

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0781
5
6

FILED
OCT 10 2006

DEPARTMENT OF REAL ESTATE

By *Conrad Shaver*

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

* * *

10
11 In the Matter of the Accusation of)
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ATVANTAGE GROUP, INC. and DANIEL
ROBERT HOLBROOK,
Respondent.

No. H-3317 SD

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between ATVANTAGE GROUP, INC. and DANIEL ROBERT HOLBROOK (hereinafter "Respondents") and their attorney, Eric R. Ginder, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on October 24, 2005 in this matter:

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 Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act (APA), shall instead and in place thereof be

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

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

6 3. Respondents filed a Notice of Defense pursuant to
7 Section 11505 of the Government Code for the purpose of
8 requesting a hearing on the allegations in the Accusation.
9 Respondents hereby freely and voluntarily withdraw said Notice of
10 Defense. Respondents acknowledge that they understand that by
11 withdrawing said Notice of Defense they will thereby waive their
12 rights to require the Commissioner to prove the allegations in
13 the Accusation at a contested hearing held in accordance with the
14 provisions of the APA, and that they will waive other rights
15 afforded to them in connection with the hearing such as the right
16 to present evidence in defense of the allegations in the
17 Accusation and the right to cross-examine witnesses.

18 4. This stipulation is based on the factual
19 allegations contained in the Accusation. In the interest of
20 expediency and economy, Respondents choose not to contest these
21 factual allegations, but to remain silent and understands that,
22 as a result thereof, these factual statements will serve as a
23 prima facie basis for the "Determination of Issues" and "Order"
24 set forth below. The Real Estate Commissioner shall not be
25 required to provide further evidence to prove such allegations.
26

27 5. This Stipulation and Respondents decision not to

1 contest the Accusation are made for the purpose of reaching an
2 agreed disposition of this proceeding and are expressly limited
3 to this proceeding and any other proceeding or case in which the
4 Department of Real Estate (hereinafter "the Department"), the
5 state or federal government, an agency of this state, or an
6 agency of another state is involved.

7 6. Respondents understand that by agreeing to this
8 Stipulation and Agreement, Respondents agree to pay, pursuant to
9 Section 10148 of the California Business and Professions Code,
10 the cost of the audit which resulted in the determination that
11 Respondent committed the trust fund violation(s) found in
12 Paragraph I, below, of the Determination of Issues. The amount
13 of said costs is \$16,843.96.

14 7. Respondents further understands that by agreeing
15 to this Stipulation and Agreement in Settlement, the findings
16 set forth below in the Determination Of Issues become final, and
17 that the Commissioner may charge said Respondents for the
18 costs of any audit conducted pursuant to Section 10148 of
19 the California Business and Professions Code to determine if
20 the violations have been corrected. The maximum costs of
21 said audit shall not exceed \$16,843.96.

22 8. It is understood by the parties that the Real
23 Estate Commissioner may adopt the Stipulation and Agreement as
24 his decision in this matter thereby imposing the penalty and
25 sanctions on the real estate licenses and license rights of
26 Respondent as set forth in the below "Order". In the event that
27

1 the Commissioner in his discretion does not adopt the Stipulation
2 and Agreement, it shall be void and of no effect, and Respondents
3 shall retain the right to a hearing and proceeding on the
4 Accusation under all the provisions of the APA and shall not be
5 bound by any admission or waiver made herein.

6 9. The Order or any subsequent Order of the Real
7 Estate Commissioner made pursuant to this Stipulation and
8 Agreement shall not constitute an estoppel, merger or bar to any
9 further administrative or civil proceedings by the Department of
10 Real Estate with respect to any matters which were not
11 specifically alleged to be causes for accusation in this
12 proceeding.

