

FILED
FEB 13 1997
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Lauriel Zan

* * *

In the Matter of the Accusation of)	
NEWPORT PACIFIC FUNDING)	NO. H-26365 LA
CORPORATION, SC FUNDING)	
CORPORATION, EQUITY BANCORP,)	OAH No. L-9601251
and JOHN MICHAEL FOLEY,)	
individually and as designated)	
officer of Newport Pacific)	
Funding Corporation, SC Funding)	
Corporation and Equity Bancorp;)	
NEWPORT PACIFIC REALTY &)	
INVESTMENT CORPORATION and MAGDY)	
HANNA, individually and as)	
designated officer of Newport)	
Pacific Realty & Investment)	
Corporation,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated January 22, 1997, 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 as to respondents NEWPORT PACIFIC FUNDING CORPORATION, SC FUNDING CORPORATION, EQUITY BANCORP, NEWPORT PACIFIC REALTY & INVESTMENT CORPORATION and MAGDY HANNA only.

This Decision shall become effective at
12 o'clock noon on March 6, 1997.

IT IS SO ORDERED 2-6, 1997.

JIM ANTT, JR.
Real Estate Commissioner

Jm Antt Jr

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

In the Matter of the Accusation)	
of)	
NEWPORT PACIFIC FUNDING)	No. H 26365 LA
CORPORATION; SC FUNDING CORP-)	
ORATION; EQUITY BANCORP, INC.)	OAH NO. L-9601251
and JOHN MICHAEL FOLEY,)	
Individually, and as designated)	
Broker of Newport Pacific)	
Funding Corporation, SC Funding)	
Corporation, and Equity Bancorp;)	
NEWPORT PACIFIC REALTY AND)	
INVESTMENT CORPORATION,)	
and MAGDY HANNA,)	
Individually and as designated)	
officer of Newport Pacific)	
Realty and Investment Corp-)	
oration,)	
Respondents.)	

PROPOSED DECISION

On November 6, 1996, in Los Angeles, California, Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mr. James L. Beaver, Staff Counsel, represented Complainant Thomas-McCrady. There was no appearance by any of the Respondents.

On December 6, 1996, the record was reopened and Complainant directed to file a brief on certain issues raised by the evidence. Complainant's brief was received December 23, 1996, and is hereby made part of the record as Exhibit 52. The matter was submitted for decision on December 23, 1996.

FINDINGS OF FACT

1. The Accusation and Amended Accusation were filed by Thomas McCrady ("Complainant") in his official capacity as Deputy Real Estate Commissioner, Department of Real Estate ("the Department"), State of California.

2. (A) Respondent Newport Pacific Funding Corporation ("Newport Funding") was licensed by the Department as a corporate real estate broker, license number 00884572. Newport Funding's license last issued on April 19, 1993, and was cancelled as of July 28, 1995, upon the resignation of its designated broker-officer.

(B) Respondent SC Funding Corporation ("SC Funding") was licensed by the Department as a corporate real estate broker, license number 00995514. SC Funding's license last issued on June 28, 1992, and was cancelled as of October 6, 1995, upon the resignation of its designated broker-officer.

(C) Respondent Equity Bancorp, Inc. ("Equity"), was licensed by the Department as a corporate real estate broker, license number 01090057. Equity's license last issued on October 23, 1994, and was cancelled as of July 28, 1995, upon the resignation of its designated broker-officer.

(D) Respondent Newport Pacific Realty and Investment Corporation ("Newport Realty") was licensed by the Department as a corporate real estate broker, license number 00884589. Newport Realty's license last issued on April 5, 1993, and was cancelled as of January 31, 1995, upon the resignation of its designated broker-officer.

(E) The Respondents described in Findings 2(A)-(D), sometimes hereinafter collectively referred to as "the Corporate Respondents", engaged in the business of brokering mortgages, servicing loans, and other licensed activities.

3. (A) Respondent Magdy Hanna ("Hanna") is an individual licensed by the Department as a real estate broker, license number 00812236. His license expires March 31, 1997. During July 1995, Hanna was a signatory upon trust accounts maintained by Newport Funding and SC Funding. During 1995, he was an officer and director of Respondents Newport Funding, SC Funding, and Equity.¹

(B) Respondent John Michael Foley ("Foley") is also an individual licensed by the Department as a real estate broker. Foley and Complainant entered into a stipulation to resolve the charges against Foley. The stipulation became effective November 12, 1996. Therefore, Complainant did not proceed against Respondent Foley and Foley did not present a defense at the hearing, though he testified as a witness for the Complainant. In reliance on the settlement and upon the request of Complainant, no findings are made on any allegation set forth in the Accusation or Amended Accusation pertaining to any alleged misconduct by Foley.

¹ Mr. Hanna was Chief Executive Officer of Newport Funding and of Equity Bancorp; he was Secretary of SC Funding.

4. This proceeding was initiated by the filing of the Accusation on November 3, 1995, after the licenses of the Corporate Respondents were cancelled. Despite the cancellation of the Corporate Respondents' licenses, the Department retains jurisdiction to proceed in this matter pursuant to section 10103 of the Business and Professions Code (hereinafter "the Code").

5. All Respondents were properly served with the Accusation, Amended Accusation, and notice of the hearing in compliance with Government Code sections 11505 and 11509. Respondents Foley and Hanna filed notices of defense; none were filed by the corporate Respondents. Despite service of notice of the hearing on all Respondents, Respondent Hanna and the corporate Respondents failed to appear at the hearing. The case therefore proceeded by default against those Respondents.

