

FILED
SEP 24 2007

DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-33031 LA
)
HILDEGARD MERRILL,) L-2007030675
dba Mountain Valley)
Mortgage and Calabasas)
Realty,)
Respondent.)

In the Matter of the Accusation of) No. H-33259 LA
)
HILDEGARD MERRILL,) L-2007030676
dba Mountain Valley)
Mortgage,)
Respondent.)

DECISION

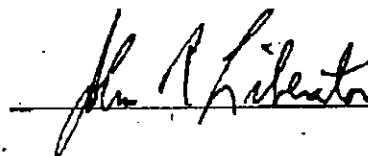
The Proposed Decision dated August 20, 2007, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code of the State of California, the Proposed Decision, Findings of Fact, paragraph 4(F), line 1 at page 5, "form" is amended to read, "from"; paragraph 6(A), page 5, line 3, "90015" is amended to read "90815".

This Decision shall become effective at 12 o'clock
noon on October 15, 2007.

IT IS SO ORDERED September 21, 2007.

JEFF DAVI
Real Estate Commissioner



BY: John R. Liberato
Chief Deputy Commissioner

BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

HILDEGARD MERRILL,
Db a Mountain Valley Mortgage and
Calabasas Realty,

Respondent.

Case No. H-33031 LA

OAH No. L-2007030675

In the Matter of the Accusation
Against:

HILDEGARD MERRILL,
Db a Mountain Valley Mortgage,

Respondent.

Case No. H-33259 LA

OAH No. L-2007030676

PROPOSED DECISION

These matters were heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on July 23, 2007, in Los Angeles. Complainant was represented by James R. Peel, Staff Counsel. Respondent was not present but was represented by Daniel G. Zerfas, Attorney at Law.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FINDINGS OF FACT

1. (A) The Administrative Law Judge takes official notice that, on June 30, 2006, the Accusation, Case No. H-33031 LA, was made and filed by complainant Robin Jolly in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

(B) The Administrative Law Judge takes official notice that, on August 25, 2006, the Accusation, Case No. H-33259 LA, was made and filed by complainant Maria Suarez in her official capacity as Deputy Real Estate Commissioner of the Department.

(C) On March 15, 2007, complainant filed motions to consolidate the two accusation matters for hearing. On April 4, 2007, the Office of Administrative Hearings ordered that the matters would be deemed consolidated for hearing unless respondent filed a written opposition to the motions. It was not established that respondent filed any opposition to the motions for consolidation.

2. (A) In or about 1981, the Department issued real estate broker's license no. 00378794 and licensing rights to Hildegard Merrill (hereinafter respondent). As of July 25, 2006, respondent's main office and mailing address was 20140 Wells Drive, Woodland Hills, California 91364. At all times relevant herein, respondent has been engaged in or doing business as Mountain Valley Mortgage and Calabasas Realty.

(B) Effective on March 19, 1996, pursuant to a Stipulation and Agreement in Settlement and Order in the Matter of the Accusation of Mountain Valley Mortgage, Inc., and Hildegard Merrill, individually and as the designated officer of Mountain Valley Mortgage, Inc. Case No. H-25691, the Department revoked the licenses and licensing rights of the corporation and respondent. Under the Stipulation, both the corporation and respondent were given the right to apply for and be issued a restricted real estate corporate broker's license and restricted real estate broker's license, respectively. The licenses of Mountain Valley Mortgage, Inc., were disciplined under Business and Professions Code section 10177, subdivision (d), for violations of the Real Estate Law and regulations thereunder. Respondent's real estate broker's license was disciplined for failing to exercise reasonable supervision and control of the activities of Mountain Valley Mortgage, Inc., in violation of Business and Professions Code sections 10177, subdivision (h), and 10159.2.

(C) Subsequently, respondent applied for and the Department issued to her a restricted real estate broker's license, which has been renewed over the past 11 years. Respondent has not been issued an unrestricted real estate license. Her restricted real estate broker's license is subject to suspension on evidence satisfactory to the Real Estate Commissioner that she has violated provisions of the Real Estate Law.

