

ORIGINAL

FILED
AUG 29 2007

DEPARTMENT OF REAL ESTATE

P. O. Box 187007

Sacramento, CA 95818-7007

Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By Anna Shaver

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

) NO. H-3488 SD

PROVIDERS FINANCIAL, INC.,)

and MARK J. McINTYRE,)

) STIPULATION AND AGREEMENT

) Respondents.)

It is hereby stipulated by and between Respondents PROVIDERS FINANCIAL, INC., a corporation, and MARK J. McINTYRE (hereinafter "Respondents"), acting by and through their counsel Mary E. Work, 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 on April 10, 2006, and the First Amended Accusation filed on May 3, 2007, in this matter (hereinafter "the First Amended Accusation"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and

H-3488 SD

PROVIDERS FINANCIAL, INC.
MARK J. McINTYRE

1 Respondents at a formal hearing on the First Amended
2 Accusation, which hearing was to be held in accordance with the
3 provisions of the Administrative Procedure Act (APA), shall
4 instead and in place thereof be submitted solely on the basis
5 of the provisions of this Stipulation and Agreement.

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

10 3. On April 20, 2006, Respondents filed a Notice of
11 Defense pursuant to Section 11505 of the Government Code for
12 the purpose of requesting a hearing on the allegations in the
13 First Amended Accusation. Respondents hereby freely and
14 voluntarily withdraw said Notice of Defense. Respondents
15 acknowledge that Respondents understand that by withdrawing
16 said Notice of Defense Respondents will thereby waive
17 Respondents' right to require the Commissioner to prove the
18 allegations in the First Amended Accusation at a contested
19 hearing held in accordance with the provisions of the APA and
20 that Respondents will waive other rights afforded to
21 Respondents in connection with the hearing such as the right to
22 present evidence in defense of the allegations in the First
23 Amended Accusation and the right to cross-examine witnesses.

24 4. Respondents, pursuant to the limitations set forth
25 below, hereby admit that the factual allegations in the First
26 Amended Accusation pertaining to Respondents are true and
27 correct and stipulates and agrees that the Real Estate

1 Commissioner shall not be required to provide further evidence
2 of such allegations.

3 5. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation and Agreement as
5 his decision in this matter, thereby imposing the penalty and
6 sanctions on Respondents' real estate licenses and license
7 rights as set forth in the "Order" below. In the event that
8 the Commissioner in his discretion does not adopt the
9 Stipulation and Agreement, it shall be void and of no effect,
10 and Respondents shall retain the right to a hearing and
11 proceeding on the First Amended Accusation under all the
12 provisions of the APA and shall not be bound by any admission
13 or waiver made herein.

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

19 DETERMINATION OF ISSUES

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

25 I

26 The acts and omissions of Respondent PROVIDERS
27 FINANCIAL, INC., described in the First Cause of Action of the

1 First Amended Accusation are grounds for the suspension or
2 revocation of the licenses and license rights of Respondent
3 under the provisions of Section 10137 of the Business and
4 Professions Code (hereinafter "the Code"). The acts and
5 omissions of Respondent PROVIDERS FINANCIAL, INC., described in
6 the Second Cause of Action of the First Amended Accusation are
7 grounds for the suspension or revocation of the licenses and
8 license rights of Respondent under the provisions of Section
9 10177(g) of the Code.

10 II

11 The acts and omissions of Respondent MARK J. McINTYRE,
12 described in the Third Cause of Action of the First Amended
13 Accusation are grounds for the suspension or revocation of the
14 licenses and license rights of Respondent under Section 10159.2
15 of the Code in conjunction with Section 10177(d) of the Code and
16 Section 10177(h) of the Code.