6. On July 7, 1995, Hanna authorized SC Funding to withdraw \$305,000.00 from a trust account it maintained for the benefit of Independent National Mortgage Corporation ("Independent National"). That money was deposited into a Newport Funding bank account via a wire transfer specifically authorized by Respondent Hanna. The Newport Funding account which received the money was known as the "Newport Funding Payment Clearing Account" ("the clearing account").

7. Newport Funding and Hanna then transferred the \$305,000.00 from the clearing account into a trust account maintained by Newport Funding for the benefit of the Federal Home Loan Mortgage Corporation, commonly known as "Freddie Mac." That trust account, known as "the Freddie Mac Account", was normally used by Newport Funding to collect and hold monies due Freddie Mac under loans serviced by Newport Funding.

8. On July 7, 1995, Newport Funding and Hanna withdrew \$125,000.00 from another trust account maintained by Newport Funding for the benefit of Independent National and its investors. That money was also deposited into the Newport Funding "Freddie Mac" account. The transfer of the \$125,000.00 was accomplished via a check signed by Hanna on behalf of Newport Funding.

9. On July 7, 1995, Newport Funding transferred the \$430,000.00 collectively described in Findings 6 through 8 to Freddie Mac, as part of a larger payment owed to that entity. Respondent Hanna authorized that payment, which was accomplished by a wire transfer.

10. After Freddie Mac and Independent National conducted audits of Newport Funding and SC Funding's accounts and records, Freddie Mac returned the \$430,000.00 to Independent National and its investors. A debt owed by Newport Funding to Freddie Mac in that amount remains unpaid.

11. Based upon Findings 6 through 10, Respondents SC Funding, Newport Funding, and Hanna misappropriated \$430,000.00 in trust funds. Such acts were in violation of their fiduciary duties and the Real Estate Law, and constituted fraud and dishonest conduct.

12. At some time prior to September 6, 1995, Respondents Newport Funding and SC Funding abandoned the offices they had maintained in Irvine, California. Newport Funding and SC Funding each failed to notify the Department they had moved from that location, and each failed to notify the Department of any new address.

13. At some time prior to September 6, 1995, Respondents Newport Pacific, Equity, and Hanna abandoned the offices they had maintained in Newport Beach, California. Newport Pacific, Equity, and Hanna each failed to notify the Department they had moved, and each failed to notify the Department of any new address.

14. On or about September 18, 1995, the Department served a subpoena duces tecum upon Corporate Respondents Newport Funding, SC Funding, and Equity, by serving the subpoena upon Respondent Foley. The subpoena sought the production of records necessary for the Department to audit those Respondents. The subpoena required the production of those documents on September 19, 1995, before a Deputy Real Estate Commissioner. These three corporate Respondents failed to comply with that subpoena in that no documents were produced by any of them on September 19, 1995, or at any other time.

15. No mitigating evidence was presented. In aggravation, Respondents Hanna and Newport Funding were disciplined in 1988 for violations of the Real Estate Law and the Department's regulations. Their licenses were suspended for thirty days and said suspensions stayed on certain terms and conditions. Hanna and Newport Funding were disciplined because they allowed an unlicensed person to act as a real estate broker.

16. Any allegations upon which findings have not been made are deemed unestablished or surplusage.

DETERMINATION OF ISSUES

1. Cause exists to suspend or revoke the real estate licenses of Respondents Newport Funding, SC Funding, and Hanna pursuant to sections 10176(i) and 10177(d) of the Code, based on their misappropriation of funds held in trust. (Findings 6 through 11.) Such acts constituted fraud and dishonest conduct in violation of Code section 10176(i), and were also violations of section 10145(a) of the Code.

2. Cause exists to suspend or revoke the real estate licenses of Respondents Newport Funding, SC Funding, Equity, Newport Pacific, and Hanna pursuant to sections 10165 and 10177(d) of the Code, based on Respondents' abandonment of their offices of record and their failures to notify the Department of new addresses where they had located their licensed businesses. (Findings 12 and 13.) Such actions violated section 10162 of the Code and sections 2710(c) and 2715 of Title 10, California Code of Regulations ("CCR").

3. Cause exists to suspend or revoke the real estate licenses of Respondents Newport Funding, SC Funding, and Equity pursuant to section 10177(d) of the Code, based on Respondents' failure to make their records available for inspection by the Department, after notice to do so, in violation of section 10148(a) of the Code. (Finding 14.)

4. There was no evidence in mitigation of the wrongful acts. On the other hand, there was evidence of aggravation in that prior discipline had been imposed against Respondents Hanna and Newport Funding. (Finding 15.)

5. Respondents' breaches of trust constitute extreme misconduct. That misconduct damaged Freddie Mac in the amount of \$430,000.00. (Finding 11.) Further, Independent National was forced to audit Respondents' records so as to establish its claim against Freddie Mac for a return of the misappropriated funds. The public can only be protected from further harm through the revocation of Respondents' licenses.

ORDER

1. The real estate broker's license of Respondent Newport Pacific Funding Corporation, number 00884572, is hereby revoked, based on Determinations 1 through 5.

2. The real estate broker's license of Respondent SC Funding Corporation, number 00995514, is hereby revoked, based on Determinations 1 through 3, and 5.

3. The real estate broker's license of Respondent Equity Bancorp, Inc., number 0109057 is hereby revoked, based on Determinations 2 and 3.

4. The real estate broker's license of Respondent Newport Pacific Realty and Investment Corporation, number 00884589 is hereby revoked, based on Determination 2.

5. The real estate broker's license of Respondent Magdy Hanna, number 00812236, is hereby revoked, based on Determinations 1 through 5.

January 22, 1997



Joseph D. Montoya,
Administrative Law Judge

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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FILED
OCT 22 1996
DEPARTMENT OF REAL ESTATE

BY *Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 NEWPORT PACIFIC FUNDING CORP.,) Case No. H-26365 LA
13 SC FUNDING CORPORATION,)
14 EQUITY BANCORP, INC.,) OAH No. L-9601251
15 JOHN MICHAEL FOLEY,)
16 NEWPORT PACIFIC REALTY) STIPULATION AND
& INVESTMENT CORP., and) AGREEMENT IN SETTLEMENT
17 MAGDY HANNA,) AND ORDER
Respondents.)

18 It is hereby stipulated by and between Respondent
19 JOHN MICHAEL FOLEY (hereinafter "FOLEY" or "Respondent"), and the
20 Complainant, acting by and through James L. Beaver, Counsel for
21 the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation filed on November 3, 1995
23 in this matter, as amended by the Amended Accusation filed herein
24 on August 30, 1996 (hereinafter "the Accusation"):

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

H-26365 LA

STIPULATION OF
JOHN MICHAEL FOLEY

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 in Settlement.

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 of Real Estate in this
8 proceeding.

9 3. On November 15, 1995, Respondent filed a Notice of
10 Defense pursuant to Section 11505 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondent hereby freely and voluntarily withdraws
13 said Notice of Defense. Respondent acknowledges that Respondent
14 understands that by withdrawing said Notice of Defense Respondent
15 will thereby waive Respondent's right to require the Commissioner
16 to prove the allegations in the Accusation at a contested hearing
17 held in accordance with the provisions of the APA and that
18 Respondent will waive other rights afforded to Respondent in
19 connection with the hearing such as the right to present evidence
20 in defense of the allegations in the Accusation and the right to
21 cross-examine witnesses.

22 4. Respondent, pursuant to the limitations set forth
23 below, hereby admits that the factual allegations in Paragraphs I
24 through XXIII of the Accusation are true and correct and the Real
25 Estate Commissioner shall not be required to provide further
26 evidence to prove such allegations.

27 ///

1 Section ~~101~~77(h) of the Code and Section 10159.2 of the Code in
2 conjunction with Section 10177(d) of the Code.

3 ORDER

4 I

5 All licenses and licensing rights of Respondent
6 JOHN MICHAEL FOLEY under the Real Estate Law are revoked;
7 provided, however, a restricted real estate broker license shall
8 be issued to Respondent pursuant to Section 10156.5 of the
9 Business and Professions Code if Respondent makes application
10 therefor and pays to the Department of Real Estate the appropriate
11 fee for the restricted license within 90 days from the effective
12 date of the Decision entered pursuant to this Order (hereinafter
13 "the Decision"). The restricted license issued to Respondent
14 shall be subject to all of the provisions of Section 10156.7 of
15 the Business and Professions Code and to the following
16 limitations, conditions and restrictions imposed under authority
17 of Section 10156.6 of that Code:

18 1. While the restricted license is in effect,
19 Respondent shall not be eligible to serve as the officer
20 designated by a corporate broker licensee pursuant to Section
21 10211 of the Code;

22 2. The restricted license issued to Respondent may be
23 suspended prior to hearing by Order of the Real Estate
24 Commissioner in the event of Respondent's conviction or plea of
25 nolo contendere to a crime which is substantially related to
26 Respondent's fitness or capacity as a real estate licensee.

27

1 3. The restricted license issued to Respondent may be
2 suspended prior to hearing by Order of the Real Estate
3 Commissioner on evidence satisfactory to the Commissioner that
4 Respondent has violated provisions of the California Real Estate
5 Law, the Subdivided Lands Law, Regulations of the Real Estate
6 Commissioner or conditions attaching to the restricted license.

7 4. Respondent shall not be eligible to apply for the
8 issuance of an unrestricted real estate license nor for the
9 removal of any of the conditions, limitations or restrictions of a
10 restricted license until one (1) year has elapsed from the
11 effective date of this Decision.

12 5. Respondent shall, within nine (9) months from the
13 effective date of the Decision, present evidence satisfactory to
14 the Real Estate Commissioner that Respondent has, since the most
15 recent issuance of an original or renewal real estate license,
16 taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license. If Respondent fails to
19 satisfy this condition, the Commissioner may order the suspension
20 of the restricted license until the Respondent presents such
21 evidence. The Commissioner shall afford Respondent the
22 opportunity for a hearing pursuant to the Administrative Procedure
23 Act to present such evidence.

24 6. Respondent shall, within six (6) months from the
25 issuance of the restricted license, take and pass the Professional
26 Responsibility Examination administered by the Department
27 including the payment of the appropriate examination fee. If

1 Respondent fails to satisfy this condition, the Commissioner may
2 order the suspension of the restricted license until Respondent
3 passes the examination.

4 7. Any restricted real estate broker license issued to
5 Respondent may be suspended or revoked for a violation by
6 Respondent of any of the conditions attaching to the restricted
7 license.

8
9 Sept 24, 1996
10 DATED

James L. Beaver
11 JAMES L. BEAVER, Counsel
12 Department of Real Estate
13 * * *

14 I have read the Stipulation and Agreement, and its terms
15 are understood by me and are agreeable and acceptable to me. I
16 understand that I am waiving rights given to me by the California
17 Administrative Procedure Act (including but not limited to
18 Sections 11506, 11508, 11509, and 11513 of the Government Code),
19 and I willingly, intelligently, and voluntarily waive those
20 rights, including the right of requiring the Commissioner to prove
21 the allegations in the Accusation at a hearing at which I would
22 have the right to cross-examine witnesses against me and to
23 present evidence in defense and mitigation of the charges.