13 * * *

14 DETERMINATION OF ISSUES

15 By reason of the foregoing stipulations and waivers and
16 solely for the purpose of settlement of the pending Accusation
17 without a hearing, it is stipulated and agreed that the following
18 determination of issues shall be made:
19

20 I

21 The acts and omissions of Respondents ATVANTAGE GROUP,
22 INC. and DANIEL ROBERT HOLBROOK as described in the Accusation
23 are grounds for the suspension or revocation of Respondents
24 licenses and license rights under the following sections of the
25 Code and Regulations:
26
27

- 1 (a) As to Paragraph VIII, under Sections 10145 and 10229(i) of
2 the Code, and Section 2832 of the Regulations in conjunction
3 with Section 10177(d) of the Code;
- 4 (b) As to Paragraph XIX, under Section 10240 of the Code in
5 conjunction with Section 10177(d) of the Code.
- 6 (c) As to Paragraph XXI(b), under Section 2831 of the
7 Regulations in conjunction with Section 10177(d) of the
8 Code.
- 9 (d) As to Paragraph XXI(c), under Section 2831.1 of the
10 Regulations in conjunction with Section 10177(d) of the
11 Code.
- 12 (e) As to Paragraph XXI(d), under Section 2831.2 of the
13 Regulations in conjunction with Section 10177(d) of the
14 Code.
- 15 (f) As to Paragraph XXII, under Section 2834 of the Regulations
16 in conjunction with Section 10177(d) of the Code.
- 17 (g) As to Paragraph XXIII, under Section 10161.8 of the Code and
18 Section 2715 of the Regulations in conjunction with Section
19 10177(d) of the Code.

20 II

21 The acts and/or omissions of Respondent DANIEL ROBERT
22 HOLBROOK (hereinafter "HOLBROOK") described in the Accusation,
23 constitute failure on the part of HOLBROOK, as designated
24 broker-officer for ATVANTAGE GROUP, INC., to exercise reasonable
25 supervision and control over the licensed activities of
26 ATVANTAGE GROUP, INC. required by Section 10159.2 of the Code,
27 and is cause for the suspension or revocation of HOLBROOK's

1 license and/or license rights under Section 10177(h) of the
2 Code.

3 * * *

4 ORDER

5 I

6 All licenses and licensing rights of Respondent ATVANTAGE
7 GROUP, INC. (hereinafter "ATVANTAGE") under the Real Estate Law
8 are suspended for a period of sixty (60) days from the effective
9 date of this Order; provided, however, that:

10 1) Thirty (30) days of said suspension shall be stayed, upon the
11 condition that ATVANTAGE petition pursuant to Section 10175.2
12 of the Business and Professions Code and pays a monetary
13 penalty pursuant to Section 10175.2 of the Business and
14 Professions Code at a rate of \$100 for each day of the
15 suspension for a total monetary penalty of \$3,000.

16 a) Said payment shall be in the form of a cashier's check or
17 certified check made payable to the Recovery Account of the
18 Real Estate Fund. Said check must be delivered to the
19 Department prior to the effective date of the Order in this
20 matter.

21 b) No further cause for disciplinary action against the Real
22 Estate licenses of ATVANTAGE occurs within two (2) years
23 from the effective date of the decision in this matter.

24 c) If ATVANTAGE fails to pay the monetary penalty as provided
25 above prior to the effective date of this Order, the stay of
26 the suspension shall be vacated as to that Respondent and
27

1 the order of suspension shall be immediately executed, under
2 this Order, in which event the said Respondent shall not be
3 entitled to any repayment nor credit, prorated or otherwise,
4 for the money paid to the Department under the terms of this
5 Order.

6 d) If said Respondent pays the monetary penalty and any other
7 moneys due under this Stipulation and Agreement and if no
8 further cause for disciplinary action against the real
9 estate license of said Respondent occurs within two (2)
10 years from the effective date of this Order, the entire stay
11 hereby granted this Order, as to said Respondent only, shall
12 become permanent.