17 ORDER

18 I

19 A. All licenses and licensing rights of Respondent
20 PROVIDERS FINANCIAL, INC., under the Real Estate Law are
21 suspended for a period of ninety (90) days from the effective
22 date of the Decision herein; provided, however:

23 1. If Respondent PROVIDERS FINANCIAL, INC.,
24 petitions, forty-five (45) days of the ninety (90) day
25 suspension shall be stayed upon the condition that:

26 (a) Respondent PROVIDERS FINANCIAL, INC., pays a
27 monetary penalty pursuant to Section 10175.2 of the Code of

1 \$10,000.00.

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

7 (c) If Respondent PROVIDERS FINANCIAL, INC., fails to
8 pay the monetary penalty in accordance with the terms and
9 conditions of the Decision, the Commissioner may, without a
10 hearing, vacate and set aside the stay order, and order the
11 immediate execution of all or any part of the stayed suspension.

12 (d) No final subsequent determination be made, after
13 hearing or upon stipulation, that cause for disciplinary action
14 against Respondent PROVIDERS FINANCIAL, INC., occurred within
15 two (2) years of the effective date of the Decision herein.
16 Should such a determination be made, the Commissioner may, in
17 his or her discretion, vacate and set aside the stay order, and
18 order the execution of all or any part of the stayed suspension,
19 in which event the Respondent shall not be entitled to any
20 repayment nor credit, prorated or otherwise, for money paid to
21 the Department under the terms of this Decision.

22 (e) If Respondent PROVIDERS FINANCIAL, INC., pays the
23 monetary penalty and if no further cause for disciplinary action
24 against the real estate license of Respondent occurs within two
25 (2) years from the effective date of the Decision herein, then
26 the stay hereby granted shall become permanent.

27 2. Forty-five (45) days of said ninety (90) day

1 suspension shall be stayed upon condition that:

2 (a) No final subsequent determination be made, after
3 hearing or upon stipulation, that cause for disciplinary action
4 against Respondent PROVIDERS FINANCIAL, INC., occurred within
5 two (2) years of the effective date of the Decision herein.

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

13 (c) If no order vacating the stay is issued, and if no
14 further cause for disciplinary action against the real estate
15 license of Respondent PROVIDERS FINANCIAL, INC., occurs within
16 two (2) years from the effective date of the Decision, then the
17 stay hereby granted shall become permanent.

18 II

19 A. All licenses and licensing rights of Respondent
20 MARK J. McINTYRE under the Real Estate Law are suspended for a
21 period of ninety (90) days from the effective date of the
22 Decision herein; provided, however:

23 1. If Respondent MARK J. McINTYRE petitions, forty-
24 five (45) days of the ninety (90) day suspension shall be stayed
25 upon the condition that:

26 (a) Respondent MARK J. McINTYRE pays a monetary
27 penalty pursuant to Section 10175.2 of the Code of \$10,000.00.

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

6 (c) If Respondent MARK J. McINTYRE fails to pay the
7 monetary penalty in accordance with the terms and conditions of
8 the Decision, the Commissioner may, without a hearing, vacate
9 and set aside the stay order, and order the immediate execution
10 of all or any part of the stayed suspension.

11 (d) No final subsequent determination be made, after
12 hearing or upon stipulation, that cause for disciplinary action
13 against Respondent MARK J. McINTYRE occurred within two (2)
14 years of the effective date of the Decision herein. Should such
15 a determination be made, the Commissioner may, in his or her
16 discretion, vacate and set aside the stay order, and order the
17 execution of all or any part of the stayed suspension, in which
18 event the Respondent shall not be entitled to any repayment nor
19 credit, prorated or otherwise, for money paid to the Department
20 under the terms of this Decision.

21 (e) If Respondent MARK J. McINTYRE pays the monetary
22 penalty and if no further cause for disciplinary action against
23 the real estate license of Respondent occurs within two (2)
24 years from the effective date of the Decision herein, then the
25 stay hereby granted shall become permanent.

26 2. Forty-five (45) days of said ninety (90) day
27 suspension shall be stayed upon condition that:

1 (a) No final subsequent determination be made, after
2 hearing or upon stipulation, that cause for disciplinary action
3 against Respondent MARK J. McINTYRE occurred within two (2)
4 years of the effective date of the Decision herein.

