

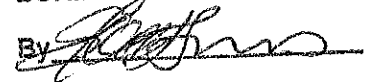
FILED

JUL 13 2016

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By 

In the Matter of the Accusation of

GRAND PACIFIC MORTGAGE INC.;
and STEVEN ROBERT VANDERHEI,

Respondent.

CalBRE No. H-04723 SD

OAH No. 2015061042

DECISION

The CORRECTED Proposed Decision dated June 13, 2016, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision.

Multiple locations, all references to "Global Pacific Mortgage" should be changed to read "Grand Pacific Mortgage".

Multiple locations, all references to "Global Pacific Realty" should be changed to read "Grand Pacific Realty".

The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the

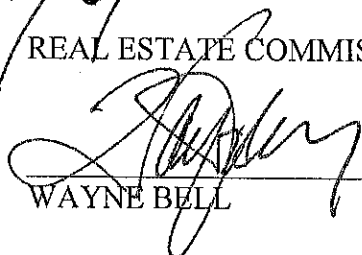
Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's
Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on AUG 03 2016.

IT IS SO ORDERED

7/8/2016

REAL ESTATE COMMISSIONER


WAYNE BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GRAND PACIFIC MORTGAGE, INC. and
STEVEN ROBERT VANDERHEI,

Respondents.

Case No. H-04723-SD

OAH No. 2015061042

CORRECTED PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 21, 2016, in San Diego, California.

Cheryl D. Keily, Counsel, represented Veronica Kilpatrick, complainant, a Deputy Real Estate Commissioner with the Bureau of Real Estate.

D.W. Duke, Attorney at Law, represented Steven Vanderhei and Grand Pacific Mortgage, Inc., respondents.

The matter was submitted on March 21, 2016.

On May 31, 2016, counsel for complainant filed with the Office of Administrative Hearings (OAH) an application for technical changes to the Proposed Decision pursuant to Government Code section 11518.5 and California Code of Regulations, title 1, section 1048, subdivision (a). Specifically, counsel asked that the order in the proposed decision address the finding at paragraph 15 in the Legal Conclusions section that "[c]ause does not exist to find that respondent Grand Pacific Mortgage was engaged in the business of a real estate broker while not in good standing with the Office of the Secretary of State in violation of Section 10159.2."

On June 1, 2016, OAH issued a Notice of No Action Taken on Application for Change in Proposed Action because complainant did not include a proof of service documenting that the request for a corrected decision had been served on respondent. On June 9, 2016, complainant resubmitted the application for a corrected decision and included proof that the request for a corrected decision was served on respondent on June 9, 2016.

The ORDER should be changed to add the following language: "The accusation against Grand Pacific Mortgage, Inc. is dismissed."

The application is granted.

FACTUAL FINDINGS

Jurisdiction

1. The bureau issued respondent a real estate salesman license, License No. B/01255438, on March 10, 1999, and a real estate broker license on March 9, 2002. Respondent's broker's license expiration date is October 5, 2018. From January 1, 2011, to December 31, 2011, respondent held a Mortgage Loan Originator (MLO) license endorsement, ID #236323. On January 1, 2012, the MLO was terminated. On March 17, 2015, the MLO license endorsement was re-issued.

Respondent is the designated officer of Grand Pacific Mortgage, Inc. The corporation's license was originally issued on October 19, 2014, and the corporation was identified as doing business as Grand Pacific Realty on December 23, 2005. The Company MLO license endorsement was approved on December 8, 2010, and terminated on January 1, 2012. Grand Pacific Realty's identification with the bureau was cancelled on October 19, 2012. According to the bureau's licensure certification, the corporation license was renewed on January 11, 2013, with respondent being listed as the designated officer. The corporation license is scheduled to expire on January 10, 2017.

On June 1, 2010, as recorded by the Secretary of State, the California Franchise Tax Board suspended the powers, rights and privileges of Global Pacific Mortgage, Inc. This suspension has remained in effect throughout the relevant period.

2. On June 2, 2015, complainant filed the accusation in her official capacity. The accusation alleged five causes for discipline relating to \$16,500 in check payments elderly consumer Joelle C. delivered to respondent between August 22, 2014, and October 1, 2014: the first cause of action alleges that respondent engaged in substantial misrepresentation, fraud and/or dishonest dealing in violation of Code sections 10176, subdivision (a), 10176, subdivision (b), 10177, subdivision (d), 10176, subdivision (i), and/or 10177, subdivision (j); the second cause of action alleges that respondent engaged in unlicensed mortgage loan originator activity in violation of Section 10166.02, subdivision (b); the third cause of action alleges that respondent collected an illegal advance fee in violation of Section 10085.6; the fourth cause of action alleges that respondent failed to exercise the supervision and control of respondent entity Grand Pacific Mortgage as required under Code section 10159.2 and California Code of Regulations, title 10, section 2725; and the fifth cause of action alleges that under California Code of Regulations, title 10, section 2742, subdivision (c), and Section

10177, subdivisions (d) and (f), respondent Grand Pacific's real estate license and license rights should be revoked or suspended.¹

3. Respondent timely filed a Notice of Defense.

Respondent's Dealings with Joelle C.

4. Respondent worked as a mortgage consultant for about one year at Wells Fargo Bank in San Marcos. During this time, and in this capacity, he came to know a 71-year-old woman, Joelle C., who went to Wells Fargo to modify the mortgage for her San Marcos home. Respondent left his employment with Wells Fargo while Ms. C.'s home mortgage modification was still pending because, as he testified, he was having financial problems due to his wife's illness from cancer and the mortgage modification process took time to complete. As a result, he was unable to earn his commissions timely.

While at Wells Fargo, respondent documented Ms. C.'s contact information, along with the contact information of about six other Wells Fargo clients whom he described at the hearing as his clients. He restarted his real estate business, