FILED

SEP 19 2016

BUREAU OF REAL ESTATE

By S. Black

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RORY LEE HOELKER and RIVERSIDE CORPORATION, a California Corporation, Respondents.	No. H-5317 SAC

ORDER GRANTING REINSTATEMENT OF LICENSES

On March 23, 2012, in Case No. H-5317 SAC, a Decision was rendered revoking the real estate broker and real estate corporation licenses of Respondents effective April 16, 2012, but granting Respondents the right to the issuance of a restricted real estate broker license and a restricted real estate corporation license. A restricted real estate broker license and a restricted real estate corporation license were issued to Respondents on April 16, 2012, and Respondents have held restricted licenses since that time.

On January 25, 2016, Respondents petitioned for reinstatement of Respondents' real estate broker and real estate corporation licenses, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondents' petition and the evidence submitted in support thereof. Respondents have demonstrated to my satisfaction that Respondents meets the requirements of law for the issuance to Respondents of an unrestricted real estate broker license

and an unrestricted real estate corporation license, and that it would not be against the public interest to issue said licenses to Respondents.

NOW, THEREFORE, IT IS ORDERED that Respondents' petition for reinstatement is granted and that real estate broker and real estate corporation licenses be issued to Respondents if Respondents satisfy the following requirements:

1. Submit a completed application and pay the fee for a real estate broker license and a real estate corporation license within the 12 month period following the date of this Order; and

2. Submit proof that Respondent RORY LEE HOELKER has completed the continuing education requirements for renewal of the license sought. The continuing education courses must be completed either (i) within the 12 month period preceding the filing of the completed application, or (ii) within the 12 month period following the date of this Order.

This Order shall become effective immediately.

DATED: 9/14/2016

REAL ESTATE COMMISSIONER

Wayne S. Bell

FILED

October 11, 2012

DEPARTMENT OF REAL ESTATE

By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RIVERSIDE CORP, a California Corporation, RORY LEE HOELKER, and MICHELLE CELESTE PETRUZZELLI, f.k.a. MICHELLE CELESTE CSEREP, Respondents.	NO. H-5317 SAC OAH NO. 2011040496

DECISION

The Proposed Decision dated August 30, 2012, 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 NOV 01 2012.

IT IS SO ORDERED 10/10/2012.

Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RIVERSIDE CORPORATION, a California Corporation; RORY LEE HOELKER; and, MICHELLE CELESTE PETRUZZELLI, f.k.a. MICHELLE CELESTE CSEREP, Respondents.	Case No. H-5317 SAC OAH No. 2011040496

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 25, 2012, in Sacramento, California.

Michael B. Rich, Counsel, represented complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner for the Department of Real Estate (department).

James L. Brunello, Attorney at Law, represented respondent, Michelle Celeste Petruzzelli, f.k.a. Michelle Celeste Cserep (Petruzzelli), who was present throughout the hearing.

There was no appearance by or on behalf of respondents Riverside Corporation, a California Corporation, or Rory Lee Hoelker. In a Stipulation and Agreement effective April 16, 2012, respondents Riverside Corporation and Rory Lee Hoelker waived their rights to a hearing in this matter, and stipulated to accept a restricted corporate real estate broker and restricted real estate broker license, respectively.

Evidence was received, and the record remained open to permit the parties to submit written closing arguments. The parties timely submitted their written closing

arguments. The record was closed and the matter was submitted for decision on August 9, 2012.

FACTUAL FINDINGS

1. On June 11, 1991, the department issued Real Estate Salesperson License Number S01111777 to respondent. Beginning on July 18, 1995, respondent's salesperson license was restricted as set forth in Factual Finding 4 below. Respondent's restricted salesperson license expired on July 17, 2011. No evidence was introduced to establish that respondent's license is currently active.[1] At all times referenced herein, respondent was a real estate salesperson in the employ of corporate real estate broker, Riverside Corporation, d.b.a. Avalar Real Estate & Mortgage Network (Avalar). At all times referenced herein, respondent was also the Chief Financial Officer of W.P. Investment Services, Inc. (WP Investment), a separate, real-estate related entity.

2. On December 17, 2009, complainant made and filed the Accusation in her official capacity.[2] Complainant seeks to discipline Petruzzelli's license for making false and misleading representations to solicit and induce a co-worker to loan $20,000 to a client knowing that the loan would not be repaid; failing to provide the co-worker with a Lender/Purchaser Disclosure Statement (LPDS) as required by Business and Professions Code section 10232.5; and failing to provide the co-worker with a written loan application and the borrower's credit report as required by Business and Professions Code section 10232.5, subdivision (a)(6). In addition, complainant alleges that Petruzzelli failed to provide the client/borrower with a Mortgage Lender Disclosure Statement (MLDS), as required by Business and Professions Code section 10240, and failed to maintain a copy of the MLDS in her file for three years, as required by Business and Professions Code section 10148.

3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative

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[1] Pursuant to Business and Professions Code Section 10103, the lapsing of a license does not deprive the department of jurisdiction to proceed with any investigation or action or disciplinary proceeding against the licensee, or render a decision suspending or revoking such license.

[2] At hearing, complainant requested the following amendments to the Accusation: at page 5, paragraph 14, line 18, and at page 7, paragraph 16, line 5: the citation to "section 10232.5(a)(6)" should be amended to cite "section 10232.5(a)(4)." Respondent did not object to these amendments.

Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et. seq.

Prior Disciplinary Action – June 1995

4. Effective June 28, 1995, in Case No. H-3018 SAC, the department adopted the Proposed Decision of an Administrative Law Judge, and issued a restricted real estate salesperson license to respondent, pursuant to Business and Professions Code section 10156.5, on the grounds that respondent made false or misleading representations to a lender in order to induce the lender to fund a loan, pursuant to Business and Professions Code sections 10176, subdivisions (a) and (i). Respondent's license was restricted for nine (9) years. However, when her probationary term was completed, respondent did not apply to the department for the issuance of an unrestricted license because she had "so many things going on in [her] life" at that time.

Zuccala Loan – March 2008

5. In or about March 2008, respondent proposed a business investment to her co-worker and mentee, Teresa Zuccala (Zuccala),[3] in which Zuccala would loan $20,000 to respondent's client Ravindar Pratap (Pratap), respondent would refinance Pratap's real property located at 6330 Cushing Way in Sacramento, California (Cushing Way), and Zuccala would receive her initial investment of $20,000 plus 20 percent interest due and payable within 14 days. Zuccala wired the $20,000 to Placer Title Company (Placer Title) on March 21, 2008.

6. The title insurance policy issued by Placer Title referenced Zuccala's loan secured by the Cushing Way property, as well as a real property located at 7972 Hanford Way in Sacramento, California, both owned by Pratap, "a married man as his sole and separate property." In a promissory note dated March 24, 2008, Pratap agreed to pay Zuccala $20,000 plus interest at the rate of 20 percent "on or before April 7, 2008." The Borrower's Closing Statement indicated that at the close of escrow, on March 25, 2008, Zuccala received a check in the amount of $2,000 representing a "loan origination fee @ 10.000%"; Avalar received a $2,000 broker fee; WP Investments received $5,500 for "services rendered";[4] and Pratap received a $7,573.22 payout.

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[3] Zuccala was licensed by the department as a real estate salesperson on July 13, 2005. At all times referenced herein, Zuccala was also an Associate-Licensee in the employ of corporate real estate broker Riverside Corporation, d.b.a. Avalar Real Estate & Mortgage Network.

[4] In a Demand faxed to Placer Title on March 20, 2008, respondent identified herself as the Secretary-Treasurer for WP Investment, and requested payment for services rendered in the amount of $5,500. In an email dated March 24, 2008,

7. Respondent originated and arranged for the refinancing of the Cushing Way property on behalf of Pratap. However, beginning on April 1, 2008, Pratap stopped making his mortgage payments and on May 28, 2008, the senior lien holder began foreclosure proceedings. At that same time, respondent was also originating and arranging for the refinancing of 1905 Michigan Boulevard, in West Sacramento, California (Michigan Blvd) for Pratap and his long time friend Roseanne Pemberton (Pemberton), so that Pemberton could "keep her home, fix it up & sell." However, prior to the close of escrow, Pemberton rescinded the refinance loan on the Michigan Blvd property.

8. The Zuccala loan was not repaid on April 7, 2008.

Complainant's Evidence

9. In an email to Zuccala dated June 27, 2008, respondent wrote, in pertinent part, "I want you to know that my promise to you is as good as gold. I will work very hard to get your money back from Mr. Pratap and in the event he decides to NOT come through with his agreement with you I will hold myself personally responsible for the debt he owes you .... I really don't believe it was the intention of Mr. Pratap to do so either but he got involved in situation [sic] that prevented him from consummating the loan that I arranged for him and his partner that would have paid you within the timeframe allotted in the private note."

10. In an email to Zuccala's attorney dated September 24, 2008, respondent wrote, in pertinent part:

> "Please except [sic] this as my letter of intent to personally repay Teresa Zuccala on the private second that was secured by a property owned by Ravindar Pratap. Unfortunately I have had no luck in making contact with Mr. Pratap. He has failed to contact either you or myself and as a result has endangered the security securing Mrs. Zuccala's private loan to him. At this point, I would like to personally secure the note and request that the following terms be considered for repayment. I would like to propose 10% of the $20,000 ($2,000) to be paid to Teresa by the 15th of October and the remaining balance, plus interest, to be paid within 45 to 60 days. Preferably 60 days and interest payments on the remaining balance of $18,000.00 to begin October 1, 2008. I have spoken to Teresa's son Sergio and he asked that I sent [sic] this letter of intent to you so that you can prepare a promissory note based on these terms with the

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respondent identified herself as a "Realtor/Sr. Loan Consultant," and requested that Placer Title wire the $5,500 to WP Investment's business account at Umpqua Bank.

> understanding that any further legal actions against me as to my part in this transaction be withdrawn ...."

11. On October 15, 2008, respondent signed a Promissory Note in which she promised to pay to Zuccala $20,000 on the following terms and conditions: (1) $2,000 to be paid upon execution of the agreement; (2) $18,000.00 balance to be paid on or before December 15, 2008; (3) Interest to accrue on the unpaid balance at the rate of ten percent (10%) per annum.

12. In an email to Zuccala's attorney dated January 15, 2009, respondent wrote: "My commission advance will not be arriving until tomorrow. The advance company was waiting for my broker to sign the agreement but I was assured it would [sic] he would do that today. I called Teresa today to explain my dilemma and assured her that she will have the $2500 no later than Monday, possibly by tomorrow or Saturday depending when my funds arrive. I can fax you a copy of the commission agreement advance if you'd like to verify that I have requested and am approved for this advance and I only did this to expedite some funds for Teresa which I know she can use now ...."

13. In a subsequent email to Zuccala's attorney dated March 3, 2009, respondent wrote:

> I did contact Teresa last week and told her that I closed a deal and would have funds for her this week. I'm expecting to have $5000.00 cashiers check for her by Friday. My bank does not put hold on large checks. My intent is to pay as I promised however I'm at the mercy of the title companies, asset manager, etc... [sic] to close my deals. I have two more closing next week which should allow me the ability to pay her in full.

14. In an email to Zuccala's attorney dated March 9, 2009, respondent wrote:

> Theresa's payment of $5K will be mailed to her on Thursday. I received my commission check on Wednesday of last week "FINALLY!" and was told by the bank that funds will be available 5 business day [sic] after deposit. That will be on March 11th. I will mail or Fed-X the cashier's check to her as well as fax you a copy for your records. As I told you last week, I also have three other closings scheduled to close by the end of this month however, I'm reluctant to make any further commitment dates due to market conditions. Again, I'm at the mercy of the banks to perform and in many cases I'm finding the situation to take up to 3 to 4 weeks extra to close. Believe me, I want nothing more than to get this matter resolved and ask

> that you and your client understand my situation and trust that I will get this matter resolved as quickly as I'm financially able to which is when I'm paid so will your client get paid.

15. In her May 20, 2009 written complaint to the department, Zuccala wrote that respondent assured her that she would prepare the necessary paperwork to complete the transaction; assured her that the investment was secured; failed to notify her that the property being used to secure the loan was in default and was at risk of foreclosure; failed to repay the $20,000 loan plus 20 percent interest within 14 days; and failed to honor a promissory note signed on October 15, 2008, in which respondent agreed to repay to Zuccala the $20,000 loan plus interest.[5]

16. At hearing, Zuccala testified that prior to working for Avalar, Zuccala worked for two real estate brokers. At all three brokerages, she performed residential sales work, and "never did loans." Zuccala met respondent at Avalar in mid-February 2008, when respondent became her mentor in real estate transactions.

17. According to Zuccala, in March 2008, respondent solicited her to make the loan; introduced her to Pratap on one occasion at the office; and assured her "over and over" not to worry about it because her money would be returned within 14 days at 20 percent interest; however, if something did go wrong, respondent offered to assist Zuccala in foreclosing on the property. According to Zuccala, she would not have been able to take over the $200,000 mortgage on the Cushing Way property had she foreclosed on it. Zuccala contends that respondent told her there was $130,000 in equity in the property, but never told her about the risks associated with the loan, and did not show her the credit report of Pratap or the appraisal report for the Cushing Way property. It never occurred to Zuccala to ask for the information from respondent because "I don't know anything about that." Zuccala admitted, however, that respondent showed her a copy of the Cushing Way property file in the office, and that she was told by broker Hoelker that sometimes loans "come out good, and sometimes they don't," and that he asked her if she was sure she wanted to do it. According to Zuccala, she wanted to do the loan "because the offer was very good and quick," and she trusted respondent because "[respondent] was very knowledgeable." Zuccala asserted that she did not know anything about loan documents or forms, and did not see, review or sign any of the loan documents prior to the close of escrow. Zuccala contends that she first learned that the Cushing Way property was foreclosed after she retained counsel to represent her, and first learned about WP Investment and respondent's interest in the company when she was reading the files provided to her by the department's investigator. Zuccala's testimony was credible.