(D) On June 30, 2006, after issuance of the first accusation in this matter, the Department suspended the restricted real estate broker's license issued to respondent pursuant to the authority of Business and Professions Code section 10156.7. On July 25, 2006, the Department vacated its order suspending respondent's license. On March 7, 2007, the Department suspended respondent's

restricted real estate broker's license under Business and Professions Code section 10156.7 based on the issuance of the Accusation in Case No. H-33031 LA, the entry of a civil judgment against respondent, and the issuance of the Accusation in Case No. H-33259 LA.

Civil Judgment

3. On August 11, 2005, before the Superior Court of California, County of Los Angeles, Northwest District, in *John Warren v. Charmaine Merrill, Hildegard Merrill dba Calabasas Realty, and American Mortgage Corporation*, Case No. LC-068-730, plaintiff obtained a judgment by court trial against respondent and respondent's daughter Charmaine Merrill on a cause of action for ejectment and given possession of a condominium in Woodland Hills; obtained judgment against respondent on causes of action for constructive fraud, breach of fiduciary duty, and ejectment and awarded damages of \$15,000; and obtained judgment against respondent on causes of action for fraud and breach of fiduciary duty and awarded punitive damages of \$50,000. Respondent received credit of \$18,765 against the award of damages as reimbursement for storage and related expenses and a credit of \$32,000 against the award of damages as reimbursement for mortgage, taxes, homeowners, and other payments that she made for maintenance of the Woodland Hills condominium. On September 21, 2006, the Court of Appeal, Second Appellate District, affirmed the judgment in favor of plaintiff and awarded him costs of appeal.

4. (A) The facts and circumstances of the civil judgment were that, in July 2001, plaintiff met respondent at an open house for a condominium in Woodland Hills near the Warner Center. Respondent was the real estate salesperson or agent for the seller. Plaintiff was in the process of getting a divorce and looking for a home for himself. He was engaged in the movie set rental business. With his permission, respondent obtained a credit report for plaintiff and learned that he had a poor credit rating. Plaintiff had been a partner in a movie set business which had collapsed and sustained a million dollar judgment for non-payment of rent. Respondent told the plaintiff that he had to make at least a 20 percent or \$77,000 down payment on the purchase of the condominium to receive a favorable mortgage interest rate. Plaintiff advised respondent that he only had \$50,000 for a down payment.

(B) Respondent told the plaintiff that he needed a co-borrower with a good credit rating to qualify for a favorable loan rate and suggested her daughter, Charmaine Merrill. Plaintiff expressed interest in the arrangement. Respondent proposed to plaintiff that her daughter act as a co-borrower and co-owner of the condominium and that the daughter would transfer her interest to him by quit claim deed on the close of escrow for a fee of \$10,000. Respondent also offered to defer receipt of her \$27,000 commission and fee and to loan this amount to plaintiff so

that he could have the 20 percent down payment ($\$50,000 + \$27,000 = \$77,000$). Plaintiff agreed to respondent's plan.

(C) Subsequently, respondent prepared a purchase offer for the condominium naming her daughter and plaintiff as co-buyers and co-owners but she applied for a mortgage loan only in the name of her daughter. On the loan application, respondent misrepresented or falsely stated that the down payment was a combination of savings and gifts and that her daughter lived in Agoura Hills and earned a monthly income of \$7,500 from her catering and shuttle businesses. In fact, respondent's daughter lived in Aspen, Colorado, she had not operated her catering and shuttle businesses in 11 years, and she received financial support from respondent. In addition, respondent falsely stated on the loan application that her daughter planned to live at the Woodland Hills condominium when, in fact, the property was supposed to be purchased as plaintiff's residence.

