given Smith the more favorable residential loan terms for the two loans discussed in Paragraph 7 if they had known that he did not intend to reside in the Brighton Property as his principal residence.

11

The acts and omissions of Respondents ARNOLD and BROWNLEE described in Paragraphs 7, 9 and 10 above, constitute substantial misrepresentations of material facts, fraud, and/or dishonest dealing.

12

The facts alleged in Paragraphs 6 through 10 above, are grounds for the suspension or revocation of the licenses of Respondents ARNOLD and BROWNLEE under Sections 10176(a), 10176(i), 10177(g), and/or 10177(j) of the Code and are grounds for the suspension or revocation of the licenses of Respondent KOJASTEY under Section 10176(i) or 10177(j) of the Code.

///

///

1 SECOND CAUSE OF ACCUSATION

2 13

3 There is hereby incorporated in this Second, separate and distinct, Cause of  
4 Accusation, all of the allegations contained in Paragraphs 1 through 10, inclusive, of the  
5 Accusation with the same force and effect as if herein fully set forth.

6 14

7 Respondent BROWNLEE, in association with Respondent ARNOLD, who signed  
8 the loan applications as the interviewer, induced Pro30 Funding to make 1<sup>st</sup> and 2<sup>nd</sup> mortgage  
9 loans to Smith in the amounts of \$451,200.00 and \$112,800.00, respectively, secured by real  
10 property at 534 Emerald Park Court, Santa Rosa, California, (hereinafter the "Emerald Park  
11 Property") to finance the purchase of said real property by Smith by representing to the lender,  
12 contrary to fact, that (1) Smith was purchasing the Emerald Park Property as his primary  
13 residence and intended to occupy the property as a residential owner; and (2) Smith was then  
14 employed by Big Rig Insurance as an Account Executive.

15 15

16 The representations described in Paragraph 14 above, were false and misleading  
17 and were known by Respondents ARNOLD and BROWNLEE to be false and misleading when  
18 made or were made by such Respondents with no reasonable grounds for believing said  
19 representations to be true. In truth and in fact, Smith did not intend to reside in the Emerald Park  
20 Property and he did not then, nor did he ever, work for Big Rig Insurance in any capacity. Smith  
21 did not have a job. His monthly income was only \$2,700.00 per month from Social Security  
22 Disability payments.

23 16

24 The two loans discussed in Paragraph 15 above closed on or about August 1, 2006  
25 with Respondent ARNOLD receiving about \$61,000 in commissions, Realty World about  
26 \$16,500 and Respondent BROWNLEE about \$595.00.

27 ///

17

Pro30 Funding would not have given Smith the more favorable residential loan terms for the two loans discussed in Paragraph 14 if they had known that he did not intend to reside in the Emerald Park Property as his principal residence.

18

The acts and omissions of Respondents ARNOLD and BROWNLEE described in Paragraphs 14 and 15 above, constitute substantial misrepresentations of material facts, fraud, and/or dishonest dealing.

19

The facts alleged in Paragraphs 14 through 18 above, are grounds for the suspension or revocation of the licenses of Respondents ARNOLD and BROWNLEE under Sections 10176(a), 10176(i), 10177(g), and/or 10177(j) of the Code.

#### THIRD CAUSE OF ACCUSATION

20

There is hereby incorporated in this Third, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs 13 through 18, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

21

Shortly after Smith discovered that Respondent KOJASTEH was misappropriating the rents from the Brighton Property, Smith entered into an agreement with Respondent KOJASTEH, then a restricted real estate salesperson, to manage that same property, the compensation for which came from Smith, not Respondent FOPPIANO, in violation of Section 10137 of the Code in conjunction with Section 10131(b) of the Code.

22

The facts alleged in Paragraphs 20 and 21 above, are grounds for the suspension or revocation of the licenses of Respondent KOJASTEH under Section 10137 of the Code.

///

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FOURTH CAUSE OF ACCUSATION

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There is hereby incorporated in this Fourth, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs 20 and 21, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

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From on or about February 11, 2008 through June 4, 2008, the Department conducted an audit of the real estate activities of Respondent FOPPIANO for the time period January 1, 2005 to December 31, 2007 as set forth in Audit Nos. OK070172 and OK070235.

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During the time covered by the audits and within the three years prior to the filing of this Accusation, Respondent FOPPIANO employed Respondent KOJASTEJ to perform acts requiring a real estate license for or in expectation of compensation, which acts were in fact performed, without notifying the Department of such employment in violation of Sections 10137 and 10161.8(a) of the Code.

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During the time covered by the audits and within the three years prior to the filing of this Accusation, Respondent FOPPIANO failed to send to the Department an acknowledgement that he has read the Decision in Department of Real Estate Case # H-6964 SF which denied the application of Respondent KOJASTEJ for a real estate salesperson license but granting the right to a restricted real estate salesperson license and that he agrees to more closely supervise Respondent KOJASTEJ, as required by said Decision, in violation of Section 10177(k) of the Code.

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During the time covered by the audits and within the three years prior to the filing of this Accusation, Respondent FOPPIANO failed to have signed Broker-Salesperson Agreements with eight of his salespersons in violation of Section 2726, Title 10, California Code of Regulations (hereinafter the "Regulations").

During the time covered by the audits and within the three years prior to the filing of this Accusation, Respondent FOPPIANO failed to (1) retain a copy of the Mortgage Loan Disclosure Statement (hereinafter "MLDS") in the December 20, 2006 loan file of Juana Sarabia; (2) have the borrower and agent negotiating the loan sign the MLDS and disclose the yield spread premium of \$13,174.88 in the April 6, 2006 loan file of Mr. Smith; and (3) have the borrowers and agent negotiating the loan sign the MLDS in the May 16, 2006 loan file of Castle/Kengo, all in violation of Section 10240 of the Code.

Respondent FOPPIANO failed to notify the Department of the December 15, 2006 termination of Respondent ARNOLD, for violation of Article 3 of the Code, until December 17, 2007 in violation of Section 10178 of the Code.

At all times mentioned herein above, Respondent FOPPIANO failed to exercise reasonable supervision over the activities of salespersons, and permitted, ratified and/or caused the conduct described above. Respondent FOPPIANO failed to reasonably or adequately review, oversee, inspect and manage the salespersons under his employ, and/or to establish reasonable policies, rules, procedures and systems for such review, oversight, inspection and management.

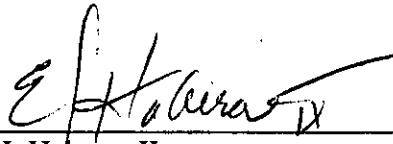
The acts and/or omissions of Respondent FOPPIANO described above are grounds for the suspension or revocation of Respondents' licenses and license rights under Sections 10137, 10177(h) and 10178 of the Code and Section 10177(d) of the Code, in conjunction with Sections 10161.8(a) and 10240 of the Code and Sections 2725 and 2726 of the Regulations.

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

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8 E. J. Haberer II  
Deputy Real Estate Commissioner

9 Dated at Oakland, California,  
10 this 21<sup>st</sup> day of March, 2009.  
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