24 9/18/96.
25 DATED

John Michael Foley
26 JOHN MICHAEL FOLEY
27 Respondent
* * *

28 The foregoing Stipulation and Agreement in Settlement is
29 hereby adopted by the Real Estate Commissioner as

1 his Decision and Order and shall become effective at 12 o'clock
2 noon on November 12, 1996.

3 IT IS SO ORDERED 10-18, 1996.

4 JIM ANTT, JR.
5 Real Estate Commissioner

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FILED
SEP 17 1996

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By *Laurel A. Zan*

In the Matter of the Accusation of
NEWPORT PACIFIC FUNDING
CORPORATION, et al.

}

Case No. H-26365 LA
OAH No. L-9601251

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 314 West First Street,
Los Angeles, CA 90012

on November 6 and 7, 1996, at the hour of 9:00 AM
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: September 17, 1996

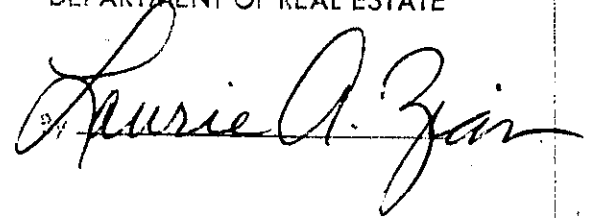
DEPARTMENT OF REAL ESTATE
By *James L. Beaver*
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
AUG 30 1996

DEPARTMENT OF REAL ESTATE



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

11 * * *

12 In the Matter of the Accusation of) NO. H-26365 LA
13 NEWPORT PACIFIC FUNDING CORP.,) OAH NO. L-9601251
14 SC FUNDING CORPORATION,)
15 EQUITY BANCORP, INC.,) AMENDED ACCUSATION
16 JOHN MICHAEL FOLEY,)
17 NEWPORT PACIFIC REALTY &,)
18 INVESTMENT CORP., and)
19 MAGDY HANNA,)
20 Respondents.)

21 The Complainant, Thomas McCrady, a Deputy Real Estate
22 Commissioner of the State of California, for cause of accusation
23 against NEWPORT PACIFIC FUNDING CORP., also known as Newport
24 Pacific Funding Corporation (hereinafter "NEWPORT PACIFIC
25 FUNDING"), SC FUNDING CORPORATION (hereinafter "SC FUNDING"),
26 EQUITY BANCORP, INC., also known as Equity Bancorp (hereinafter
27 "EQUITY"), NEWPORT PACIFIC REALTY & INVESTMENT CORP., also known
as Newport Pacific Realty & Investment Corporation and Newport
Pacific Realty & Inv Corp (hereinafter "NEWPORT PACIFIC REALTY"),

1 MAGDY HANNA (hereinafter "HANNA"), and JOHN MICHAEL FOLEY
2 (hereinafter "FOLEY"), individually and as designated officer of
3 NEWPORT PACIFIC FUNDING and SC FUNDING, alleges as follows:

4 FIRST CAUSE OF ACCUSATION

5 I

6 The Complainant, Thomas McCrady, a Deputy Real Estate
7 Commissioner of the State of California, makes this Accusation in
8 his official capacity.

9 II

10 At all times mentioned herein Respondents NEWPORT
11 PACIFIC FUNDING, SC FUNDING, FOLEY, and HANNA were and now are
12 presently licensed and/or have license rights under the Real
13 Estate Law (Part 1 of Division 4 of the Business and Professions
14 Code) (hereinafter "the Code").

15 III

16 At all times herein mentioned, Respondents FOLEY and
17 HANNA were and now are individually licensed as real estate
18 brokers.

19 IV

20 At all times herein mentioned:

21 (a) Respondents NEWPORT PACIFIC FUNDING and SC FUNDING
22 were and now are licensed by the Department as corporate real
23 estate brokers;

24 (b) To and until July 28, 1995, Respondent NEWPORT
25 PACIFIC FUNDING was so licensed by and through Respondent FOLEY as
26 designated officer-broker of Respondent NEWPORT PACIFIC FUNDING to

27 ///



1 qualify said corporation and to act for said corporation as a real
2 estate broker;

3 (c) To and until October 6, 1995, Respondent SC FUNDING
4 was so licensed by and through Respondent FOLEY as designated
5 officer-broker of Respondent SC FUNDING to qualify said
6 corporation and to act for said corporation as a real estate
7 broker; and

8 (d) As said designated officer-broker, Respondent FOLEY
9 was responsible pursuant to Section 10159.2 of the Code for the
10 supervision of the activities of NEWPORT PACIFIC FUNDING and SC
11 FUNDING, and the officers, agents, real estate licensees and
12 employees of NEWPORT PACIFIC FUNDING and SC FUNDING for which a
13 license is required.

14 V

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

23 VI

24 At all times herein mentioned, Respondents NEWPORT
25 PACIFIC FUNDING, SC FUNDING, FOLEY and HANNA were each acting as
26 the agent or employee of one another and within the course and
27 scope of such agency or employment.



VII

1
2 At all times herein mentioned, Respondents NEWPORT
3 PACIFIC FUNDING, SC FUNDING, FOLEY and HANNA engaged in the
4 business of, acted in the capacity of, advertised, or assumed to
5 act as real estate brokers within the State of California within
6 the meaning of Sections 10131(d) and 10131(e) of the Code,
7 including the operation and conduct of a mortgage loan brokerage
8 business with the public wherein, on behalf of others, for
9 compensation or in expectation of compensation, such Respondents
10 solicited lenders and borrowers for loans secured directly or
11 collaterally by liens on real property, wherein Respondents
12 arranged, negotiated, processed, and consummated such loans,
13 wherein Respondents serviced and collected payments on such loans,
14 and wherein Respondents sold or offered to sell, bought or offered
15 to buy, or exchanged or offered to exchange promissory notes
16 secured directly or collaterally by a lien on real property and
17 performed services for the holders thereof.