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[5] According to Zuccala's complaint, respondent repaid $5,500 under the terms of the promissory note prior to discontinuing making payments. There remains a balance of $14,500 plus interest on the promissory note.

18. Kyle Jones is a Special Investigator with the department. Prior to working for the department, he worked as a licensed real estate broker. In 2009, he was assigned to investigate the Zuccala complaint. During his investigation, Mr. Jones interviewed Zuccala and obtained her signed declaration confirming that she had no prior experience as a private lender, and had never seen the credit report of Pratap; the appraisal report for the Cushing Way property; or the Lender/Purchaser Disclosure Statement before or after completion of the loan. According to Mr. Jones, Zuccala had a minimal amount of real estate knowledge and in this transaction, was unfamiliar with the concept of first liens; was unaware who WP Investment was; was unaware that WP Investments received $5,500 from the proceeds of her loan; and was unaware that respondent had an interest in WP Investment. Zuccala notified Mr. Jones that respondent performed all aspects of the loan process from origination to close of escrow.

19. Mr. Jones also interviewed Pratap and obtained his signed declaration confirming that respondent was the loan officer for the Zuccala private money loan; that he did not borrow $5,500 from respondent; and that the $5,500 paid to WP Investments was a loan origination fee assessed by respondent.

20. Mr. Jones interviewed respondent and obtained her signed declaration confirming that Pratap solicited her two years prior to the Zuccala loan to arrange for "hard money financing." According to respondent, "Pratap did not seem to be knowledgeable about loans even though his business card stated he did loans." Respondent told Mr. Jones that Zuccala overheard her telephone conversations with private money lenders and offered to lend Pratap the money. Respondent showed Zuccala the approval for another loan Pratap was securing, and told Zuccala that once that loan funded, Zuccala would receive the proceeds from her loan. Respondent admitted that she was an owner of WP Investments, but contends that the $5,500 paid to WP Investments was for reimbursement of a personal loan she made to Pratap for his vehicle repairs. She could not explain, however, why the closing statement identified the $5,500 paid to WP Investments as "Services Rendered," rather than repayment of a personal loan.

21. Mr. Jones conducted a telephonic interview with Rory Hoelker, (Hoelker) respondent's broker. Hoelker confirmed during his interview and in a subsequent signed declaration that respondent was Zuccala's mentor at the company; that he advised Zuccala that there are risks in all loans, and that she should make sure there is equity in the property; that Zuccala had the option to foreclose on the property; that he was aware that respondent had an ownership interest in WP Investments; and that he was unaware that WP Investments received $5,500 for originating the Zuccala loan.

22. As part of his investigation, Mr. Jones obtained and reviewed the file maintained at Avalar containing the Zuccala loan documentation. Included in the documentation was Pratap's credit report showing scores of 593, 603 and 590. Mr.

Jones testified that these scores are regarded as low credit scores, and that the minimum credit score necessary for a conventional loan is 620. Also included in the Avalar file was a Property Appraisal Report dated October 19, 2007, in which Pratap's Cushing Way property was appraised at $350,000 based on a sales comparison approach; $374,400 based on an income approach; and $404,617 based on a cost approach.

23. Upon completion of his investigation, Mr. Jones determined that respondent failed to provide to Zuccala the Lender/Purchaser Disclosure Statement, Form 851C, which is required by Business and Professions Code section 10232.5, subdivision (a)(4), in order to disclose to private lenders the appraised value of real property, credit scores and the income declaration of the borrower. Mr. Jones also determined that respondent failed to provide the Mortgage Lender Disclosure Statement to Pratap, pursuant to Business and Professions Code section 10240.

24. Ravindar Pratap has been a licensed real estate broker since July 6, 2006. He testified that he approached respondent to assist him with obtaining a $20,000 loan to enable him to keep his new business afloat, and offered his Cushing Way property as security for the loan. While they discussed his financial situation prior to obtaining the $20,000 loan, Pratap did not tell respondent that he may have difficulty making the payments on his property. According to Pratap, Zuccala's $20,000 loan was a second lien on his Cushing Way property. However, his business "went down," and he "was unable to make payments" on the property, so the senior lien holder foreclosed.

25. Pratap does not recall respondent advancing any monies to him, and denied owing $5,500 to respondent for a personal loan. According to Pratap, two checks written to him by respondent in the amounts of $1,480.86 and $1,000, respectively, represented his referral fees on a loan. Pratap also denied owing $5,500 to WP Investment for a personal loan, and denied knowing that respondent had an ownership interest in WP Investment. According to Pratap, it was his understanding that the $5,500 paid to WP Investment represented a fee for obtaining the Zuccala loan.

26. Pratap confirmed that at the time of the Zuccala loan, respondent was also organizing a refinance loan on the Michigan Blvd property on behalf of Pratap's friend Pemberton through Pratap's client, Shrimati Singh. Pratap denied having an ownership interest in the Michigan Blvd property, but authorized respondent to obtain his credit report to obtain the refinancing for the Michigan Blvd property because he "was going to be a borrower with Mr. Singh." Pratap contends that he did not have an arrangement to repay the $20,000 loan to Zuccala using the Michigan Blvd property.

Respondent's Evidence

27. In a written declaration to the department dated June 12, 2009, respondent asserted that in March 2008 she gave a copy of Pratap's loan application, credit report, and loan approval on his Michigan Blvd property, to Zuccala to secure her $20,000 investment in the Cushing Way property. However, respondent contradicted her written declaration at hearing when she admitted that she showed a copy of the credit report to Zuccala, and that completed her due diligence to Zuccala. (Factual Finding 32). Respondent also asserted that she provided Zuccala with a copy of the appraisal report and preliminary title report showing $150,000 equity in Cushing Way. According to respondent, prior to loaning the $20,000, Zuccala also spoke with respondent's broker who cautioned Zuccala to "proceed with caution" and that "if [Zuccala] decided to proceed to make sure it was secured." After the repayment deadline passed, respondent "instructed Theresa [sic] to begin foreclosure proceedings immediately." Respondent contends that because she was "very good friends" with Zuccala, she "agreed and signed a promissory note ... because [she] felt very bad for Ms. Zuccala and guilty to have been exposed to a part of what appeared to be an oblivious [sic] scam set up by Mr. Pratap." Respondent's "intentions where [sic] sincere and still are to repay the entire amount in full." Respondent believes that Zuccala "was given the proper information to make an informed decision however she was taken advantage of by some else, (Mr. Pratap) other than myself."

28. At hearing, respondent confirmed that she has originated loans for the purpose of acquiring real property her "entire career." She began working as a loan originator for Avalar in February 2007. Her responsibilities include meeting with clients, taking their applications, obtaining credit and appraisal reports, and determining if the information provided qualifies a borrower for financing.

29. Respondent met Pratap in October 2007, when Pratap requested that she help refinance Pemberton's Michigan Blvd property. In December 2007 and January 2008, respondent loaned $1,480.86 and $1,000, respectively, to Pratap for his automobile transmission problems. According to respondent, Pratap "seemed like a nice guy," so she and her husband agreed to help him. There was no memo or comment indicated on the December 2007 check regarding the purpose of the check; however, the January 2008 check indicated that it was for a "transfer." Respondent asserted that WP Investment was created to facilitate a development project respondent was involved in constructing. According to respondent, the balance of the $5,500 paid to WP Investment through the Zuccala loan process represented the personal loans to Pratap to enable him to fix his vehicle, plus her fees for showing properties to Pratap's clients, including Pemberton, reviewing and evaluating the loans for Pratap's potential clients, and discussing loans terms and rates with Pratap. Respondent expected Pratap to pay for that work, and according to respondent, that was their agreement. In light of the oral and documentary evidence in this matter, respondent's testimony on this issue was not credible. Respondent is unaware of whether or not her collection of the $5,500 was a violation of Business and

Professions Code section 10137 and 10138. Respondent claims that she was "very proud" of her development project, and hung a framed photograph of the project in her office. Respondent asserted that she discussed the development project with "anyone that came into my office," and according to respondent, Zuccala "commented on the picture," and "asked about it," so respondent discussed it with her. Respondent's testimony on this issue was not persuasive, and was not supported by the evidence.

30. In March 2008, Pratap requested that respondent help him with a "bridge loan," which respondent contends Zuccala asked her about, and asked if she could participate in it. As Zuccala didn't understand it well, respondent "felt it was prudent ... to explain it to [Zuccala] in full detail." Respondent contends that the Michigan Blvd refinance loan was approved the day after Zuccala made the $20,000 loan, and "that was where the quick pay would come from." However, Pemberton rescinded the refinance loan and "the whole deal was off." Respondent contends that she told Zuccala that her $20,000 loan was secured by the $150,000 equity in the Cushing Way property, and that there was "quick money" from the Michigan Blvd property. And although the market was starting to decline in February 2008, there was still "quite a bit of equity" available in the Cushing Way property. However, the refinance loan on Michigan Blvd "fell apart," and Pratap defaulted on the Cushing Way property, so respondent instructed Zuccala to foreclose on Cushing Way, and offered to refer her to someone who could assist her with the foreclosure process as respondent herself was unfamiliar with the procedures. According to respondent, however, Zuccala "did not do what I recommended she do." Respondent asserted that when Zuccala brought her a copy of the Notice of Default, she was "hysterical," but because she would not exercise her right to foreclose on the Cushing Way property, respondent's "hands were tied." Respondent's testimony that Zuccala brought her a copy of the Notice of Default was not credible. There were no documents introduced in evidence to establish that respondent filed a Request for Special Notice, pursuant to California Civil Code section 2924b, subdivision (d), to ensure that Zuccala, as the second lien holder on the Cushing Way property, would receive notice of the default.

31. Respondent admitted that she did not provide the LPDS form 851C to Zuccala because she was not aware that the form was required. Despite all of her loans transaction over the years, respondent "[had] never done one of these," and "it was not brought to [her] attention." Respondent believes that she should have been fully informed of this requirement by her broker.

32. Respondent asserted that prior to the funding of the loan, she showed to Zuccala a copy of Pratap's October 2007 credit report, which was part of the Cushing Way file, and Zuccala refused to pay an additional $21 to obtain a new credit report. She admitted, however, that she did not give Zuccala a copy of Pratap's credit report because she did not believe it was required. According to respondent, "I made available a copy of the credit report and my due diligence was complete."

33. Respondent contends that she was under duress when she signed the Promissory Note agreeing to pay $20,000 plus interest to Zuccala. According to respondent, she felt threatened by Zuccala's attorney when he indicated to her that if she did not sign the Promissory Note, he would file a formal complaint with the department. Respondent's testimony on this issue was not credible. Prior to Zuccala retaining counsel, respondent sent a letter to Zuccala claiming personal responsibility for the $20,000 loan (Factual Finding 9). After Zuccala retained counsel, respondent proposed the terms and conditions of the promissory note to Zuccala's attorney (Factual Finding 10). Therefore, the signing of the Promissory Note was respondent's formal acceptance of her personal responsibility to Zuccala, and not the result of duress.

34. Respondent is married to her business partner, Nick Petruzzelli. They have three children together, ages 27, 26 and 22 years old. Other than the Zuccala civil lawsuit, there have been no lawsuits filed against respondent regarding her real estate transactions. She has sustained two driving under the influence (DUI) convictions since receiving a restricted real estate salesperson license, but has met all the court-imposed terms and conditions of her convictions. She obtained her health and life insurance agent license from the California Department of Insurance after disclosing her DUI convictions and this department's Accusation on her application for licensure. Respondent volunteers her time with Holy Trinity and St. Patrick's churches, as well as for the Worldwide Children's Organization in Nicaragua. She is currently employed by Universal Lending conducting "strictly residential sales."

35. Dennis Byron has been a licensed real estate broker for 40 years, and worked with respondent on residential real estate transactions at Universal Realty in Cameron Park, California starting in January 2010. Mr. Byron testified on respondent's behalf at hearing, and asserted that "I would hire her again."

36. Rebecca Mitchell has been a licensed real estate agent since 1999, and worked with respondent as a realtor at Universal Realty. Ms. Mitchell described respondent as a "qualified licensee," with whom she "would work with ... again." Ms. Mitchell is aware of respondent's restricted license status, but is unaware of the details surrounding her restricted license.

37. Wanda MacDermott was the manager at Universal Realty, and has known respondent since 1995. They have worked on "hundreds of files" together. Ms. MacDermott described respondent as "meticulous" and "very ethical," and asserted that she "will work with her again." She is aware of the details surrounding respondent's restricted license status.

38. Nick Petruzzelli has been a licensed real estate salesperson since 2004, and is respondent's husband. He lives with respondent in Cameron Park and together they have six children between them. Mr. Petruzzelli referred Pratap to respondent after they met at an open house. According to Mr. Petruzzelli, Zuccala "understood

basic real estate terms"; was willing to take applications; and "knows about credit reports."

39. Respondent submitted two letters of recommendation which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).[6] B. Mike West, Managing Director of Villa Properties and Funding Source, and Penny Fonti Belli, worked with respondent in the real estate industry. Both reference letters were written in September 2004, to address reinstatement of respondent's real estate license without restrictions. Mr. West and Ms. Belli described respondent as professional, moral, ethical and honest. However, these letters were written before the conduct giving rise to this matter; therefore they were considered for the purpose of describing respondent's conduct in light of her prior disciplinary action only.

