FILED

MAR 21 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL SCOTT MOORE and JTB FUNDING, INC., Respondents.	No. H-2657 SD OAH No. L2001080162

ORDER GRANTING RECONSIDERATION
AS TO MICHAEL SCOTT MOORE ONLY

On January 23, 2002, a Decision was rendered in the above-entitled matter. The Decision is to become effective March 21, 2002.

On February 7, 2002, Respondent MICHAEL SCOTT MOORE petitioned for reconsideration of the Decision of January 23, 2002.

I have considered said petition and said Decision and have concluded that pursuant to Section 10175.2 of the Business and Professions Code the public interest and public welfare will

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be adequately served by permitting Respondent MICHAEL SCOTT MOORE to pay a monetary penalty to the department in lieu of an actual license suspension.

Reconsideration is hereby granted and the Order in said Decision is modified to read as follows:

1. All licensees and licensing rights of Respondent JTB FUNDING, INC. under the Real Estate Law are revoked.

2. All licenses and licensing rights of Respondent MICHAEL SCOTT MOORE under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision; provided however that twenty (20) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent MOORE shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee of the State of California; and

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in her discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent. If Respondent MOORE petitions, the remaining ten (10) days of said suspension (or a portion thereof) shall be stayed upon condition that:

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1. Respondent MOORE pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $250.00 for each day of the 10 unstayed days of the suspension for a total monetary penalty of $2,500.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

3. No further cause for disciplinary action against the real estate license of Respondent MOORE occurs within one year from the effective date of the Decision in this matter.

4. If Respondent MOORE fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event Respondent MOORE shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent MOORE pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent MOORE occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

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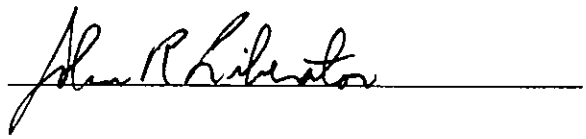
This Decision shall become effective at 12 o'clock noon on April 10, 2002.

DATED: March 20, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BY: John R. Liberator
Chief Deputy Commissioner

FILED
FEB 08 2002
DEPARTMENT OF REAL ESTATE
By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL SCOTT MOORE, Respondent.	No. H-2657 SD

ORDER STAYING EFFECTIVE DATE

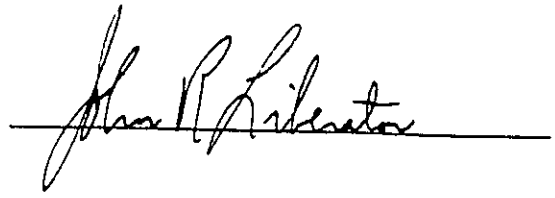
On January 23, 2001, a Decision was rendered in the above-entitled matter to become effective February 19, 2002.

On February 7, 2002, Respondent petitioned for reconsideration of the Decision of January 23, 2001.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of January 23, 2001, shall become effective at 12 o'clock noon on March 21, 2002.

DATED: February 7, 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

FILED

JAN 30 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

* * *

In the Matter of the Accusation of MICHAEL SCOTT MOORE and, JTB FUNDING, INC. Respondents.	NO. H-2657 SD OAH NO. L2001080162

DECISION

The Proposed Decision dated January 7, 2002, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on February 19, 2002.

DATED: January 23, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of: MICHAEL SCOTT MOORE and JTB FUNDING, INC. Respondents.	Case No. H-2657 SD OAH No. L2001080162

PROPOSED DECISION

On December 17, 2001, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David B. Seals, Counsel, represented complainant.

Christine A. Carlino, attorney at law, represented respondent.

The matter was submitted on December 17, 2001.

FACTUAL FINDINGS

1. J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department") filed Accusation No. H-2657 SD in his official capacity on July 16, 2001. Respondent filed a Notice of Defense dated July 30, 2001.

2. The Department issued real estate broker license number 01205345 to respondent Michael Scott Moore and at all relevant times, the license was in full force and effect. The Department issued corporation license number 01214766 to respondent JTB Funding, Inc., with respondent Moore as the designated officer, on November 19, 1996, and at all relevant times the license was in full force and effect. Respondent Moore ceased to be the designated officer on January 26, 1999. The license expired on November 18, 2000. It had held a dba as V.A. Loan Center, but that expired on November 19, 2000.

3. During 1998, respondent JTB Funding, Inc. was doing business as the V.A. Loan Center and was in the business of making mortgage loans through ShadowRidge Financial. In March 1998, respondent Moore submitted advertising to the Department seeking its approval. The flyer read it part:

"ATTENTION VETERANS

"The Veterans Administration (VA) has a program which allows existing VA mortgages to be refinanced to a lower interest rate.

"Refinance Now to Protect Yourself From Large Interest Rate and Payment Changes!

"Skip Two House Payments*

"Get Up to $2500 Cash Back**

"No Processing Charges

"No Escrow Charges

"No Income Qualifying

"No Credit Qualifying

"No Appraisal

"No Out of Pocket Cost to You"

The Department reviewed the advertising flyer and disapproved it, giving several reasons why it was potentially misleading.