(D) Plaintiff paid \$10,000 to respondent's daughter by giving her two checks payable to her credit card accounts. Respondent deferred receipt of the sales commission from the sale of the condominium and the mortgage loan brokerage fee, which totaled \$27,000, so that plaintiff would have the 20 percent down payment. Plaintiff wrote respondent a check for \$27,000 which respondent held as collateral until plaintiff repaid her by making payments over six months. Respondent failed to tell plaintiff that the seller had agreed to give him a \$6,000 credit to defray closing costs. Because she knew the lender would not fund the loan if plaintiff was named on the legal title but not the loan application, respondent convinced plaintiff to sign an escrow amendment that removed his name from the title. Respondent explained that the amendment was a formality to secure the loan and to close escrow. As such, when escrow closed, respondent's daughter was listed as the sole legal title holder of the newly purchased condominium. Plaintiff moved into the residence but the daughter did not execute a quit claim deed to transfer title to him as respondent had promised.

(E) After moving into the condominium, plaintiff made the mortgage payments to the lender for several months. He then developed a substance abuse problem and entered the Betty Ford Center for treatment. During his stay at the drug rehabilitation program, plaintiff did not pay and defaulted on the mortgage payments. Respondent made payments to stop foreclosure and then filed an unlawful detainer action against plaintiff, claiming her daughter was the owner of the condominium. Respondent obtained an unlawful detainer judgment and a writ of possession and had plaintiff evicted from the property while he was still in treatment. Respondent removed all of plaintiff's belongings from the residence, placed them in storage, and rented out the condominium.

(F) In September 2002, plaintiff was discharged from the Betty Ford Center and discovered that he had been evicted from his condominium. He offered to repay respondent for the monies that she had advanced to rescue the property

~~from~~ foreclosure. However, respondent did not allow plaintiff to return to the residence and told him that he did not owe her money and not to call her anymore. For four months, plaintiff was homeless, sleeping at friends' homes, in his car, and in a public park.

(G) In June 2004, plaintiff filed the civil suit against respondent, her daughter, and the lender. At trial, respondent admitted that she owed a fiduciary duty to the plaintiff after she began representing him in the real estate transaction. She did not recognize having a conflict of interest in representing both plaintiff and her daughter in the real estate and loan transactions. The court found respondent's testimony at trial to have been unreliable and lacking in credibility and entered judgment in favor of plaintiff on causes of action for quiet title, constructive trust, ejectment, fraud, and breach of fiduciary duty.

5. Based on Findings 3 – 4 above, a final judgment in a civil action was entered against respondent, a real estate licensee, upon grounds of fraud, misrepresentation, or deceit in connection with her real estate sale, purchase, and mortgage loan activities for the Woodland Hills condominium, which activities required a real estate license, in violation of Business and Professions Code section 10177.5.

Marsalli Mortgage Loan

6. (A) In or about September 2003, Valarie Rose Marsalli owned and resided at a condominium at 4151 Hathaway Avenue, Unit No. 36, in Long Beach, California 90815. She decided to purchase an adjacent condominium unit, Unit No. 37, for \$260,000 and to sell her unit, No. 36. She enlisted the realtor services of a Help-U-Sell office. The Help-U-Sell office recommended that Marsalli contract with respondent, doing business as Mountain Valley Mortgage, to obtain a mortgage loan for the purchase of her new condominium residence.

(B) On an undetermined date, Marsalli and respondent entered into an agreement wherein respondent was to represent Marsalli and to obtain for her a mortgage loan for her purchase of the condominium residence at 4151 Hathaway Avenue, Unit No. 37, Long Beach. Marsalli wanted a fixed rate mortgage and for the escrows on the sale of her prior unit and her purchase of her new condominium to close at the same time. Marsalli had approximately \$100,000 in equity in her prior unit and wanted to transfer that equity from the sale of her prior unit to the purchase of her new condominium. She had paid a good faith deposit of \$7,500 for the purchase of her new condominium and did not expect to pay any further down payment. Marsalli had an excellent credit rating with little debt.

7. (A) In or about September 2003, respondent advised Marsalli that she had to make an additional down payment of five percent of the purchase price of the

new condominium, or \$13,000, to qualify for a mortgage loan. Respondent also told Marsalli that the sale of her prior unit could not be combined in a single transaction or escrow with the purchase of the new condominium. Respondent indicated that, because of her mistake, there were separate escrows for the sale and purchase of the units and the two escrows would not close concurrently or on the same day.