Discussion

40. The evidence establishes that respondent knew Pratap's financial situation was questionable from the moment she met him. His credit report in October 2007 showed low credit scores that made him ineligible for a conventional mortgage loan (Factual Findings 22 and 32); he was seeking a bridge loan to keep his business afloat (Factual Findings 24 and 30); and respondent had to loan him money to repair his automobile (Factual Finding 29). Respondent took no further action to verify, update or determine Pratap's ability to pay back this loan or refinance his property, and made no attempt to obtain an updated appraisal report on his Cushing Way property. Despite knowing that Zuccala did not understand the loan process well (Factual Finding 30), respondent failed to share any of this critical information, or any real estate related documents, with Zuccala to ensure that Zuccala made an informed decision prior to loaning $20,000 to Pratap. (Factual Findings 15, 17, 18 and 23). As the story unfolds, it is clear that respondent relied exclusively on the refinance transactions of Pratap's Cushing Way property, and Pemberton's Michigan Blvd property to resolve Pratap's financial situation, reimburse Zuccala's loan proceeds, and improve the financial position of WP Investment, a company in which neither Pratap or Zuccala were aware respondent had an ownership interest. (Factual Findings 18 and 25). However, the real estate market changed, the refinance transactions fell apart, and respondent washed her hands of the Zuccala deal, and took no responsibility for her part in the transaction. Instead she blamed Zuccala for not obtaining an updated credit report, and blamed her employer for not advising her that a Lender/Purchaser Disclosure Statement was required in this loan transaction. (Factual Findings 31 and 32). While respondent offered to refer Zuccala to someone

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[6] Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions ...."

who could assist her in foreclosure proceedings, it was a veiled offer in that respondent knew, or reasonably should have known, that Zuccala did not have the financial ability to carry the Cushing Way mortgage. (Factual Finding 17).

41. Respondent's conduct during and subsequent to this loan transaction was misleading, dishonest and unprofessional. As set forth in Factual Finding 4, respondent's license was restricted in 1995 for similar conduct – making false or misleading representations to a lender in order to induce the lender to fund a loan. In this matter, respondent owed a fiduciary obligation to both her clients, Pratap and Zuccala, and failed to honor those obligations in her haste to process the refinance transactions. Respondent also had the obligation to know the laws and regulations governing her conduct as a loan originator, and to take action to ensure compliance with those laws and regulations. Respondent failed to follow the law when she failed to provide the LPDS and Pratap's credit report to Zuccala. There was little evidence presented at hearing to establish that respondent has been sufficiently rehabilitated since that time. Therefore, as respondent currently holds a restricted real estate salesperson license, it would not be beneficial to extend or impose further restrictions on her license. The public health, safety and welfare will be best protected with the revocation of respondent's real estate salesperson license.

LEGAL CONCLUSIONS

1. In an Accusation seeking to revoke, suspend, or otherwise discipline a professional license, the agency has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) As set forth below, complainant has met its burden that the real estate salesperson license issued to respondent Petruzzelli should be revoked pursuant to Business and Professions Code sections 10176, subdivisions (a), (b), (g) and (i); 10177, subdivisions (g), (j) and (k); 10232.5, subdivision (a)(4); and 10240.

False and Misleading Representations and Secret or Undisclosed Compensation

2. Section 10176, subdivisions (a), (b), (g) and (i), provide that the commissioner may ". . . temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following: (a) Making any substantial misrepresentation; (b) Making any false promises of a character likely to influence, persuade, or induce ... (g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter ....; and (i) Any other conduct, whether of the

same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

As set forth in Factual Findings 5, 15, 17, 22 through 24, 27, 30 and 32, respondent made misrepresentations and false promises to Zuccala to induce her to loan $20,000 to Pratap. Respondent knew that Zuccala did not understand the loan process well, yet chose not to provide or explain the significance of Pratap's financial situation or credit report to Zuccala prior to the loan. Therefore, cause exists to discipline respondent's real estate salesperson license, pursuant to Business and Professions Code section 10176, subdivisions (a), (b) and (i).

As set forth in Factual Findings 18, 20 and 21, respondent had an ownership interest in WP Investment. Neither Pratap nor Zuccala were aware of this ownership interest, and Zuccala was unaware that WP Investment was to receive $5,500 out of her $20,000 loan transaction. In addition, while respondent's employer, Hoelker, was aware of respondent's ownership interest in WP Investment, he was unaware that WP Investment was to receive $5,500 for services rendered in the Zuccala loan transaction. No evidence was presented to establish that there was a legitimate purpose for WP Investment to be paid $5,500 for this loan transaction. No services were rendered by WP Investment at any time during this loan transaction. Therefore, respondent accepted a secret or undisclosed amount of compensation, commission or profit from this loan transaction, which establishes cause to discipline respondent's real estate salesperson license, pursuant to Business and Professions Code section 10176, subdivision (g).

Violations of the Real Estate Law

3. Section 10177, subdivisions (d), (g), (j) and (k), authorize the commissioner to suspend or revoke the license of a real estate licensee ..., where the individual licensee ... has done any of the following:

> (d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.
>
> [¶]...[¶]
>
> (g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.
>
> [¶]...[¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

As set forth in the Factual Findings as a whole, the department has met its burden of establishing that respondent willfully disregarded the real estate laws and regulations when she made misleading and dishonest representations to Zuccala during the origination and processing of the $20,000 loan transaction, and when she failed to disclose to her clients her ownership interest in WP Investment, and collected an unearned $5,500 fee on behalf of WP Investment. Respondent also demonstrated negligence and incompetence when she failed to provide copies of Pratap's credit report and the LPDS to Zuccala during the loan transaction. Therefore, cause exists to discipline respondent's real estate salesperson license, pursuant to Business and Professions Code section 10177, subdivisions (d), (g) and (j).

As set forth in Factual Finding 4, respondent held a restricted real estate salesperson license during the time of this loan transaction, and as a result of her conduct during this loan transaction, violated the terms and conditions of her probation. Therefore, cause exists to discipline respondent's real estate salesperson license, pursuant to Business and Professions Code section 10177, subdivision (k).

Lender/Purchaser Disclosure Statement

4. Section 10232.5, subdivision (a)(4), provides that: "[i]f the real estate broker is performing acts described in subdivision (d) of Section 10131 in negotiating a loan to be secured by a lien on real property or on a business opportunity, the statement required to be given to the prospective lender shall include, but shall not necessarily be limited to, the following information: (4) Identity, occupation, employment, income, and credit data about the prospective borrower or borrowers as represented to the broker by the prospective borrower or borrowers."

As set forth in Factual Findings 17 though 19, 23, 28 and 31, it is undisputed that respondent was the loan officer who originated and processed the Zuccala loan. Respondent admitted at hearing that she did not provide the Lender/Purchaser Disclosure Statement to Zuccala because respondent was unaware that the form was required, and did not provide Pratap's credit report to Zuccala because respondent believed that showing the report to Zuccala was sufficient to discharge her fiduciary obligation to Zuccala. Therefore, cause exists to discipline respondent's real estate salesperson license pursuant to Business and Professions Code section 10232.5, subdivision (a)(4).

Mortgage Lender Disclosure Statement

5. Section 10240 provides, in pertinent part, that:

> (a) Every real estate broker who negotiates a loan to be secured directly or collaterally by a lien on real property "shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower. No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted."
>
> (b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.
>
> [¶]. . .[¶]

Complainant did not prove by clear and convincing evidence that respondent failed to provide the Mortgage Lender Disclosure Statement to Pratap. Therefore, cause does not exist to discipline respondent's real estate salesperson license, pursuant to Business and Professions Code section 10240.

6. Business and Professions Code section 10148, subdivision (a), provides in pertinent part that "[a] licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated."