VIII

18
19 In so acting as mortgage loan brokers, as described in
20 Paragraph VII above, Respondents accepted or received funds in
21 trust (hereinafter "trust funds") from or on behalf of lenders or
22 investors, borrowers, and others in connection with the
23 solicitation, negotiation, processing, packaging, and consummation
24 of mortgage loans by Respondents, in connection with the servicing
25 and collection of payments on such loans by Respondents, and in
26 connection with the sale, purchase, and exchange of secured
27 promissory notes by Respondents, as alleged herein.



IX

1
2 The aforesaid trust funds accepted or received by
3 Respondents were deposited or caused to be deposited by
4 Respondents into one or more bank accounts (hereinafter "trust
5 fund accounts") maintained by Respondents for the handling of
6 trust funds, including but not necessarily limited to the
7 following accounts:

8 (a) The "Newport Pacific Funding Corp FHLMC P&I
9 Account", account number 1067-09970, maintained by NEWPORT PACIFIC
10 FUNDING at the Newport Beach, California, branch of Sanwa Bank
11 (hereinafter "the FHLMC Account");

12 (b) The "Newport Pacific Funding Corp Remittance
13 Clearing Account", account number 1067-09967, maintained by
14 NEWPORT PACIFIC FUNDING at the Newport Beach, California, branch
15 of Sanwa Bank (hereinafter "the Remittance Clearing Account");

16 (c) The "Newport Pacific Funding Corp Payment Clearing
17 Account", account number 1060-09965, maintained by NEWPORT PACIFIC
18 FUNDING at the Newport Beach, California, branch of Sanwa Bank
19 (hereinafter "the Payment Clearing Account"); and

20 (d) The "SC Funding INMC P&I Account", account number
21 005-520479, maintained by SC FUNDING at the Newport Beach,
22 California, branch of Tokai Bank (hereinafter "the INMC Account").

23 X

24 Within the three-year period immediately preceding the
25 filing of this Accusation, in connection with the collection and
26 disbursement of said trust funds in said trust fund accounts,
27 NEWPORT PACIFIC FUNDING violated Section 2834 of Chapter 6,



1 Title 10, California Code of Regulations (hereinafter "the
2 Regulations") in that said Respondent caused, suffered or
3 permitted trust fund withdrawals to be made from the FHLMC
4 Account, the Remittance Clearing Account, and the Payment Clearing
5 Account by HANNA, Jacques Poujade, Melinda Simon and Kristine
6 Hubbard, while (a) no officer through whom NEWPORT PACIFIC FUNDING
7 was licensed pursuant to Section 10158 or 10211 of the Code was an
8 authorized signatory of the said accounts, and (b) no officer
9 through whom NEWPORT PACIFIC FUNDING was licensed had provided
10 specific authorization in writing for HANNA, Jacques Poujade or
11 Kristine Hubbard to make withdrawals from said accounts.

12 XI

13 Within the three-year period immediately preceding the
14 filing of this Accusation, in connection with the collection and
15 disbursement of said trust funds in said trust fund accounts,
16 Respondent SC FUNDING violated Section 2834 of the Regulations in
17 that said Respondent caused, suffered or permitted withdrawals to
18 be made from the INMC Account by HANNA, Jacques Poujade and
19 Kristine Hubbard, while (a) no officer through whom SC FUNDING was
20 licensed pursuant to Section 10158 or 10211 of the Code was an
21 authorized signatory of the said accounts, and (b) no officer
22 through whom SC FUNDING was licensed had provided specific
23 authorization in writing for HANNA, Jacques Poujade or Kristine
24 Hubbard to make withdrawals from said accounts.

25 XII

26 Within the three-year period immediately preceding the
27 filing of this Accusation, in connection with the collection and



1 disbursement of said trust funds in said trust fund accounts,
2 Respondents NEWPORT PACIFIC FUNDING, SC FUNDING and HANNA
3 withdrew, diverted or disbursed funds, or caused or permitted the
4 withdrawal, diversion or disbursement of funds, from the various
5 aforesaid trust fund accounts for their own use or benefit and/or
6 for purposes not authorized by the party or parties from whom said
7 funds were accepted or received by Respondents or to whom said
8 funds were to be disbursed by Respondents.

9 XIII

10 In connection with said unauthorized withdrawals,
11 diversions and/or disbursements of trust funds, as alleged in
12 Paragraph X above, on or about July 7, 1995:

13 (a) Respondents NEWPORT PACIFIC FUNDING and HANNA
14 converted \$125,000.00 of said trust funds to their own use or
15 benefit or to purposes not authorized by the rightful owners of
16 said funds; and

17 (b) Respondents SC FUNDING, NEWPORT PACIFIC FUNDING and
18 HANNA converted an additional \$305,000.00 of said trust funds to
19 their own use or benefit or to purposes not authorized by the
20 rightful owners of said funds.

21 SECOND CAUSE OF ACCUSATION

22 XIV

23 There is hereby incorporated in this second, separate
24 and distinct Cause of Accusation, all of the allegations contained
25 in Paragraphs I through XIII, inclusive, of the First Cause of
26 Accusation with the same force and effect as if herein fully set
27 forth.



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XV

Beginning on or about July 7, 1995, and continuing through the present, Respondent SC FUNDING has failed to retain and make available for examination and inspection by a designated representative of the Real Estate Commissioner of the State of California, all documents executed or obtained by such Respondent in connection with transactions for which a real estate license is required, including but not limited to the transactions described in Paragraphs X through XIII, inclusive, hereinabove.