(B) With respect to the five percent down payment, Marsalli did not have \$13,000. When she told respondent that she did not have that amount of cash on hand, respondent offered to pay the \$13,000 down payment herself as a loan. Marsalli was not pleased that there was two separate transactions and escrows, but she accepted respondent's offer to advance and loan her the additional five percent down payment. On an undetermined date, respondent advanced Marsalli the sum of approximately \$13,000. The monies were deposited into Marsalli's bank checking account and recorded in the corresponding escrow account.

(C) On or about September 19, 2003, respondent as the mortgage broker prepared a Request for Verification of Deposit and asked Marsalli to obtain the account or deposit information from her bank for her mortgage loan application. Marsalli had her bank complete the deposit verification form and transmit an executed copy to respondent by facsimile transmission. As completed and verified by the bank, the deposit verification form showed that Marsalli had a current balance of \$13,428.95 in her checking account and that the average balance in the account for the previous two months was \$3,790.02. Marsalli corroborated that these amounts were noted on the deposit verification form.

(D) After receipt of the completed Request for Verification of Deposit from Marsalli's bank, respondent altered the form by adding the number "1" before the amount for the average balance for the previous two months. As result of respondent's alteration, the deposit form falsely showed that Marsalli's average balance for the two previous months was \$13,790.02, or \$10,000 more than verified by the bank.

(E) Thereupon, respondent forwarded the altered bank deposit form to American General Mortgage, Inc., which placed the form in Marsalli's loan file. When testifying, the executive vice-president of American General Mortgage, Inc., confirmed that the company received and relied upon the altered bank deposit form in making the subject loans.

8. (A) On or about September 23, 2003, respondent on behalf of Mountain Valley Mortgage prepared a Uniform Residential Loan Application for Marsalli's purchase of the new condominium. The application was for a conventional, fixed rate loan in the amount of \$147,000. Respondent represented that she prepared the loan application by taking information from the borrower in a face-to-face interview.

(B) In the Schedule of Real Estate Owned section of the loan application, respondent falsely listed Marsalli's prior condominium unit, No. 36, as an asset and rental property held for income. In the Details of Transaction of the application, respondent falsely noted that no part of the down payment for the purchase of the condominium was borrowed. Based on discussions with Marsalli, respondent knew and was aware that Marsalli was not retaining ownership of her condominium unit as a rental property but was, in fact, selling her prior unit and using the proceeds or equity from that sale to purchase the new condominium unit. Respondent also knew and was aware that \$13,000 of the down payment was, in fact, borrowed since she had loaned that sum to Marsalli. Respondent presented the loan application to Marsalli who signed the application and certified that the information therein was true and correct.

9. Respondent sent the completed loan application with the false rental property and deposit information to the lender American General Mortgage, Inc., in order to obtain mortgage loans for Marsalli. Respondent also forwarded the altered bank deposit form to the lender. American General Mortgage, Inc., accepted the application and placed the bank deposit verification form in Marsalli's loan file. As established by the testimony of the mortgage company's executive vice-president, the lender relied upon the false rental property information, the misrepresentation that the deposit was not borrowed, and the altered bank deposit verification form in approving and funding mortgage loans for Marsalli's purchase of new condominium. The lender might not have approved the mortgage loans if the company had been aware that the deposit for the purchase was, in fact, borrowed from the real estate broker and not secured.

10. (A) On or about September 26, 2003, escrow closed on Marsalli's purchase of her new condominium at 4151 Hathaway Avenue, Unit 37, Long Beach. The escrow company issued a Settlement Statement for the transaction. Marsalli was surprised and unhappy to learn, however, that respondent obtained two mortgage loans from American General Mortgage, Inc, for her condominium purchase: a first mortgage loan of \$147,000, which was an adjustable and not a fixed rate loan, and a second mortgage of \$100,000.