4. Respondent Moore submitted other advertising flyers to the Department, which were also disapproved.

5. Respondent JTB Funding, Inc. was owned by Robert Berg. He also owned ShadowRidge Financial and VA Loan Center. Respondent Moore was the broker and general manager of the companies. It was respondent Moore's responsibility to create the advertising and to accomplish this he hired a graphic artist and reviewed the advertising materials from other companies. He sent about 15 different flyers to the Department for approval, and after he received the Department's response back, he made changes to the advertising to try to satisfy the Department's concerns.

6. In approximately August or September 1998, a flyer very similar to the one described in Finding 3 was sent out by respondent JTB Funding, Inc. This one promised "Skip two house payments and get $1000-$2500 cash back" in addition to the other promises of no fees or out-of-pocket costs. It did not contain the license number under which the loan would be made or arranged.

Teka Luttrell and his wife, Rose Cohen, responded to the flyer and contacted respondent JTB Funding, Inc. Luttrell spoke to Michael O'Leary, a salesperson employed by the company. They discussed refinancing the mortgage on their home in Sebastapol. Based upon the flyer and discussions he had with O'Leary, Mr. Luttrell thought the refinancing would result in a lower interest rate, lower house payments, there would be no change in the size of the mortgage, and he would not have to pay any fees. He and Mrs. Cohen agreed to refinance their mortgage, and the loan closed in October 1998. The refinancing resulted in lower monthly payments and a higher loan amount. When the homeowners realized that, they complained to the Department.

7. The advertising flyer contained false and misleading information in the following respects:

a. The promise of skipping two house payments implies the borrower will not have to make two house payments. In fact, interest for two months was included in the loan amount, thereby increasing the amount of the loan by the amount of the interest. Thus, the borrowers did not skip making two house payments.

b. The promise of getting $1,000 to $2,500 cash back referred to return of any amount held in an impound account. In some cases, if there is no impound account, there would not be a return of any funds. Even if there is such a return, it is the borrower's own money that is being returned, and would be returned in any case, regardless of the ad. The ad suggests the borrower is getting something valuable when that is not the case.

c. The claim that there are no processing or escrow charges was misleading. It is true that the borrower received a credit adjustment of $2,000.00 on the nonrecurring closing costs. However, it is extremely difficult to determine what is a processing charge or an escrow charge when looking at a lengthy closing statement. Indeed, respondent Moore had difficulty testifying which cost was a processing or escrow charge, and his testimony differed in some respects from O'Leary's view. It would be very easy for a borrower not to understand they have received any benefit from this claim.

8. Respondent Moore was in charge of the advertising, but Berg owned the company, and he determined that a version of the disapproved advertising flyer should be sent out in order to increase business. When respondent Moore learned the advertising had been sent out at Berg's direction, he confronted Berg, and that marked the end of their relationship. The designation of respondent Moore as the designated officer of respondent JTB Funding, Inc. ended three months after the Luttrell loan closed.

9. Respondent Moore as the designated broker of respondent JTB Funding, Inc. is responsible for the licensed operations of the corporation, including its advertising. Thus, he cannot escape responsibility for the misleading advertising by pointing to Berg's actions as the reason for the violations. However, respondent's efforts to comply with the rules regarding advertising, and his confrontation with Berg after he learned Berg had sent out a

version of the disapproved advertising, are factors in mitigation for purposes of assessing the appropriate penalty to be imposed.

10. In assessing the penalty, a number of factors must be considered. First, there was no evidence to establish borrowers were damaged by the misleading advertising. Respondents established that the terms of the loan were explained to them first verbally and then through the estimated and final closing statements. The borrowers should have known what the loan amount was, how the loan amount increased, why they did not have to make the first two monthly payments, the return of their impound funds, and the credit they received against closing costs. Respondent Moore has changed his business; he no longer works with Berg or respondent JTB Funding, Inc. He recognized that the claims regarding the skipping of payments and the cash back were problems and he knew the advertising required his license number. He presently is a communication technician and works part-time doing an occasional loan. Finally, this is the first disciplinary action taken against respondent Moore's broker's license.

There was no evidence of any aggravating circumstances. The mitigation factors described above point to a suspension as an appropriate penalty for respondent Moore's misconduct in this matter. Since respondent JTB Funding, Inc. is out of business, its license should be revoked.

LEGAL CONCLUSIONS

1. Cause to suspend respondent Moore's real estate broker's license pursuant to Business and Professions Code sections 10176(a),(i), and (j), and 10177(c) and (d) in conjunction with section 10235.5 and 10236.4 and Title 10, California Code of Regulations, section 2847.3 was established by reason of Findings 3 through 10.

2. Cause to revoke the real estate corporation license of respondent JTB Funding, Inc. pursuant to Business and Professions Code sections 10176(a),(i), and (j), and 10177(c) and (d) in conjunction with section 10235.5 and 10236.4 and Title 10, California Code of Regulations, section 2847.3 was established by reason of Findings 3 through 10.