THIRD CAUSE OF ACCUSATION

XVI

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

XVII

At all times mentioned herein Respondents NEWPORT PACIFIC REALTY and EQUITY were and now are presently licensed and/or have license rights under the Real Estate Law.

XVIII

At all times herein Respondents NEWPORT PACIFIC REALTY and EQUITY were and now are licensed by the Department as corporate real estate brokers.

XIX

Respondents NEWPORT PACIFIC REALTY and EQUITY have each abandoned such Respondent's business office at 4400 MacArthur

1 Boulevard, Newport Beach, California, and have each failed to
2 maintain on file with the Commissioner of the Department of Real
3 Estate a new address for the principal place of business for such
4 Respondent's real estate brokerage activities, in violation of
5 Section 10162 of the Code.

6 XX

7 Respondents NEWPORT PACIFIC FUNDING and SC FUNDING have
8 each abandoned such Respondent's business office at 4 Park Plaza,
9 Suite 1200, Irvine, California, and have each failed to maintain
10 on file with the Commissioner of the Department of Real Estate a
11 new address for the principal place of business for such
12 Respondent's real estate brokerage activities, in violation of
13 Section 10162 of the Code.

14 FOURTH CAUSE OF ACCUSATION

15 XXI

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

21 XXII

22 Respondent FOLEY failed to exercise reasonable
23 supervision over the acts of NEWPORT PACIFIC FUNDING in such a
24 manner as to allow the acts and events described in Paragraphs X,
25 XII, XIII, and XX, above, to occur.

26 ///

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1 XXIII

2 Respondent FOLEY failed to exercise reasonable
3 supervision over the acts of SC FUNDING in such a manner as to
4 allow the acts and events described in Paragraphs XI, XII,
5 XIII(b), XV and XX, above, to occur.

6 XXIV

7 The facts alleged above as to the First Cause of
8 Accusation are grounds for the suspension or revocation of the
9 licenses and license rights of Respondents NEWPORT PACIFIC
10 FUNDING, SC FUNDING and HANNA under the following provisions of
11 the Code and/or the Regulations:

12 (a) As to Paragraph X and Respondent NEWPORT PACIFIC
13 FUNDING under Section 10177(d) of the Code in conjunction with
14 Section 2834 of the Regulations;

15 (b) As to Paragraph XI and Respondent SC FUNDING under
16 Section 10177(d) of the Code in conjunction with Section 2834 of
17 the Regulations;

18 (c) As to subsection (a) of Paragraph XII and
19 Respondents NEWPORT PACIFIC FUNDING and HANNA under Section
20 10176(i) of the Code; and

21 (d) As to subsection (b) of Paragraph XII and
22 Respondents SC FUNDING, NEWPORT PACIFIC FUNDING and HANNA under
23 Section 10176(i) of the Code.

24 XXV

25 The facts alleged above as to the Second Cause of
26 Accusation are grounds for the suspension or revocation of the
27 licenses and license rights of Respondent SC FUNDING under Section

1 10177(d) of the Code in conjunction with Section 10148 of the
2 Code.

3 XXVI

4 The facts alleged above as to the Third Cause of
5 Accusation grounds for the suspension or revocation of the
6 licenses and license rights of Respondents NEWPORT PACIFIC
7 FUNDING, SC FUNDING, EQUITY, and NEWPORT PACIFIC REALTY under the
8 following provisions of the Code and/or the Regulations:

9 (a) As to Paragraph XIX and Respondents EQUITY and
10 NEWPORT PACIFIC REALTY, under Sections 10165 and 10177(d) of the
11 Code; and

12 (b) As to Paragraph XX and Respondents SC FUNDING and
13 NEWPORT PACIFIC FUNDING, under Sections 10165 and 10177(d) of the
14 Code.

15 XXVII

16 The facts alleged above as to the Fourth Cause of
17 Accusation are grounds for the suspension or revocation of the
18 licenses and license rights of Respondent FOLEY as to Paragraphs
19 XXII and XXII under Section 10177(g) and/or Section 101077(h) of
20 the Code and Section 10159.2 of the Code in conjunction with
21 Section 10177(d) of the Code.

22 PRIOR DISCIPLINE

23 Effective November 12, 1987, in Case No. H-635 SA:

24 (a) Based upon a determination that cause for
25 suspension or revocation of the licenses and license rights of
26 Respondent NEWPORT PACIFIC FUNDING existed pursuant to the
27 provisions of Section 10137 of the Code and Section 10177(d) of

1 the Code in conjunction with Section 2830 of the Regulations, the
2 Real Estate Commissioner suspended the real estate broker licenses
3 of Respondent NEWPORT PACIFIC FUNDING for a term of thirty days,
4 which term of suspension was permanently stayed upon the payment
5 of \$2,000.00 pursuant to the provisions of Section 10175.2 of the
6 Code; and

7 (b) Based upon a determination that cause for
8 suspension or revocation of the licenses and license rights of
9 Respondent HANNA existed pursuant to the provisions of Section
10 10177(h) of the Code in conjunction with Section 2725 of the
11 Regulations, the Real Estate Commissioner suspended the real
12 estate broker licenses of Respondent HANNA for a term of thirty
13 days, which term of suspension was permanently stayed upon the
14 payment of \$2,000.00 pursuant to the provisions of Section 10175.2
15 of the Code.

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

Thomas McCrady

THOMAS McCRADY
Deputy Real Estate Commissioner

23
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25 Dated at Los Angeles, California,
26 this _____ day of August, 1996.