(B) Subsequently, Marsalli paid off and satisfied the \$100,000 second mortgage. When escrow closed on the sale of her prior condominium unit, Marsalli used the net proceeds from the sale to pay off the second mortgage. Marsalli also refinanced her \$147,000 first mortgage and obtained a fixed rate loan. Two months after the close of escrow on her condominium purchase, Marsalli repaid respondent the \$13,000 loan that respondent advanced to cover the five percent down payment. However, Marsalli withheld the amount of \$2,800 to cover her costs and extra fees incurred when respondent obtained two mortgages loans and Marsalli refinanced the adjustable rate first mortgage.

11. It was not established that the lender, American General Mortgage, Inc., was damaged financially in this real estate transaction and loan matter. As established by the testimony of the executive vice-president of the company, the lender did not suffer any financial losses on the first or second mortgage loans made to borrower Marsalli.

12. (A) Based on Findings 6 – 10 above, respondent made substantial misrepresentations in violation of Business and Professions Code section 10176, subdivision (a). Respondent made substantial misrepresentations on the loan application by falsely stating that borrower Marsalli was retaining her prior condominium unit as a rental property and that no part of Marsalli's down payment was borrowed.

(B) Based on Findings 6 – 10 above, respondent committed conduct which constituted fraud or dishonest dealing in violation of Business and Professions Code section 10176, subdivision (i). Respondent altered the bank deposit verification form and provided the form to the lender; the lender then relied upon the altered form in making mortgage loans to her client. Respondent failed to inform the lender that she had made the unsecured loan of the down payment to the borrower.

13. (A) It was not established that respondent as a licensed real estate broker violated Business and Professions Code section 10148, subdivision (a), by failing to retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed or obtained by her in connection with any real estate transactions requiring a broker's license.

(B) It was not established that respondent failed to retain copies of all documents in connection with the purchase and loan on the condominium located at 4151 Hathaway, Unit 37, Long Beach, California, or any other transaction requiring a real estate broker's license.

(C) No evidence was presented regarding respondent's duty or failure to retain any documents in connection with her real estate business.

14. No evidence in mitigation or rehabilitation was admitted into evidence in this matter. Respondent offered several reference or character letters (Exh. A) to which complainant's counsel objected as hearsay evidence. Because respondent was not present at the hearing and did not testify or otherwise establish any foundation for the letters, respondent's reference letters were not admitted into evidence.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent's restricted real estate broker's license under Business and Professions Code section 10177.5 in that a final judgment was entered in a civil action against respondent on grounds of fraud, misrepresentation, or deceit with respect to a transaction requiring a real estate license, as set forth in Findings 2 – 5 above.

2. Grounds exist to revoke or suspend respondent's restricted real estate broker's license under Business and Professions Code section 10176, subdivisions (a) and (i), in that respondent made substantial misrepresentations and committed conduct constituting fraud or dishonest dealing, as set forth in Findings 6 – 10 and 12 above.

3. Grounds do not exist to revoke or suspend respondent's restricted real estate broker's license under Business and Professions Code section 10177, subdivision (d), in that it was not established that respondent violated Business and Professions Code section 10148, subdivision (a), or any other provision of the Real Estate Law or rules and regulations promulgated thereunder, based on Finding 13 above.

4. Discussion—Based on Findings 3 – 10 and 12 above, it was established by clear and convincing evidence to a reasonable certainty that respondent committed fraud, misrepresentation, and dishonest dealing and made substantial misrepresentations in connection with two real estate and mortgage loan transactions. In summary, respondent made misrepresentations on the loan application for plaintiff's purchase of the Woodland Hills condominium and substantial misrepresentations on the loan application for Marsalli's purchase of her Long Beach condominium. She deceived and defrauded the plaintiff in the civil case and caused him to be evicted from his home while he was in a drug rehabilitation program. Respondent altered the bank deposit verification form in the Marsalli transaction, engaged in dishonest conduct with the lender, and caused the borrower to incur extra and unnecessary costs. The evidence demonstrates that respondent is a danger to the public and her restricted real estate broker's license, which was previously disciplined for violations of the Real Estate Law, should be revoked for protection of the public interest and welfare.