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

12 (c) If no order vacating the stay is issued, and if no
13 further cause for disciplinary action against the real estate
14 license of Respondent MARK J. McINTYRE occurs within two (2)
15 years from the effective date of the Decision, then the stay
16 hereby granted shall become permanent.

17
18
19 6/15/07
20 DATED

Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

21 * * *

22 I have read the Stipulation and Agreement and its
23 terms are understood by me and are agreeable and acceptable to
24 me. I understand that I am waiving rights given to me by the
25 California Administrative Procedure Act (including but not
26 limited to Sections 11506, 11508, 11509, and 11513 of the
27 Government Code), and I willingly, intelligently, and

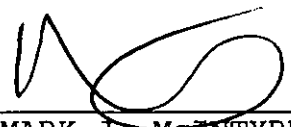
1 voluntarily waive those rights, including the right of requiring
2 the Commissioner to prove the allegations in the First Amended
3 Accusation at a hearing at which I would have the right to
4 cross-examine witnesses against me and to present evidence in
5 defense and mitigation of the charges.

6
7 PROVIDERS FINANCIAL, INC.,
Respondent

8
9 6/5/07
10 DATED

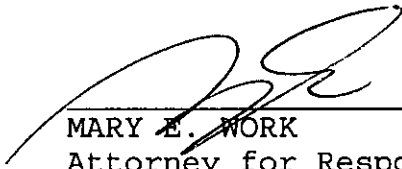
By: 
11 MARK J. MCINTYRE,
12 Designated Broker/Officer

13 6/5/07
14 DATED


15 MARK J. MCINTYRE,
16 Respondent

17 Approved as to form and content by counsel for
18 Respondent PROVIDERS FINANCIAL, INC., and Respondent MARK J.
19 McINTYRE.

20 6-12-07
21 DATED


22 MARY E. WORK
23 Attorney for Respondents

24 ///

25 //

26 /

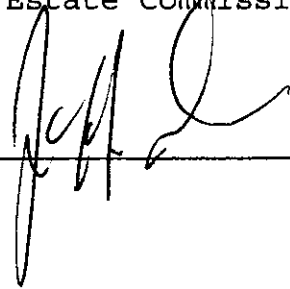
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter as to Respondent
PROVIDERS FINANCIAL, INC., and Respondent MARK J. McINTYRE,
shall become effective at 12 o'clock noon on
SEP 19 2007

IT IS SO ORDERED 8-9, 2007.

JEFF DAVI
Real Estate Commissioner



FILED

MAY 03 2007

DEPARTMENT OF REAL ESTATE

By S. E. O.

MICHAEL B. RICH, Counsel
State Bar Number 82457
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)	
PROVIDERS FINANCIAL INC., and)	H-3488 SD
MARK J. MCINTYRE,)	
Respondents.)	<u>FIRST AMENDED</u> <u>ACCUSATION</u>

The Complainant, JOSEPH AIU, a Deputy Real Estate Commissioner of the State of California, as and for an Accusation herein against PROVIDERS FINANCIAL INC., and MARK J. MCINTYRE, is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

I

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

II

Respondents PROVIDERS FINANCIAL INC., and MARK J. MCINTYRE, are presently licensed and/or have license rights

1 under the Real Estate Law, Part 1 of Division 4 of the
2 California Business and Professions Code (hereinafter the Code).

3 III

4 At all times herein mentioned, Respondent PROVIDERS
5 FINANCIAL INC. (hereinafter "Respondent PFI") was and now is
6 licensed by the Department of Real Estate of the State of
7 California (hereinafter "the Department") as a corporate real
8 estate broker.

9 IV

10 At all times herein mentioned, Respondent MARK J.
11 McINTYRE (hereinafter "Respondent McINTYRE") was and is licensed
12 by the Department of Real Estate (hereafter "Department") as an
13 individual real estate broker.