13 2) The remaining thirty (30) days of said suspension shall be
14 stayed for two (2) years upon the following terms and
15 conditions:

16 a) ATVANTAGE shall obey all laws, rules and regulations
17 governing the rights, duties and responsibilities of a real
18 estate licensee in the State of California; and,

19 b) That no final subsequent determination be made, after
20 hearing or upon stipulation, that cause for disciplinary
21 action occurred within two (2) years from the effective date
22 of this Order. Should such a determination be made, the
23 Commissioner may, in his discretion, vacate and set aside
24 the stay order and reimpose all or a portion of the stayed
25 suspension. Should no such determination be made, the stay
26 imposed herein shall become permanent.

27 3) Pursuant to Section 10148 of the Business and Professions

1 Code, ATVANTAGE shall jointly and severally with HOLBROOK pay
2 the sum of \$16,843.96 for the Commissioner's cost of the audit
3 which led to this disciplinary action. Respondents shall pay
4 such cost within forty-five (45) days of receiving an invoice
5 therefor from the Commissioner. The Commissioner may suspend
6 the ATVANTAGE's license pending a hearing held in accordance
7 with Section 11500, et seq., of the Government Code, if
8 payment is not timely made as provided for herein, or as
9 provided for in a subsequent agreement between the Respondent
10 and the Commissioner. The suspension shall remain in effect
11 until payment is made in full or until Respondent enters into
12 an agreement satisfactory to the Commissioner to provide for
13 payment, or until a decision providing otherwise is adopted
14 following a hearing held pursuant to this condition.

15 4) Pursuant to Section 10148 of the Business and Professions

16 Code, ATVANTAGE shall jointly and severally with HOLBROOK pay
17 the Commissioner's reasonable cost, not to \$16,843.96, for an
18 audit to determine if Respondents have corrected the trust
19 fund violation(s) found in Paragraph I of the Determination of
20 Issues. In calculating the amount of the Commissioner's
21 reasonable cost, the Commissioner may use the estimated
22 average hourly salary for all persons performing audits of
23 real estate brokers, and shall include an allocation for
24 travel time to and from the auditor's place of work.
25 Respondent shall pay such cost within forty-five (45) days of
26 receiving an invoice therefor from the Commissioner detailing
27 the activities performed during the audit and the amount of

1 time spent performing those activities. The Commissioner may
2 suspend ATVANTAGE'S license pending a hearing held in
3 accordance with Section 11500, et seq., of the Government
4 Code, if payment is not timely made as provided for herein, or
5 as provided for in a subsequent agreement between Respondent
6 and the Commissioner. The suspension shall remain in effect
7 until payment is made in full or until Respondent enters into
8 an agreement satisfactory to the Commissioner to provide for
9 payment, or until a decision providing otherwise is adopted
10 following a hearing held pursuant to this condition.

11 II

12 All licenses and licensing rights of Respondent HOLBROOK
13 under the Real Estate Law are suspended for a period of sixty
14 (60) days from the effective date of this Order; provided,
15 however, that:

16 1) Thirty (30) days of said suspension shall be stayed, upon the
17 condition that HOLBROOK petition pursuant to Section 10175.2.
18 of the Business and Professions Code and pays a monetary
19 penalty pursuant to Section 10175.2 of the Business and
20 Professions Code at a rate of \$100 for each day of the
21 suspension for a total monetary penalty of \$3,000.

22 a) Said payment shall be in the form of a cashier's check or
23 certified check made payable to the Recovery Account of the
24 Real Estate Fund. Said check must be delivered to the
25 Department prior to the effective date of the Order in this
26 matter.
27

1 b) No further cause for disciplinary action against the Real
2 Estate licenses of said Respondent occurs within two (2)
3 years from the effective date of the decision in this
4 matter.

5 c) If HOLBROOK fails to pay the monetary penalty as provided
6 above prior to the effective date of this Order, the stay of
7 the suspension shall be vacated as to that Respondent and
8 the order of suspension shall be immediately executed, under
9 this Order, in which event the said Respondent shall not be
10 entitled to any repayment nor credit, prorated or otherwise,
11 for the money paid to the Department under the terms of this
12 Order.