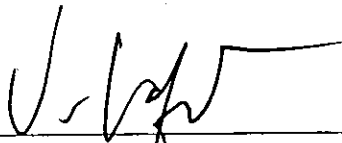
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Wherefore, the following Order is hereby made:

ORDER

All real estate licenses and licensing rights previously issued to respondent Hildegard Merrill, doing business as Mountain Valley Mortgage and as Calabasas Realty, are revoked, based on Conclusions of Laws 1 – 2 and 4 above, jointly and for all. Accusations, Case Nos. H-33031 LA and H-33259 LA, are sustained.

Dated: Aug 20, 2007



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

FILED
MAR 12 2007

DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-33031 LA
)	
HILDEGARD MERRILL,) No. H-33259 LA
)	
)	
)	
Respondent.)
)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: HILDEGARD MERRILL

On June 21, 1996, a restricted real estate broker license was issued by the Department of Real Estate to Respondent, on the terms, conditions and restrictions, as set forth in the Real Estate Commissioner's Order of February 26, 1996, in case no. H-25691 LA. This Order granted Respondent the right to the issuance of a restricted real estate broker license subject to the provisions of Section 10156.7 of the Business and Professions Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of said Code.

1 On June 30, 2006, in case no. H-33031 LA, an Accusation
2 by a Deputy Real Estate Commissioner of the State of California
3 was filed charging Respondent HILDEGARD MERRILL with violation of
4 Section 10177(k) of the Business and Professions Code of the
5 State of California, as set forth more fully below.

6 On or about August 19, 2005, in the Superior Court of
7 the State of California, for the County of Los Angeles, Northwest
8 District, in case no. LC068730, John Warren, an individual v.
9 Charmaine Merrill, an individual, Hildegard Merrill, d/b/a
10 Calabasas Realty, an individual, American General Mortgage
11 Corporation, a California corporation, all persons unknown,
12 claiming any legal or equitable right, title, estate, lien, or
13 interest in the property described in the complaint adverse to
14 plaintiff's title, or any cloud on plaintiff's title thereto, and
15 Does 1 thru 100, inclusive, a judgment was entered against
16 Respondent based on grounds of fraud, misrepresentation or
17 deceit, and breach of fiduciary duty, with reference to a
18 transaction for which a real estate license is required.
19 Respondent filed a timely appeal in the Court of Appeal of the
20 State of California, Second Appellate District, Division Seven,
21 in case no. B186698. On or about September 21, 2006, the
22 judgment was affirmed.

23 On September 20, 2006, in case no. H-33259 LA, a second
24 Accusation was filed against Respondent, charging Respondent
25 HILDEGARD MERRILL with violations of the Real Estate Law.

26 NOW, THEREFORE, IT IS ORDERED under authority of
27 Section 10156.7 of the Business and Professions Code of the State

1 of California that the restricted real estate broker license
2 heretofore issued to Respondent and the exercise of any
3 privileges thereunder is hereby suspended.

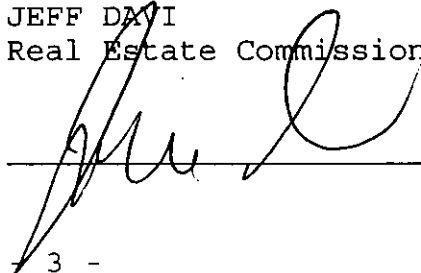
4 IT IS FURTHER ORDERED that all license certificates and
5 identification cards issued by the Department of Real Estate
6 which are in the possession of Respondents be immediately
7 surrendered by personal delivery or by mailing in the enclosed
8 self-addressed envelope to:

9 DEPARTMENT OF REAL ESTATE
10 Attention: Flag Section
11 Post Office Box 187000
12 Sacramento, CA 95818-7000

12 Hearing Rights: Pursuant to the provisions of Section
13 10156.7 of the Business and Professions Code, you have the right
14 to a hearing to contest the Commissioner's determination that you
15 are in violation of Section 10177(k). If you desire a hearing,
16 you must submit a written request. The request may be in any
17 form, as long as it is in writing and indicates that you want a
18 hearing. Unless a written request for a hearing, signed by or on
19 behalf of you, is delivered or mailed to the Department at 320 W.
20 Fourth Street, Room 350, Los Angeles, CA 90013, within 20 days
21 after the date that this Order was mailed to or served on you,
22 the Department will not be required to provide you a hearing.