14 V

15 Respondent McINTYRE was and is licensed by the
16 Department as the designated broker/officer of Respondent PFI.
17 As said designated officer/broker, Respondent McINTYRE was at
18 all times mentioned herein responsible pursuant to Section
19 10159.2 of the Code for the supervision of the activities of the
20 officers, agents, real estate licensees and employees of
21 Respondent PFI for which a real estate license is required.

22 VI

23 Whenever reference is made in an allegation in this
24 Accusation to an act or omission of Respondent PFI, such
25 allegation shall be deemed to mean that the officers, directors,
26 employees, agents and real estate licensees employed by or
27 associated with Respondent PFI committed such act or omission

1 while engaged in the furtherance of the business or operations
2 of Respondent PFI and while acting within the course and scope
3 of their corporate authority and employment.

4 VII

5 At no time mentioned herein did the Department license
6 FRANK C. MALLONEE (hereinafter "MALLONEE") as either a real
7 estate broker or as a real estate salesperson.

8 VIII

9 Within the three year period next preceding to the
10 filing of this Accusation and at all times herein mentioned,
11 Respondent PFI engaged in the business of, acted in the capacity
12 of, advertised or assumed to act as a real estate broker within
13 the State of California, including the business of the
14 soliciting borrowers and lenders or negotiating loans in
15 connection with loans secured directly or collaterally by liens
16 on real property, wherein such loans were brokered, arranged,
17 processed, and/or consummated on behalf of others pursuant to
18 Section 10131(d) of the Code, for or in expectation of
19 compensation.

20 IX

21 Within the three year period next preceding to the
22 filing of this Accusation and at all times herein mentioned,
23 Respondent PFI employed MALLONEE to perform and engage in the
24 activities set forth in Paragraph VII, above, for which a real
25 estate license is required, for or in expectation of
26 compensation.

27 ///

X

Within the three year period next preceding to the filing of this Accusation and at all times herein mentioned, in the course of the activities described in Paragraphs VIII and IX, above, MALLONEE, while unlicensed, solicited borrowers and lenders and/or negotiated loans secured directly or collaterally by liens on real property, wherein such loans were brokered, arranged, processed, and/or consummated on behalf of others pursuant to Section 10131(d) of the Code, for or in expectation of compensation, including, but not limited to, the following:

1.) Real property: 3350 - 54th Street, San Diego,
California

Client/Borrower: Phong Phillippe Tuan Mai

Lender: Washington Mutual Bank FA

Application date: 7/24/03

Escrow: San Diego Escrow Company, escrow #022730-
SO

Closed: 8/29/03

2.) Real property: 2613 Mission Blvd., #7, San Diego,
California

Client/Borrower: Jason Dawson

Lender: Washington Mutual Bank FA

Application date: 7/31/03

Escrow: Stewart Title of California

Closed: 10/28/03

3.) Real property: 27411 Compostella, Mission Viejo,
California

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

②

2

4

E

10

□

6

2

10

11 11

—

22

5.1

15

16
17
18
19

22

D 1

22
23
24
25
26

XIII

Within the three year period next preceding to the filing of this Accusation, in order to induce PHONG PHILLIPPE TUAN MAI (hereinafter "MAI") to accept and become obligated on a promissory note secured by real property known as 3350 - 54th Street, San Diego, California, Respondent PFI, by and through MALLONEE, represented to MAI that Respondent PFI would be able to provide to MAI a 3/1 ARM interest only purchase money loan having a principal sum of \$237,500.00, at an annual rate of 3.875%, with an interest only monthly payment of \$766.93. At close of escrow, Respondent PFI submitted a promissory note and trust deed for MAI to execute, having a principal sum of \$285,000.00, a 3/1 ARM at an annual rate of 3.875%, fully amortized with monthly payments of principal and interest at \$1,340.18 per month. In order to induce MAI to accept this fully amortized adjustable rate promissory note and trust deed at the close escrow, Respondent PFI, by and through MALLONEE, represented to MAI that Respondents would immediately refinance the loan to the desired 3/1 ARM interest only monthly payment loan.