Complainant did not prove by clear and convincing evidence that respondent failed to retain a copy of the Mortgage Lender Disclosure Statement in her file. Therefore, cause does not exist to discipline respondent's real estate salesperson license, pursuant to Business and Professions Code section 10148, subdivision (a).

7. As discussed in Factual Findings 40 and 41, respondent has engaged in very little rehabilitation efforts, and her witnesses provided minimal testimony regarding their knowledge of the details surrounding the matter giving rise to this Accusation. The evidence provided was insufficient to demonstrate respondent's rehabilitation. Therefore, it would be contrary to the public interest, safety and welfare to permit respondent Petruzzelli to retain her real estate salesperson license at this time, with or without restrictions.

ORDER

All licenses and licensing rights of respondent Michelle Celeste Petruzzelli, f.k.a. Michelle Celeste Cserep, under the Real Estate Law are revoked.

DATED: August 30, 2012

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings

FILED
MAR 27 2012
Department of Real Estate
BY:

DEPARTMENT OF REAL ESTATE
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RIVERSIDE CORP, a California Corporation, RORY LEE HOELKER, and MICHELLE CELESTE PETRUZELLI, Respondents.	No. H-5317 SAC OAH No. 2011040496
In the Matter of the Accusation of MATTHEW WAYNE STEWART, DANCE HALL INVESTORS, INC., a California corporation, WAYNE THOMAS HALL, RIVERSIDE CORP, a California corporation, and RORY LEE HOELKER, Respondents.	NO. H-5482 SAC OAH No. 2011040494

STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondent RIVERSIDE CORP, and RORY LEE HOELKER (hereinafter "Respondents"), acting by and through their attorney, Justin Dain Hein, and the Complainant, acting by and through Michael B. Rich, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed December 17, 2009, under Department Case No. H-5317 SAC and for the

purpose of settling and disposing of the First Amended Accusation filed on July 7, 2011, under Department Case No. H-5482 SAC (hereinafter collectively "the Accusations"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusations, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement.

2. Respondents have received, read and understand the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

3. On January 6, 2010, Respondents filed Notices of Defense in Case No. 5317 SAC and on October 25, 2010, Respondents filed Notices of Defense in Case No. 5482 SAC pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusations. Respondents hereby freely and voluntarily withdraw said Notices of Defense. Respondents acknowledge that they understand that by withdrawing said Notices of Defense Respondents will thereby waive Respondents' right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that Respondents will waive other rights afforded to Respondents in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. Respondents, pursuant to the limitations set forth below, hereby admit that the factual allegations in the Accusations pertaining to Respondents are true and correct and stipulate and agree that the Real Estate Commissioner shall not be required to provide further evidence of such allegations.

5. It is understood by the parties that the Real Estate Commissioner may adopt the Stipulation and Agreement as her decision in this matter, thereby imposing the penalty and sanctions on Respondents' real estate license and license rights as set forth in the "Order"

below. In the event that the Commissioner in her discretion does not adopt the Stipulation and Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusations under all the provisions of the APA and shall not be bound by any admission or waiver made herein.

6. This Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real Estate with respect to any matters which were not specifically alleged to be causes for accusation in this proceeding.

DETERMINATION OF ISSUES

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

I

The acts and omissions of Respondent RIVERSIDE CORP described in the Accusation under Case No. H-5317 SAC are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of Sections 10176(a), 10176(b), 10176(g), 10176(i), 10177(g), and Section 10177(j) of the Code, and under Sections 10232.5, 10232.5(a)(6), and Section 10240 of the Code all in conjunction with Section 10177(d) of the Code.

II

The acts and omissions of Respondent RIVERSIDE CORP described in the Accusation under Case No. H-5482 SAC are grounds for the suspension or revocation of the licenses and license rights of Respondents under the provisions of Sections 10176(a), 10176(f), 10176(g), 10176(i), 10177(g), and Section 10177(j) of the Code.

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III

The acts and omissions of Respondent RORY LEE HOELKER described in the Accusation under Case No. H-5317 SAC and in the Accusation under Case No. 5482 SAC are grounds for the suspension or revocation of the licenses and license rights of Respondent under the provisions of Section 10159.2 of the Code and Section 2725 of the Regulations all in conjunction with Section 10177(d) of the Code and Section 10177(h) of the Code.

ORDER

I

The corporate real estate broker licenses and all license rights of Respondent RIVERSIDE CORP under the Real Estate Law are revoked; provided, however, a restricted corporate real estate broker license shall be issued to Respondent RIVERSIDE CORP pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent RIVERSIDE CORP (permitting Respondent to conduct all activities permitted by a broker license) shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. The restricted license issued to Respondent RIVERSIDE CORP may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands

Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent RIVERSIDE CORP shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations, or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

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

5. The restricted license issued to Respondent RIVERSIDE CORP is suspended for a period of sixty (60) days from the date of issuance of said restricted license; provided, however, that if Respondent petitions, thirty (30) days of said suspension (or a portion thereof) shall be stayed upon condition that:

(a.) Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $100.00 for each day of the suspension for a total monetary penalty of $3,000.00.

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

(c.) No further cause for disciplinary action against the real estate license of Respondent occurs within three (3) years from the effective date of the Decision in this matter.

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(d.) If Respondent 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 the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(e.) If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within three (3) years from the effective date of the Decision, the stay hereby granted shall become permanent.

6. Thirty (30) days of said sixty-(60) day suspension shall be stayed upon condition that:

(a) No final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action against Respondent occurred within three (3) years of the effective date of the Decision herein.

(b) Should such a determination be made, the Commissioner may, in his or her discretion, vacate and set aside the stay order, and order the execution of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(c) If no order vacating the stay is issued, and if no further cause for disciplinary action against the real estate license of Respondent occurs within three (3) years from the effective date of the Decision, then the stay hereby granted shall become permanent.

7. Respondent RIVERSIDE CORP, together with Respondent RORY LEE HOELKER, shall, within twenty-four (24) months from the effective date of this Decision, provide evidence satisfactory to the Commissioner that Respondent has reimbursed Teresa Zuccala the sum of $15,500.00. If Respondent fails to satisfy this condition within 24 months from the effective date of this Decision, the Commissioner may order suspension of Respondent's restricted license until Respondent has submitted such evidence that Teresa Zuccala has been so reimbursed.

II

All licenses and licensing rights of Respondent RORY LEE HOELKER under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and Professions Code if, within 90 days from the effective date of the Decision entered pursuant to this Order, Respondent makes application for the restricted license and pays to the Department of Real Estate the appropriate fee therefor.

The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

2. The restricted license issued to Respondent RORY LEE HOELKER may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime

which is substantially related to Respondent's fitness or capacity as a real estate licensee.

3. Respondent RORY LEE HOELKER shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three (3) years have elapsed from the effective date of this Decision.

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

5. Respondent RORY LEE HOELKER shall, within six (6) months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

6. The restricted license issued to Respondent RORY LEE HOELKER is suspended for a period of sixty (60) days from the date of issuance of said restricted license; provided, however, that if Respondent petitions, thirty (30) days of said suspension (or a portion thereof) shall be stayed upon condition that:

(a.) Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of $100.00 for each day of the suspension for a total monetary penalty of $3,000.00.