13 d) If HOLBROOK pays the monetary penalty and any other moneys
14 due under this Stipulation and Agreement and if no further
15 cause for disciplinary action against the real estate
16 license of said Respondent occurs within two (2) years from
17 the effective date of this Order, the entire stay hereby
18 granted under this Order, as to said Respondent only, shall
19 become permanent.

20 2) The remaining thirty (30) days of said suspension shall be
21 stayed for two (2) years upon the following terms and
22 conditions:

23 a) HOLBROOK shall obey all laws, rules and regulations
24 governing the rights, duties and responsibilities of a real
25 estate licensee in the State of California; and,

26 b) That no final subsequent determination be made, after
27 hearing or upon stipulation, that cause for disciplinary

1 action occurred within two (2) years from the effective date
2 of this Order. Should such a determination be made, the
3 Commissioner may, in his discretion, vacate and set aside
4 the stay order and reimpose all or a portion of the stayed
5 suspension. Should no such determination be made, the stay
6 imposed herein shall become permanent.

7 3) HOLBROOK shall, within six (6) months from the effective date
8 of this Decision, take and pass the Professional
9 Responsibility Examination administered by the Department
10 including the payment of the appropriate examination fee. If
11 HOLBROOK fails to satisfy this condition, the Commissioner may
12 order suspension of the license until Respondent passes the
13 examination.

14 4) HOLBROOK shall, prior to the effective date of this Decision,
15 submit proof satisfactory to the Commissioner of having taken
16 and successfully completed the continuing education course on
17 trust fund accounting and handling specified in subdivision
18 (a) of Section 10170.5 of the Business and Professions Code.
19 Proof of satisfaction of this requirement includes evidence
20 that HOLBROOK has successfully completed the trust fund
21 account and handling continuing education course within 120
22 days prior to the effective date of the Decision in this
23 matter. If HOLBROOK fails to satisfy this condition, the
24 Commissioner may order the suspension of HOLBROOK'S license
25 until HOLBROOK presents proof that she has successfully
26 completed the trust fund course.

27 5) Pursuant to Section 10148 of the Business and Professions

1 Code, HOLBROOK shall jointly and severally with ATVANTAGE pay
2 the sum of \$16,843.96 for the Commissioner's cost of the audit
3 which led to this disciplinary action. Respondent shall pay
4 such cost within forty-five (45) days of receiving an invoice
5 therefor from the Commissioner. The Commissioner may suspend
6 HOLBROOK'S license pending a hearing held in accordance with
7 Section 11500, et seq., of the Government Code, if payment is
8 not timely made as provided for herein, or as provided for in
9 a subsequent agreement between the Respondent and the
10 Commissioner. The suspension shall remain in effect until
11 payment is made in full or until Respondent enters into an
12 agreement satisfactory to the Commissioner to provide for
13 payment, or until a decision providing otherwise is adopted
14 following a hearing held pursuant to this condition.

15 6) Pursuant to Section 10148 of the Business and Professions
16 Code, HOLBROOK shall jointly and severally with ATVANTAGE pay
17 the Commissioner's reasonable cost, not to exceed \$16,843.96,
18 for an audit to determine if Respondents have corrected the
19 trust fund violation(s) found in Paragraph I of the
20 Determination of Issues. In calculating the amount of the
21 Commissioner's reasonable cost, the Commissioner may use the
22 estimated average hourly salary for all persons performing
23 audits of real estate brokers, and shall include an allocation
24 for travel time to and from the auditor's place of work.
25 Respondent shall pay such cost within forty-five (45) days of
26 receiving an invoice therefor from the Commissioner detailing
27 the activities performed during the audit and the amount of

1 time spent performing those activities. The Commissioner may
 2 suspend HOLBROOK'S license pending a hearing held in
 3 accordance with Section 11500, et seq., of the Government
 4 Code, if payment is not timely made as provided for herein, or
 5 as provided for in a subsequent agreement between Respondent
 6 and the Commissioner. The suspension shall remain in effect
 7 until payment is made in full or until Respondent enters into
 8 an agreement satisfactory to the Commissioner to provide for
 9 payment, or until a decision providing otherwise is adopted
 10 following a hearing held pursuant to this condition.