XIV

Within the three year period next preceding to the filing of this Accusation, in reliance upon the express and/or implied representations Respondent PFI, as described in Paragraph XIII, above, MAI executed execute the promissory note and trust deed for the \$285,000.00 3/1 ARM loan at an annual

///

1 rate of 3.875%, fully amortized with monthly payments of
2 principal and interest at \$1,340.18 per month.

3 XV

4 The representations of Respondent PFI, described in
5 Paragraph XIII, above, were false or misleading and were known
6 by Respondents to be false or misleading when made or were made
7 by Respondents with no reasonable grounds for believing said
8 representations to be true. In truth and in fact Respondent PFI
9 had no intention of refinancing, or could not refinance, the
10 fully amortized loan for an interest only loan.

11 XVI

12 Respondents failed to disclose to MAI the true facts
13 that Respondent PFI had no intention of refinancing, or could
14 not refinance, the fully amortized loan for an interest only
15 loan.

16 XVII

17 Had MAI known the true facts, he would not have
18 executed the promissory note and trust deed for the \$285,000.00
19 3/1 ARM loan at an annual rate of 3.875%, fully amortized with
20 monthly payments of principal and interest at \$1,340.18 per
21 month.

22 XVIII

23 Respondent's acts and omissions described above
24 constituted the substantial misrepresentation of a material fact
25 and fraud and dishonest dealing.

26 XIX

27 The facts alleged above are grounds for the suspension

1 or revocation of the licenses of Respondents under Sections
2 10176(a), 10176(b), 10176(i), 10177(g) and/or 10177(j) of the
3 Code.

4 THIRD CAUSE OF ACCUSATION

5 XX

6 There is hereby incorporated in this Third, separate
7 and distinct, Cause of Accusation, all of the allegations
8 contained in Paragraphs I through XIX, inclusive, of the First
9 and Second Causes of Accusation with the same force and effect
10 as if herein fully set forth.

11 XXI

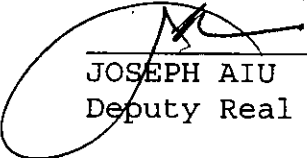
12 At all times above mentioned, Respondent McINTYRE was
13 responsible, as the designated broker/officer of Respondent PFI,
14 for the supervision and control of the activities conducted on
15 behalf of the corporation by its officers and employees.
16 Respondent McINTYRE failed to exercise reasonable supervision
17 and control over the property management and employment
18 activities of Respondent PFI. In particular, Respondent
19 McINTYRE permitted, ratified and/or caused the conduct described
20 in the First and Second Causes of Accusation, above, to occur,
21 including but not limited to the employment of unlicensed
22 persons to conduct licensed acts and making misrepresentations
23 to loan applicants, and failed to take reasonable steps,
24 including the implementation of policies, rules, procedures, and
25 systems, to ensure the compliance of Respondent PFI with the
26 Real Estate Law.

27 ///

XXII

The above acts and/or omissions of Respondent McINTYRE constitute grounds for suspension or revocation of his real estate broker license under the provisions of Section 10177(h) of the Code and/or Section 10159.2(a) of the Code in conjunction with Section 10177(d) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent 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 applicable provisions of law.


JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 30 day of April, 2007.

1 under the Real Estate Law, Part 1 of Division 4 of the
2 California Business and Professions Code (hereinafter the Code).

3 III

4 At all times herein mentioned, Respondent PROVIDERS
5 FINANCIAL INC. (hereinafter "Respondent PFI") was and now is
6 licensed by the Department of Real Estate of the State of
7 California (hereinafter "the Department") as a corporate real
8 estate broker.