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

(c.) No further cause for disciplinary action against the real estate license of Respondent occurs within three (3) years from the effective date of the Decision in this matter.

(d.) If Respondent 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 the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(e.) If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within three (3) years from the effective date of the Decision, the stay hereby granted shall become permanent.

7. Thirty (30) days of said sixty-(60) day suspension shall be stayed upon condition that:

(a) No final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action against Respondent occurred within three (3) years of the effective date of the Decision herein.

(b) Should such a determination be made, the Commissioner may, in his

or her discretion, vacate and set aside the stay order, and order the execution of all or any part of the stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(c) If no order vacating the stay is issued, and if no further cause for disciplinary action against the real estate license of Respondent occurs within three (3) years from the effective date of the Decision, then the stay hereby granted shall become permanent.

8. Respondent RORY LEE HOELKER, together with Respondent RIVERSIDE CORP, shall, within twenty-four (24) months from the effective date of this Decision, provide evidence satisfactory to the Commissioner that Respondent has reimbursed Teresa Zuccala the sum of $15,500.00. If Respondent fails to satisfy this condition within 24 months from the effective date of this Decision, the Commissioner may order suspension of Respondent's restricted license until Respondent has submitted such evidence that Teresa Zuccala has been so reimbursed.

February 22, 2012
DATED

MICHAEL B. RICH, Counsel
Department of Real Estate

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* * *

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

RIVERSIDE CORP.
Respondent

2-3-2012
DATED

By: Rory Hoelker
RORY LEE HOELKER
Title: Broker

2-3-2012
DATED

RORY LEE HOELKER, Respondent

Approved as to form and content by counsel for Respondents.

2/8/2012
DATED

JUSTIN DAIN HEIN
Attorney for Respondents

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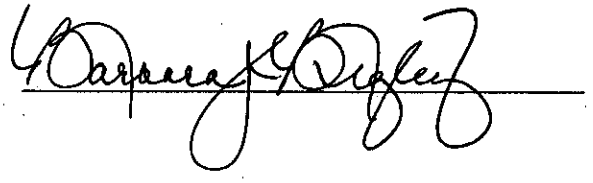
* * *

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter as to Respondent RIVERSIDE CORP and Respondent RORY LEE HOELKER and shall become effective at 12 o'clock noon on APR 16 2012.

IT IS SO ORDERED 3/23/12.

BARBARA J. BIGBY
Acting Real Estate Commissioner



FLG

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FILED
DEC 17 2009
DEPARTMENT OF REAL ESTATE
By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of RIVERSIDE CORP, a California Corporation, RORY LEE HOELKER, and MICHELLE CELESTE PETRUZZELLI, Respondents.	NO. H-5317 SAC ACCUSATION

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent RIVERSIDE CORP, a California Corporation, doing business under the fictitious names of AVALAR REAL ESTATE AND MORTGAGE, AVALAR REAL ESTATE & MORTGAGE NETWORK, AVALAR REALTY, STANFORD RANCH REALTY, SACTOBYOWNER.COM, SACTOBYOWNER, RIVERSIDE PROPERTIES, RIVERSIDE INVESTMENTS, CASH FLOW INVESTMENTS, CASH FLOW PROPERTIES and FOLSOM HILLS REALTY, against Respondent RORY LEE HOELKER, and against Respondent MICHELLE CELESTE PETRUZZELLI formerly known as MICHELLE CELESTE CSEREP, is informed and alleges as follows:

1

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in her official capacity.

2

Respondents RIVERSIDE CORP, RORY LEE HOELKER, and MICHELLE CELESTE PETRUZZELLI are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter "the Code").

3

At all times herein mentioned, Respondent RIVERSIDE CORP, (hereafter "Respondent RIVERSIDE") was and is licensed by the Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

4

At all times herein mentioned, Respondent RORY LEE HOELKER (hereinafter "Respondent HOELKER") was and is licensed by the Department as a real estate broker.

5

At all times herein mentioned, Respondent HOELKER was licensed by the Department as the designated broker/officer of Respondent RIVERSIDE. As said designated Broker/officer, Respondent HOELKER was at all times mentioned herein responsible pursuant to Sections 10159.2 and 10177(h) of the Code for the supervision of the activities of the officers, agents, and employees of, and of the real estate licensees employed by, Respondent RIVERSIDE and of the activities of said corporation for which a real estate license is required.

6

At all times herein mentioned, Respondent MICHELLE CELESTE PETRUZZELLI (hereinafter "Respondent PETRUZZELLI") was and is licensed by the Department as a restricted real estate salesperson employed by Respondent RIVERSIDE as a restricted salesperson licensee.

7

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent RIVERSIDE, such allegation shall be deemed to mean that the officers,

directors, employees, agents and real estate licensees employed by or associated with Respondent RIVERSIDE committed such act or omission while engaged in the furtherance of the business or operations of Respondent RIVERSIDE and while acting within the course and scope of their corporate authority and employment.

8

Within the three year period prior to the filing of this Accusation and at all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Section 10131(d) of the Code, including the operation of and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans to be secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation, and wherein such loans were serviced and payments thereon were collected on behalf of others.

FIRST CAUSE OF ACTION

9

There is hereby incorporated in this First, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 8, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

10

Within the three year period prior to the filing of this Accusation, on or about March 20, 2008, Respondent RIVERSIDE CORP and Respondent PETRUZZELLI, in the course and scope of the licensed activities set forth in Paragraph 8, above, solicited and induced Teresa Zuccala (hereinafter "Lender") to loan $20,000.00 (hereinafter "subject loan") to Ravindar Pratap (hereinafter "Borrower") to be secured by real property at 6330 Cushing Way, Sacramento, California (hereinafter "subject property"), by representing to Lender that the funds would be repaid to lender within 14 days plus 20% interest, and by submitting to Lender a

settlement statement showing costs of $5,500.00 payable to W. P. Investments for services rendered.

11

The representations described in Paragraph 10, above, were false and misleading and were known by Respondents RIVERSIDE and PETRUZZELLI to be false and misleading when made or were made by such Respondents with no reasonable grounds for believing said representations to be true, and/or said Respondents should have known at the time through the exercise of reasonable diligence that such representations were false and misleading. In truth and in fact: 1.) the Lender's $20,000.00 would not be repaid with or without interest by the Borrower within 14 days or at any time thereafter; 2.) Respondents had no certain knowledge and no reason to believe with certainty that Borrower would obtain funds or financing sufficient to repay the $20,000.00 loan within 14 days or at any time thereafter; 3.) the Borrower had no financial capability to repay the subject loan; 4.) beginning on April 1, 2008, and continuing thereafter, Borrower defaulted on his obligation to make monthly mortgage payments to a pre-existing lender holding a senior trust deed encumbering the subject property and lost the property to the senior lender by foreclosure; 5.) W. P. Investments had not rendered any services of any kind with reference to the loan and was not entitled to collect $5,500.00 from the loan proceeds; 6.) Respondent PETRUZZELLI was a stockholder and chief financial officer of W. P. Investments; 7.) Respondent PETRUZZELLI failed to disclose to Lender PETRUZZELLI's personal interest in W. P. Investments; and, 8.) Respondent PETRUZZELLI failed to disclose to Lender that Respondent PETRUZZELLI would claim and receive the $5,500.00 from the loan proceeds for her personal benefit.