23 This Order shall be effective immediately.

24 DATED: 3-7-07.

25 JEFF DAYI
26 Real Estate Commissioner
27 

9/20/06
Hag

FILED
SEP 20 2006

DEPARTMENT OF REAL ESTATE

By [Signature]

JAMES R. PEEL, Counsel (SBN 47055)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6913 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-33259 LA
)	
HILDEGARD MERRILL,)	<u>A C C U S A T I O N</u>
dba Mountain Valley Mortgage,)	
)	
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against HILDEGARD MERRILL, dba Mountain Valley Mortgage, alleges as follows:

I

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against HILDEGARD MERRILL.

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1 II

2 HILDEGARD MERRILL (hereinafter referred to as
3 "Respondent") is presently licensed and/or has license rights
4 under the Real Estate Law (Part 1 of Division 4 of the Business
5 and Professions Code) (hereinafter Code).

6 III

7 PRIOR DEPARTMENT ACTIONS

8 a. At all times herein mentioned, Respondent was
9 licensed by the Department of Real Estate of the State of
10 California as a real estate broker.

11 b. Effective March 19, 1996, in case No. H-25691 LA,
12 Respondent's real estate broker license was restricted.

13 c. On April 9, 1987, in case No. H-22860 LA, a Desist
14 and Refrain Order was issued against Respondent for violations of
15 the Real Estate Law.

16 FIRST CAUSE OF ACCUSATION

17 IV

18 On or about September 26, 2003, Respondent, while
19 representing to be the borrower's agent in the transaction,
20 arranged or caused the arrangement, a loan on property located at
21 4151 Hathaway, Unit 37, Long Beach, California. Respondent
22 arranged for the borrower Valerie Marsalli to obtain a first and
23 second loan from American General Mortgage (Lender).

24 V

25 The terms of the loans required, among other things,
26 that no part of the down payment would be borrowed money.

27 ///

1 VI

2 During the course of the loan transaction, in direct
3 violation of the terms of the loan, Respondent loaned a portion
4 of the down payment to the borrower.

5 VII

6 In order to induce the Lender to make the loans to the
7 borrower, Respondent caused falsified documentation to be
8 submitted to the Lender upon which the Lender relied in making
9 the loan.

10 VIII

11 The Lender relied upon the documentation it received
12 from Respondent and agreed to make the loans to the borrower. If
13 the Lender had known the true facts in this matter, the Lender
14 would not have agreed to make the loans to the borrower.

15 IX

16 The Lender has been damaged financially in this matter
17 in an amount not yet determined.

18 SECOND CAUSE OF ACCUSATION

19 X

20 Pursuant to Section 10148 of the Code, a real estate
21 broker shall retain for three years copies of all listings,
22 deposit receipts, canceled checks, trust records, and other
23 documents executed by her or obtained by her in connection with
24 any transaction for which a real estate broker license is
25 required.

26 ///

27 ///

1 XI

2 Respondent has failed to retain copies of all documents
3 required by Section 10148 in this matter.

4 XII

5 The conduct of Respondent, as alleged above, subjects
6 her real estate licenses and license rights to suspension or
7 revocation pursuant to Code Sections 10176(a) and 10176(i) for
8 the First Cause of Accusation, and Code Section 10177(d) for the
9 Second Cause of Accusation.

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

18 Dated at Los Angeles, California

19 this *25th* day of *August* 2006.

20
21 
22 MARIA SUAREZ
Deputy Real Estate Commissioner

23 cc: Hildegard Merrill
24 Sacto.
25 Maria Suarez
26
27