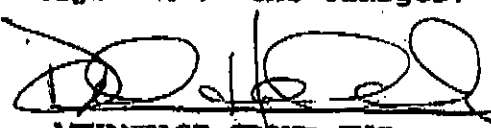
11
 12 6-Sept-06
 DATED

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 12 
 13 TRULY BUCHROE
 14 Counsel for Complainant

14 * * *

15 I have read the stipulation and Agreement, discussed it
 16 with my counsel, and its terms are understood by me and are
 17 agreeable and acceptable to me. I understand that I am waiving
 18 rights given to me by the California Administrative Procedure
 19 Act, and I willingly, intelligently and voluntarily waive those
 20 rights, including the right of requiring the Commissioner to
 21 prove the allegations in the Accusation at a hearing at which I
 22 would have the right to cross-examine witnesses against me and to
 23 present evidence in defense and mitigation of the charges.

24
 25 August 21, 2006
 26 DATED

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 25 
 26 ADVANTAGE GROUP INC.
 27 Respondent

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time spent performing those activities. The Commissioner may suspend HOLBROOK'S license pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED

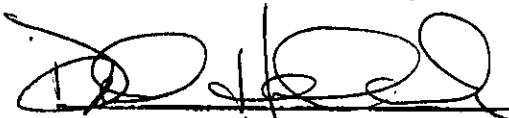
TRULY SUGHRUE
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, discussed it with my counsel, 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, 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.

August 21, 2006

DATED


ADVANTAGE GROUP INC.
Respondent

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August 21, 2006

[Handwritten Signature]

DATED

DANIEL ROBERT HOLBROOK
Respondent

I have reviewed the Stipulation and Agreement as to
form and content and have advised my client accordingly.

DATED

ERIC R. GINDER
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on _____, 2006.

IT IS SO ORDERED _____, 2006.

JEFF DAVI
Real estate Commissioner

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August 21, 2006

Daniel Robert Holbrook

DATED

DANIEL ROBERT HOLBROOK
Respondent

I have reviewed the Stipulation and Agreement as to
form and content and have advised my client accordingly.

8-21-06

Eric R. Ginder

DATED

ERIC R. GINDER
Attorney for respondents

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on OCT 30 2006

IT IS SO ORDERED 10-5, 2006.

JEFF DAVIS
Real estate Commissioner

Jeff Davis

1 TRULY SUGHRUE, Counsel
2 SBN 223266
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0789

FILED
OCT 24 2005

DEPARTMENT OF REAL ESTATE

By 

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

11 * * *

12 In the Matter of the Accusation of)
13)
14 THE ATVANTAGE GROUP, INC.) NO. H- 3317 SD
15 and DANIEL ROBERT HOLBROOK,)
16) ACCUSATION
17 Respondents.)

17 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
18 Commissioner of the State of California, for causes of Accusation
19 against TAGI FINANCE CORPORATION and RICHARD STEPHEN HOLBROOK, is
20 informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22 I

23 Respondents THE ATVANTAGE GROUP, INC. and DANIEL ROBERT
24 HOLBROOK are presently licensed and/or have license rights under
25 the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code (hereafter the Code).

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II

The Complainant, J. CHRIS GRAVES, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent THE ATVANTAGE GROUP, INC. (hereafter TAGI) was licensed by the State of California Department of Real Estate (hereafter the Department) as a real estate broker corporation.

IV

At all times herein mentioned, Respondent DANIEL ROBERT HOLBROOK (hereafter HOLBROOK) was licensed by the Department as an individual real estate broker, and as the designated broker officer of TAGI. At all times herein mentioned, HOLBROOK was the President and owner of one hundred percent of the shares of TAGI, and directed and controlled its activities.