3. Cause to suspend respondent Moore's real estate broker's license pursuant to Business and Professions Code sections 10177(h) was established by reason of Findings 3 through 10.

ORDER

1. All licenses and licensing rights of respondent JTB Funding, Inc. under the Real Estate Law are revoked.

2. All licenses and licensing rights of respondent Michael Scott Moore under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Decision; provided however that twenty (20) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

a. Respondent Moore shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee of the State of California; and

b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: January 7, 2002

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

FILED

NOV 21 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL SCOTT MOORE and
JTB FUNDING, INC.

Respondent

Case No. H-2657 SD

OAH No.

AMENDED SECOND CONTINUED
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, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on MONDAY--DECEMBER 17, 2001, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 subpenas 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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: NOVEMBER 20, 2001

By DAVID B. SEASL, *Counsel*

RE 501 (Rev. 8/97)

FILED

OCT 23 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL SCOTT MOORE and
JTB FUNDING, INC.

Respondent

Case No. H-2657 SD

OAH No. L-2001080162

FIRST CONTINUED
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, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on MONDAY--NOVEMBER 26, 2001, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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.

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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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 23, 2001

By David B. Seals

DAVID B. SEALS, *Counsel*

RE 501 (Rev. 8/97)

FILED

AUG 16 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL SCOTT MOORE and
JTB FUNDING, INC.

Respondent

Case No. H-2657 SD

OAH No. L-2001080162

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, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101 on TUESDAY--OCTOBER 23, 2001, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 subpenas 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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 16, 2001

By DAVID B. SEALS, *Counsel*

RE 501 (Rev. 8/97)

DAVID B. SEALS, Counsel (SBN 69378)
Department of Real Estate
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789
-or- (916) 227-0792 (Direct)

FILED
JUL 20 2004
DEPARTMENT OF REAL ESTATE
By Shelly Elay

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of MICHAEL SCOTT MOORE and, JTB FUNDING, INC., Respondents.	NO. H-2657 SD ACCUSATION

The Complainant, J. Chris Graves, a Deputy Real Estate Commissioner of the State of California for cause of Accusation against MICHAEL SCOTT MOORE (hereinafter "Respondent MOORE") and JTB FUNDING, INC. (hereinafter "Respondent JTB") is informed and alleges as follows:

I

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

II

Respondent JTB 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 corporate real estate broker dba VA Loan Center. Respondent MOORE was the designated officer of Respondent JTB at all times relevant herein.

III

Respondent MOORE is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker and as the designated officer of Respondent JTB from November 19, 1996 through January 26, 1999.

IV

At all times mentioned herein, as the designated officer of Respondent JTB, Respondent MOORE was responsible for the supervision and control of the activities conducted on behalf of Respondent JTB by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

V

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

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VI

That at all times herein mentioned, Respondent JTB and Respondent MOORE, and both of them, engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers in the State of California within the meaning of Section 10131(d) of the Code for or in expectation of compensation.

VII

In or about August or September of 1998 Teka T. Luttrell (hereinafter the "Borrower") received an advertisement and solicitation in the mail from Respondent JTB in the name of the V.A. Loan Center. The advertisement read, in pertinent part, as follows:

"ATTENTION VETERANS

The V.A. has a program which allows existing V.A. mortgages to be refinanced into a lower fixed interest rate.

REFINANCE NOW AND PROTECT YOURSELF FROM HIGH INTEREST RATES

Skip two house payments and get $1000-$2500 cash back

No processing fee

No escrow charges

No income qualifying

No credit qualifying

No appraisal

No out of pocket cost to you"

The advertisement further quoted rates starting at "6.5%-7%" and failed to include Respondent JTB's broker license number.

VIII

In reliance on the information contained in the advertisement described in Paragraph VII and discussions with Respondent JTB the Borrower and his wife, Rose Cohen, refinanced their home, located at 6680 Barbara Drive, Sebastopol, with Respondent JTB.

IX

Respondent JTB failed to maintain a monthly reconciliation of the control records with the separate records for the trust account, in violation of Section 2831.2 of the Regulations.

X

Borrower and his wife closed escrow on the refinance of their home on October 14, 1998 but did not get $1000 - $2500 cash back on the refinance.

XI

Respondents JTB and Moore knew that the information on the advertisement described in Paragraph VII above was false and misleading. The advertisement was made and distributed knowing such information was false and misleading with the intent to induce persons to rely on such information. Borrower and his wife did, in fact, rely on such false and misleading information.

XII

The acts and/or omissions of Respondents described above are grounds for the revocation or suspension of Respondents' licenses under the following sections of the Business and Professions Code and the Regulations:

(a) As to Respondents JTB and MOORE, and each of them, under Sections 10176(a), 10177(c), 10176(I) or 10177(j) and 10177(d) in conjunction with Sections 10235.5 and 10236.4 of the Code, and Section 2847.3 of the Regulations; and

(b) As to Respondent MOORE only, under Section 10177(g) and/or 10177(h) of the Code.

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

J. Chris Graves

J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 16th day of July, 2001.