9 IV

10 At all times herein mentioned, Respondent MARK J.
11 McINTYRE (hereinafter "Respondent McINTYRE") was and is licensed
12 by the Department of Real Estate (hereafter "Department") as an
13 individual real estate broker.

14 V

15 Respondent McINTYRE was and is licensed by the
16 Department as the designated broker/officer of Respondent PFI.
17 As said designated officer/broker, Respondent McINTYRE was at
18 all times mentioned herein responsible pursuant to Section
19 10159.2 of the Code for the supervision of the activities of the
20 officers, agents, real estate licensees and employees of
21 Respondent PFI for which a real estate license is required.

22 VI

23 Whenever reference is made in an allegation in this
24 Accusation to an act or omission of Respondent PFI, such
25 allegation shall be deemed to mean that the officers, directors,
26 employees, agents and real estate licensees employed by or
27 associated with Respondent PFI committed such act or omission

1 while engaged in the furtherance of the business or operations
2 of Respondent PFI and while acting within the course and scope
3 of their corporate authority and employment.

4 VII

5 At no time mentioned herein did the Department license
6 FRANK C. MALLONEE (hereinafter "MALLONEE") as either a real
7 estate broker or as a real estate salesperson.

8 VIII

9 Within the three year period next preceding to the
10 filing of this Accusation and at all times herein mentioned,
11 Respondent PFI engaged in the business of, acted in the capacity
12 of, advertised or assumed to act as a real estate broker within
13 the State of California, including the business of the
14 soliciting borrowers and lenders or negotiating loans in
15 connection with loans secured directly or collaterally by liens
16 on real property, wherein such loans were brokered, arranged,
17 processed, and/or consummated on behalf of others pursuant to
18 Section 10131(d) of the Code, for or in expectation of
19 compensation.

20 IX

21 Within the three year period next preceding to the
22 filing of this Accusation and at all times herein mentioned,
23 Respondent PFI employed MALLONEE to perform and engage in the
24 activities set forth in Paragraph VII, above, for which a real
25 estate license is required, for or in expectation of
26 compensation.

27 ///

1 X

2 Within the three year period next preceding to the
3 filing of this Accusation and at all times herein mentioned, in
4 the course of the activities described in Paragraphs VIII and
5 IX, above, MALLONEE, while unlicensed, solicited borrowers and
6 lenders and/or negotiated loans secured directly or collaterally
7 by liens on real property, wherein such loans were brokered,
8 arranged, processed, and/or consummated on behalf of others
9 pursuant to Section 10131(d) of the Code, for or in expectation
10 of compensation, including, but not limited to, the following:

11 1.) Real property: 3350 - 54th Street, San Diego,
12 California

13 Client/Borrower: Phong Phillippe Tuan Mai

14 Lender: Washington Mutual Bank FA

15 Application date: 7/24/03

16 Escrow: San Diego Escrow Company, escrow #022730-SO

17 Closed: 8/29/03

18 2.) Real property: 2613 Mission Blvd., #7, San Diego,
19 California

20 Client/Borrower: Jason Dawson

21 Lender: Washington Mutual Bank FA

22 Application date: 7/31/03

23 Escrow: Stewart Title of California

24 Closed: 10/28/03

25 3.) Real property: 27411 Compostella, Mission Viejo,
26 California

27 Client/Borrower: James B. Joyce

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

2

3

4

5

6
7

9

0

..