V

Within the last three years, Respondents TAGI and HOLBROOK engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California, for or in expectation of compensation, including but not limited to the operation and conduct of the following:

(a) a mortgage loan brokerage business with the public wherein borrowers, institutional lenders, and private lenders were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged,

1 negotiated, processed, consummated, and serviced on behalf of
2 others; and

3 (b) a property management business with the public,
4 wherein Respondents leased or rented, offered to lease or rent,
5 solicited prospective tenants, collected rents on, and/or managed
6 certain real properties in California.

7 FIRST CAUSE OF ACTION

8 VI

9 The trust funds accepted or received by Respondents
10 during the audit period were deposited or caused to be deposited
11 from time to time into at least five bank accounts, including but
12 not limited to the following accounts:

13 (a) Account #1: Union Bank of California Account No.
14 2300012364, in the name of "The Atvantage Group
15 Inc.," to be used for trust funds, primarily credit
16 report and appraisal fees related to mortgage loan
17 activities;

18 (b) Account #3: Union Bank of California Account No.
19 2300012372, in the name of "The Atvantage Group
20 Inc.," to be used for trust funds, primarily monies
21 from private hard money investors, and monthly
22 payments from borrowers; and also used for deposit of
23 TAGI's own funds to fund loans and other purposes.

24 (c) General Account: Union Bank of California Account
25 No. 2300012380, in the name of "The Atvantage Group
26 Inc.," to be used for commissions and company
27 expenses; and also used for trust fund handling for

1 property management activities such as rental
2 receipts, security deposits, and property-related
3 expenses.

4 VII

5 In connection with the collection and disbursement of
6 trust funds allocated to Account #1, Respondent TAGI failed to
7 deposit and maintain trust funds in a trust account or neutral
8 escrow depository, or to deliver them into the hands of the
9 owners of the funds as required by Section 10145 of the Code in
10 such a manner that as of June 30, 2003, there was a trust fund
11 shortage as to Account #1 in the approximate sum of \$25.00.

12 VIII

13 In connection with the collection and disbursement of
14 trust funds allocated to the General Account, Respondent TAGI
15 failed to deposit and maintain trust funds in a trust account or
16 neutral escrow depository, or to deliver them into the hands of
17 the owners of the funds as required by Section 10145 of the Code
18 in such a manner that as of June 30, 2003, there was a trust fund
19 shortage as to the General Account in the approximate sum of
20 \$11,907.57.

21 IX

22 In connection with the collection and disbursement of
23 trust funds allocated to Account #3, the Department was unable to
24 ascertain Respondent TAGI's accountability for trust funds.
25 Respondent TAGI accepted loan funds from private investors
26 without respect to any specific loan, real property sales
27 contract, or promissory note to be secured directly or indirectly

1 by a specific lien on real property. Respondent TAGI pooled the
2 loan funds in a portfolio, and loaned the trust funds to
3 borrowers showing itself as the lender.

4 X

5 In connection with the pooling of loan funds in
6 Account #3 as alleged above, Respondent TAGI failed to record or
7 cause to be recorded deeds of trust or assignments of deeds of
8 trust, naming as the beneficiary the lender or the lender's
9 nominee other than Respondents or Respondents' nominees, and/or
10 failed to deliver deeds of trust or assignments of deeds of trust
11 to the lenders or beneficiaries with a written recommendation
12 that they be recorded; and instead prepared or recorded deeds of
13 trust in the name of TAGI as the beneficiary on some or all
14 loans.

15 XI

16 In connection with servicing monthly loan payments,
17 Respondent TAGI from time to time advanced its own funds, or
18 funds other than funds received from the borrower of the note to
19 be applied toward a payment to protect the security of the note
20 or contract serviced, without giving written notice to the
21 lender, beneficiary or owner containing the information required
22 by Section 10233.1 of the Code.