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facto glas

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George Wright, Staff Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
NOV - 3 1995
DEPARTMENT OF REAL ESTATE

By *K. Orudubelt*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H- 26365 LA
NEWPORT PACIFIC FUNDING)	A C C U S A T I O N
CORPORATION, SC FUNDING)	
CORPORATION, EQUITY BANCORP,)	
and JOHN MICHAEL FOLEY)	
individually and as designated)	
officer of Newport Pacific)	
Funding Corporation, SC Funding,)	
Corporation and Equity Bancorp;)	
NEWPORT PACIFIC REALTY &)	
INVESTMENT CORPORATION and MAGDY)	
HANNA individually and as)	
designated officer of Newport)	
Pacific Realty & Investment)	
Corporation,)	
Respondents.)	

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against NEWPORT PACIFIC FUNDING CORPORATION, SC FUNDING CORPORATION, EQUITY BANCORP and JOHN MICHAEL FOLEY, NEWPORT PACIFIC REALTY & INVESTMENT CORPORATION and MAGDY HANNA, alleges as follows:

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I

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

At all times mentioned herein, NEWPORT PACIFIC FUNDING CORPORATION, ("NEWPORT") was and still is licensed by the Department of Real Estate of the State of California ("Department") as a corporate real estate broker.

III

At all times mentioned herein, SC FUNDING CORPORATION, ("SC") was and still is licensed by the Department as a corporate real estate broker.

IV

At all times mentioned herein, EQUITY BANCORP, ("EQUITY") was and still is licensed by the Department as a corporate real estate broker.

V

At all times herein mentioned, JOHN MICHAEL FOLEY, ("FOLEY") was and still is licensed by the Department as a real estate broker in his individual capacity. At all times herein mentioned, FOLEY was licensed by the Department as the designated officer of NEWPORT, EQUITY and SC. As the designated officer of NEWPORT, EQUITY and SC, FOLEY was responsible for the supervision and control of the activities conducted on behalf of NEWPORT, EQUITY and SC by its officers and employees as necessary to secure full compliance with the Real Estate Law as set forth in Section



1 10159.2 of the Code.

2 VI

3 At all times mentioned herein, NEWPORT PACIFIC REALTY &
4 INVESTMENT CORPORATION, ("NEWPORT PACIFIC") was and still is
5 licensed by the Department as a corporate real estate broker.

6 VII

7 At all times herein mentioned, MAGDY HANNA ("HANNA") was
8 and still is licensed by the Department as a real estate broker in
9 his individual capacity. HANNA was licensed by the Department as
10 the designated officer of NEWPORT PACIFIC from March 24, 1992,
11 through January 30, 1994. As the designated officer of NEWPORT
12 PACIFIC, HANNA was responsible for the supervision and control of
13 the activities conducted on behalf of NEWPORT PACIFIC by its
14 officers and employees as necessary to secure full compliance with
15 the Real Estate Law as set forth in Section 10159.2 of the Code.
16 At all times herein mentioned, HANNA was an officer as well as a
17 director of NEWPORT, SC and EQUITY.

18 VIII

19 All further references to NEWPORT, EQUITY, SC and
20 NEWPORT PACIFIC shall include NEWPORT, EQUITY, SC and NEWPORT
21 PACIFIC and the parties described in Paragraphs V and VII, and
22 shall also be deemed to refer to the directors, officers,
23 employees, agents and real estate licensees employed by or
24 associated with NEWPORT, EQUITY, SC and NEWPORT PACIFIC, who at
25 all times herein mentioned were engaged in the furtherance of the
26 business or operations of NEWPORT, EQUITY, SC and NEWPORT PACIFIC,
27 and who were acting within the course and scope of their authority

1 and employment.

2 IX

3 All further references to the "Code" are to the California
4 Business and Professions Code, and all further references to the
5 "Regulations" are to Chapter 6, Title 10, California Code of
6 Regulations.

7 X

8 At all times mentioned herein, for or in expectation of
9 compensation, NEWPORT, EQUITY, SC and NEWPORT PACIFIC engaged in
10 the business of, acted in the capacity of, advertised or assumed
11 to act as a real estate broker in the State of California, within
12 the meaning of Section 10131(d) of the Code, including the
13 operation of a mortgage loan brokerage business with the public
14 wherein borrowers and lenders were solicited for loans secured
15 directly or collaterally by liens on real property, wherein such
16 loans were arranged, negotiated, processed, and serviced on behalf
17 of said borrowers and lenders, for or in expectation of
18 compensation.

19 XI

20 On September 6, 1995, Department personnel went to the
21 mailing and main office address listed in the Department's
22 licensing records for HANNA and NEWPORT PACIFIC located at 4400
23 MacArthur Boulevard, Suite 900, Newport Beach, California, 92660,
24 as well as EQUITY located at the same address in Suite 800. Upon
25 arrival at the eighth floor Department personnel located and
26 entered Suite 800 and Suite 900 and made a visual inspection of
27 the office and found that all loan files, loan servicing records,

1 and all accounting records including computer records were
2 missing. No forwarding information exists for the licensee and
3 the offices have been abandoned. Said conduct violates Section
4 10162 of the Code and Sections 2710 and 2715 of the Regulations
5 and constitutes cause for the suspension or revocation of the
6 license and license rights of HANNA, NEWPORT PACIFIC and EQUITY
7 under Section 10165 of the Code.