14

15
16
17
18

19

20

21
22
23
24
25

26

27

1 filing of this Accusation, in order to induce PHONG PHILLIPPE
2 TUAN MAI (hereinafter "MAI") to accept and become obligated on a
3 promissory note secured by real property known as 3350 - 54th
4 Street, San Diego, California, Respondent PFI, by and through
5 MALLONEE, represented to MAI that Respondent PFI would be able
6 to provide to MAI a 3/1 ARM interest only purchase money loan
7 having a principal sum of \$237,500.00, at an annual rate of
8 3.875%, with an interest only monthly payment of \$766.93. At
9 close of escrow, Respondent PFI submitted a promissory note and
10 trust deed for MAI to execute, having a principal sum of
11 \$285,000.00, a 3/1 ARM at an annual rate of 3.875%, fully
12 amortized with monthly payments of principal and interest at
13 \$1,340.18 per month. In order to induce MAI to accept this
14 fully amortized adjustable rate promissory note and trust deed
15 at the close escrow, Respondent PFI, by and through MALLONEE,
16 represented to MAI that Respondents would immediately refinance
17 the loan to the desired 3/1 ARM interest only monthly payment
18 loan.

19 XIV

20 Within the three year period next preceding to the
21 filing of this Accusation, in reliance upon the express and/or
22 implied representations Respondent PFI, as described in Paragraph
23 XIII, above, MAI executed execute the promissory note and trust
24 deed for the \$285,000.00 3/1 ARM loan at an annual rate of
25 3.875%, fully amortized with monthly payments of principal and
26 interest at \$1,340.18 per month.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XV

The representations of Respondent PFI, described in Paragraph XIII, above, were false or misleading and were known by Respondents to be false or misleading when made or were made by Respondents with no reasonable grounds for believing said representations to be true. In truth and in fact Respondent PFI had no intention of refinancing, or could not refinance, the fully amortized loan for an interest only loan.

XVI

Respondents failed to disclose to MAI the true facts that Respondent PFI had no intention of refinancing, or could not refinance, the fully amortized loan for an interest only loan.

XVII

Had MAI known the true facts, he would not have executed the promissory note and trust deed for the \$285,000.00 3/1 ARM loan at an annual rate of 3.875%, fully amortized with monthly payments of principal and interest at \$1,340.18 per month.

XVIII

Respondent's acts and omissions described above constituted the substantial misrepresentation of a material fact and fraud and dishonest dealing.

///
///
///
///

1 XIX

2 The facts alleged above are grounds for the suspension
3 or revocation of the licenses of Respondents under Sections
4 10176(a), 10176(b), 10176(i), 10177(g) and/or 10177(j) of the
5 Code.

6 THIRD CAUSE OF ACCUSATION

7 XX

8 There is hereby incorporated in this Third, separate
9 and distinct, Cause of Accusation, all of the allegations
10 contained in Paragraphs I through XIX, inclusive, of the First
11 and Second Causes of Accusation with the same force and effect
12 as if herein fully set forth.

13 XXI

14 At all times above mentioned, Respondent McINTYRE was
15 responsible, as the designated broker/officer of Respondent PFI,
16 for the supervision and control of the activities conducted on
17 behalf of the corporation by its officers and employees.
18 Respondent McINTYRE failed to exercise reasonable supervision
19 and control over the property management and employment
20 activities of Respondent PFI. In particular, Respondent
21 McINTYRE permitted, ratified and/or caused the conduct described
22 in the First, Second Causes of Accusation, above, to occur, and
23 failed to take reasonable steps, including but not limited to
24 the use of a fictitious business name, the employment of persons
25 to conduct licensed acts, employment of salesperson licensees,
26 and the implementation of policies, rules, procedures, and

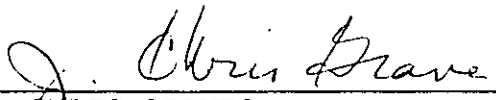
27 ///

1 systems to ensure the compliance of Respondent PFI with the Real
2 Estate Law.

3 XXII

4 The above acts and/or omissions of Respondent
5 McINTYRE constitute grounds for suspension or revocation of his
6 real estate broker license under the provisions of Section
7 10177(h) of the Code and/or Section 10159.2(a) of the Code in
8 conjunction with Section 10177(d) of the Code.

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

16
17 
18 J. CHRIS GRAVES
Deputy Real Estate Commissioner

19 Dated at San Diego, California,
20 this 24th day of February, 2006.