23 XII

24 In connection with the collection and disbursement of
25 trust funds allocated to Account #3, Respondent TAGI deposited
26 its own funds into the account, and commingled those principal
27 funds with the trust funds of borrowers and lenders, such that as

1 of June 30, 2003, Respondent TAGI had deposited approximately
2 \$104,455 of its funds during the previous twelve-month period.

3 XIII

4 Respondent TAGI failed to timely prepare and
5 deliver to lenders/investors, or cause to be delivered, an
6 accurate written lender/purchaser disclosure statement
7 required by Section 10232.4 of the Code, prior to each
8 investor becoming obligated to make the loan or purchase the
9 note, prior to TAGI's receipt of funds from each investor,
10 and/or prior to disbursement of the investor's funds for the
11 loan or purchase.

12 XIV

13 In connection with the pooling of loan funds in Account
14 #3 as alleged above, Respondents TAGI and HOLBROOK directly or
15 indirectly obtained the benefit of the trust funds and borrowed
16 and used the funds to invest in loans and purchase real
17 properties, and failed to notify the Department as required by
18 Section 10231.2 of the Code. As of June 30, 2003, there were at
19 least four trust deeds in the portfolio in the name of TAGI or
20 HOLBROOK as trustor.

21 XV

22 As of on or about February 28, 2003, Respondent TAGI
23 negotiated a combination of ten or more qualifying mortgage loan
24 transactions in an aggregate amount of more than one million
25 dollars under Section 10232 of the Code and failed to notify the
26 Department within thirty days thereafter.

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XVI

Within the last three years, in connection with the mortgage loan brokerage business as above alleged, Respondent TAGI failed to prepare and deliver to borrowers, or cause to be delivered, a complete written borrower disclosure statement as required by Section 10240 of the Code within three business days after receipt of a completed written loan application, or prior to the borrower becoming obligated on the note, whichever is earlier; and/or failed to retain executed copies of such statements with the records of the company.

XVII

In connection with the collection and disbursement of trust funds allocated to the General Account as alleged in Paragraph VI(c) above, Respondent TAGI deposited trust funds into the general business account, and commingled those trust funds of borrowers and lenders with the principal monies of the companies.

XVIII

In connection with the receipt and disbursement of trust funds, Respondent TAGI:

- (a) As to Account #1, Account #3, and the General Account, failed to deposit trust funds into one or more trust accounts in the name of Respondent TAGI as trustee at a bank or other financial institution, in conformance with Section 10145 of the Code and Section 2832 of Title 10, California Code of Regulations (hereafter the Regulations)

1 (b) As to property management trust fund handling in
2 the General Account, failed to maintain a written
3 control record of all trust funds received and
4 disbursed containing all information required by
5 Section 2831 of the Regulations, including but not
6 limited to the date of receipt of the trust funds,
7 and a record of trust funds received not placed in
8 the account;

9 (c) As to Account #3 and the General Account, failed
10 to maintain separate beneficiary or transaction
11 records containing all information required by
12 Section 2831.1; and

13 (d) As to Account #1, Account #2, and the General
14 Account, failed to reconcile the balance of
15 separate beneficiary or transaction records with
16 the control record of trust funds received and
17 disbursed at least once a month, and/or failed to
18 maintain a record of such reconciliations for each
19 account as required by Section 2831.2 of the
20 Regulations.

21 XIX

22 Within the last three years, Respondent TAGI authorized
23 or permitted withdrawals to be made from its bank accounts
24 handling trust funds, including but not limited to Account #1,
25 Account #3, and the General Account, on the signatures of Lansing
26 e. Eberling, an officer of TAGI, and Ida Rhem, an employee of
27

1 TAGI, when neither of them was licensed by the Department as a
2 real estate broker or a real estate salesperson. At no time
3 herein did Respondent TAGI have either Eberling or Rhem duly
4 bonded as an employee of Respondent's with the requisite fidelity
5 bond insurance coverage to conduct such trust account activities;
6 or have written authorization from Respondent HOLBROOK, pursuant
7 to Section 2834 of the Regulations.