12

The acts and omissions of Respondent RIVERSIDE and Respondent PETRUZZELLI described in Paragraphs 10 and 11, above, constitute misrepresentation, fraud, deceit, and dishonest dealing.

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13

Within the three year period prior to the filing of this Accusation, in the course of brokering the subject loan as set forth in Paragraph 10, Respondents RIVERSIDE and PETRUZZELLI failed to provide to Lender a written Lender/Purchaser Disclosure Statement as required by Section 10232.5 of the Code containing all of the information required by that Section, including, but not limited to: the subject property address; estimated fair market value of subject property; age, construction type and improvements on subject property; identity, occupation, employment, income and credit data of borrower; terms of promissory note; information regarding pre-existing encumbrances and liens against subject property; knowledge of any anticipated or expected loan to be secured by the property; loan servicing provisions; information regarding any joint beneficiaries; and, detailed statement of any intended use and disposition of loan funds which the licensee will use or benefit from for other than commissions, fees, and costs and expenses.

14

Within the three year period prior to the filing of this Accusation, in the course of brokering the subject loan as set forth in Paragraph 10, Respondents RIVERSIDE and PETRUZZELLI failed to provide to Lender a copy of a written loan application and a credit report for the Borrower as required by Section 10232.5(a)(6) of the Code

15

Within the three year period prior to the filing of this Accusation, in the course of brokering the subject loan as set forth in Paragraph 10, Respondents RIVERSIDE and PETRUZZELLI failed to provide to the Borrower a Mortgage Lender Disclosure Statement as required by Section 10240 of the Code containing all of the information required under Section 10241 (requiring disclosure of estimated costs and expenses of loan, commissions, origination fees, lien information, estimated insurance costs, taxes due, creditor claims, loan principal, interest rate, loan term, balloon payments, etc.) as signed by the borrower and the broker, and/or failed to maintain for a period of three years a copy of the Mortgage Lender Disclosure

Statement as signed by the borrower and the broker in violation of Section 10148 of the Code (requiring licensed brokers to maintain for three years all transactional documents and records executed by the broker or obtained by broker in connection with any transactions requiring a real estate license).

16

The facts alleged in Paragraphs 10, 11, 12, 13,.14, and 15, above, are grounds for the suspension or revocation of the licenses and licensing rights of Respondent RIVERSIDE and Respondent PETRUZZELLI under the following provisions:

(a) As to Paragraphs 10, 11, and 12, under Sections 10176(a) of the Code (making a substantial misrepresentation);

(b) As to Paragraphs 10, 11, and 12, under Section 10176(b) of the Code (making any false promises of a character likely to influence, persuade or induce);

(c) As to Paragraphs 10, 11, and 12, under Section 10176(g) of the Code (claiming or taking any secret or undisclosed amount of compensation, commission or profit);

(d) As to Paragraphs 10, 11, and 12, under Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing);

(e) As to Paragraphs 10, 11, and 12, under Section 10177(g) of the Code (demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license);

(g) As to Paragraphs 10, 11, and 12, under Section 10177(j) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing);

(h) As to Paragraph 13, under Section 10232.5 of the Code (requiring broker to provide Lender/Purchaser Disclosure Statement to lender) in

conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10, California Code of Regulations);

(i) As to Paragraph 14, under Section 10232.5(a)(6) of the Code (requiring broker to provide loan application and credit report to lender) in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10, California Code of Regulations);

(k) As to Paragraph 15, under Section 10240 of the Code (requiring broker to provide and keep copy of signed Mortgage Lender Disclosure Statement to borrower) in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10, California Code of Regulations); and,

17

The facts alleged in Paragraph 15 are grounds for the suspension or revocation of the license and licensing rights of Respondent RIVERSIDE under Section 10148 of the Code (requiring licensed brokers to maintain for three years all transactional documents and records executed by the broker or obtained by broker in connection with any transactions requiring a real estate license) in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10, California Code of Regulations).

18

The facts alleged in Paragraphs 10, 11, 12, 13, 14, 15, and 16, above, are grounds for the suspension or revocation of the license and licensing rights of Respondent

PETRUZZELLI under Section 10177(k) of the Code (violated any of the terms, conditions or restrictions, and limitations contained in an order granting a restricted license).

SECOND CAUSE OF ACTION

19

There is hereby incorporated in this Second, separate and distinct, Cause of Action, all of the allegations contained in Paragraphs 1 through 18, inclusive, of the Accusation with the same force and effect as if herein fully set forth.

20

At all times above mentioned, Respondent HOELKER was responsible, as the designated broker officer of Respondent RIVERSIDE, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent HOELKER failed to exercise reasonable supervision and control over the mortgage brokering activities of Respondent RIVERSIDE and its licensed employees. In particular, Respondent HOELKER permitted, ratified, and/or caused the conduct described in the First Cause of Action, above, to occur, and failed to take reasonable steps, including but not limited to the review of loan applications and transactional documents, preventing misrepresentations and false statements on transactional documents, failure to provide required lending disclosure statements and credit reports, failure to disclose personal interests of licensee in transaction, failure to disclose secret or undisclosed amount of compensation to licensee, the supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation and its licensed employees with the Real Estate Law (Business and Professions Code Sections 10000 et seq. and Sections 11000 et seq.) and the Commissioner's Regulations (Chapter 6, Title 10, California Code of Regulations) .

21

The acts and/or omissions of Respondent HOELKER as described in Paragraph 19, above, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent HOELKER under the provisions Section 10159.2 of the Code (designated

broker/officer responsible for supervision and control of activities conducted on behalf of corporation by officers, licensed salespersons and employees to secure compliance with the Real Estate Law) and Section 2725 of Chapter 6, Title 10, California Code of Regulations (broker shall exercise reasonable supervision over: licensed employees; establish policies and procedures for compliance with Real Estate Law; supervise transactions requiring a real estate license; trust fund handling; etc.) all in conjunction with Section 10177(d) of the Code and/or of Section 10177(h) of the Code (suspension or revocation for broker or designated broker/officer who fails to exercise reasonable supervision of licensed employees or licensed activities of broker corporation).

MATTERS IN AGGRAVATION

PRIOR PROCEEDING

22

Effective June 8, 1995, in Case No. H-3018 SAC (OAH Case No. N-9408053), the real estate salesperson license of Respondent PETRUZZELLI, formerly known as MICHELLE CELESTE CSEREP, was revoked after hearing, subject to the right to apply for a restricted real estate salesperson license subject to terms and conditions. The real estate salesperson license of Respondent PETRUZZELLI was revoked for violating Section 10176(a) of the Code (making a substantial misrepresentation) and Section 10176(i) of the Code (any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing) for having defrauded a lender.

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

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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.

TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 9th day of December, 2009.