8 XII

9 On September 6, 1995, Department personnel traveled to
10 the mailing and former main office address listed in the
11 Department's licensing records for NEWPORT and SC located at 4
12 Park Plaza, Suite 1200, Irvine, California, 92714. Upon arrival
13 at the twelfth floor, Department personnel found Suite 1200 to be
14 locked and unoccupied. According to the Building Manager,
15 NEWPORT, SC and any other occupants of Suite 1200 have been
16 evicted. There were no loan files, loan servicing records, or
17 accounting records including computer records remaining. No
18 forwarding information exists for the licensee and the offices
19 have been abandoned. Said conduct violates Section 10162 of the
20 Code and Sections 2710 and 2715 of the Regulations and constitutes
21 cause for the suspension or revocation of the license and license
22 rights of FOLEY, NEWPORT and SC under Section 10165 of the Code.

23 XIII

24 On or about July 7, 1995, SC and HANNA diverted \$305,000
25 via wire transfer from Independent National Mortgage Corporation's
26 (INMC) Custodial Trust Account (#005-520479) maintained by SC at
27 the Irvine Branch of Tokai Bank of California to the NEWPORT

1 Payment Clearing Trust Account (#1060-09965) maintained at the
2 Newport Beach Branch of Sanwa Bank of California. At all times
3 mentioned herein, HANNA was a signatory on the SC account. These
4 funds were then subsequently deposited via check #1184 in the
5 amount of \$409,000 into the Freddie Mac P&I Custodial Trust
6 Account (#1067-09970) maintained by NEWPORT at the Newport Beach
7 Branch of Sanwa Bank of California as part of a \$534,000 deposit
8 into the account. The balance in the NEWPORT Clearing account on
9 July 7, 1995, prior to the \$305,000 deposit \$118,940.75. Without
10 the wire transfer of \$305,000 from SC, NEWPORT would not have been
11 able to write check #1184 for \$409,000. Said conduct violates
12 Section 10145 of the Code and constitutes cause under Sections
13 10176(I) and 10177(d) for the suspension or revocation of the
14 license and license rights of HANNA, SC, NEWPORT and FOLEY.

15 XIV

16 On or about July 7, 1995, NEWPORT and HANNA diverted
17 \$125,000 via check #1001 from NEWPORT'S Remittance Clearing Trust
18 Account (#1067-09967) maintained by NEWPORT at the Newport Beach
19 Branch of Sanwa Bank of California to the NEWPORT Freddie Mac P&I
20 Custodial Trust Account (#1067-09970) maintained by NEWPORT at the
21 Newport Beach Branch of Sanwa Bank of California as part of a
22 \$534,000 deposit into the account. At all times mentioned herein,
23 HANNA was a signatory on the NEWPORT account. The balance in the
24 Freddie Mac P&I Custodial Trust Account prior to the \$534,000
25 deposit was \$617,982.12. Without the deposit of \$534,000 from
26 NEWPORT (\$409,000 from the NEWPORT Payment Clearing Account and
27 \$125,000 from the NEWPORT Remittance Account) NEWPORT would not

1 have been able cover it's monthly remittance to Freddie Mac of
2 \$1,151,343.38. Said conduct violates Section 10145 of the Code and
3 constitutes cause under Sections 10176(I) and 10177(d) for the
4 suspension or revocation of the license and license rights of
5 HANNA, SC, NEWPORT and FOLEY under the Real Estate Law.

6 XV

7 From on or about August 2, 1995, Department personnel
8 attempted to conduct an audit of the books and records of SC. The
9 audit covered the period January 1, 1995 to August 31, 1995, and
10 was conducted at 4 Park Plaza, Suite 1200, Irvine California and
11 13931 Carroll Way, Suite A-2, in the city of Tustin, California.

12 gave notice to SC to produce books and records for inspection
13 and audit. Although the records were requested they were not made
14 available for inspection. On September 18, 1995, FOLEY was
15 personally served a Subpoena Duces Tecum to produce books and
16 records of SC for the period March 3, 1995 to July 31, 1995;
17 NEWPORT for the period October 27, 1994 to July 28, 1995; and
18 EQUITY for the period October 23, 1994 to July 28, 1995, all for
19 which FOLEY was the Designated Officer of the corporate licensee
20 for the period stated. FOLEY was not able to provide any records
21 for examination. Said conduct violates Section 10148 of the Code
22 and constitutes cause under Section 10177(d) for the suspension or
23 revocation of the license and license rights of SC, NEWPORT,
24 EQUITY and FOLEY under the Real Estate Law.

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XVI

The conduct of NEWPORT, SC, EQUITY and FOLEY, as alleged hereinabove in Paragraphs XI through XV, constitutes cause for the suspension or revocation of all licenses and/or license rights of the Respondents under Sections 10145, 10148, 10165, 10176(i) and 10177(d) of the Code.

XVII

FOLEY failed to comply with Section 10159.2 of the Code by allowing NEWPORT, SC and EQUITY to violate the above-described provisions of the Real Estate Law during the time that FOLEY was the designated officer of NEWPORT, SC and EQUITY. This conduct is cause for the suspension or revocation of FOLEY'S license and/or license rights under Section 10177(h) of the Code.

XVIII

The conduct of NEWPORT PACIFIC and HANNA, as alleged hereinabove in Paragraphs XI through XV, constitutes cause for the suspension or revocation of all licenses and/or license rights of the Respondents under Sections 10165, 10176(i) and 10177(d) of the Code.

XIX

HANNA failed to comply with Section 10159.2 of the Code by allowing NEWPORT PACIFIC to violate the above-described provisions of the Real Estate Law during the time that HANNA was the designated officer of NEWPORT PACIFIC. This conduct is cause for the suspension or revocation of HANNA'S license and/or license rights under Section 10177(h) of the Code.

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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/or license rights of the Respondents under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
this 3rd day of November, 1995.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: Newport Pacific Funding Corporation
SC Funding Corporation
Equity Bancorp, Inc.
Newport Pacific Realty & Investment Corporation
John Michael Foley
Magdy Hanna
SACTO
PI