8 XX

9 Within the last three years, Respondent TAGI failed to
10 timely notify the Department of the termination of employment of
11 certain real estate salesperson licensees, including but not
12 limited to Derric P. Melbourne, Jesus F. Rivas, John O. App, Jack
13 Brunacini, Tamara L. MacDowell, Moses F. Rangel, Sherri L.
14 Shelton, Claudia Troisi, and/or Thomas A. Walters.

15 XXI

16 The acts and/or omissions of Respondent TAGI as alleged
17 above constitute grounds for disciplinary action under the
18 following provisions:

19 (a) As to Paragraphs VI(a), VI(b), VI(c) and XVIII(a),
20 under Sections 10145 of the Code, and Section 2832
21 of the Regulations in conjunction with Section
22 10177(d) of the Code;

23 (b) As to Paragraphs VII and VIII, under Sections
24 10145 of the Code, and Section 2832 of the
25 Regulations in conjunction with Section 10177(d)
26 of the Code;

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- (c) As to Paragraph IX, under Section 10231 of the Code in conjunction with Section 10177(d) of the Code.
- (d) As to Paragraph X, under Section 10234 of the Code in conjunction with Section 10177(d) of the Code.
- (e) As to Paragraph XI, under Section 10233.1 of the Code in conjunction with Section 10177(d) of the Code.
- (f) As to Paragraphs XII and XVIII, under Section 10176(e) of the Code, and Section 2835 of the Regulations in conjunction with Section 10177(d) of the Code.
- (g) As to Paragraph XIII, under Section 10232.4 of the Code in conjunction with Section 10177(d) of the Code.
- (h) As to Paragraph XIV, under Section 10231.2 of the Code in conjunction with Section 10177(d) of the Code.
- (i) As to Paragraph XV, under Section 10232 of the Code in conjunction with Section 10177(d) of the Code.
- (j) As to Paragraph XVI, under Section 10240 of the Code in conjunction with Section 10177(d) of the Code.
- (k) As to Paragraph XVIII(b), under Section 2831 of the Regulations in conjunction with Section 10177(d) of the Code.

1 (l) As to Paragraph XVIII(c), under Section 2831.1 of
2 the Regulations in conjunction with Section
3 10177(d) of the Code.

4 (m) As to Paragraph XVIII(d), under Section 2831.2 of
5 the Regulations in conjunction with Section
6 10177(d) of the Code.

7 (n) As to Paragraph XIX, under Section 2834 of the
8 Regulations in conjunction with Section 10177(d)
9 of the Code.

10 (o) As to Paragraph XX, under Section 10161.8 of the
11 Code and Section 2715 of the Regulations in
12 conjunction with Section 10177(d) of the Code.

13 SECOND CAUSE OF ACTION

14 XXI

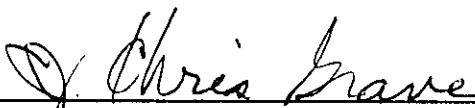
15 At all times mentioned herein, Respondent HOLBROOK
16 failed to exercise reasonable supervision and control of the
17 activities of TAGI for which a real estate license is required.
18 In particular, HOLBROOK caused, permitted, and/or ratified the
19 conduct described above, and/or failed to take reasonable steps
20 to implement effective supervision that would have prevented it,
21 including but not limited to: (a) the establishment of policies,
22 rules, procedures, and systems to review, oversee, inspect and
23 manage the business including but not limited to the handling of
24 trust funds, threshold and multi-lender loan requirements, and
25 (b) the establishment of systems for monitoring compliance with
26 such policies, rules, procedures, and systems, to ensure
27 compliance by the company with the Real Estate Law.

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XXII

The acts and/or omissions of HOLBROOK as alleged above constitute grounds for disciplinary action under the provisions of Section 10177(h) of the Code and Section 2725 of the Regulations.

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
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 7th day of October, 2005.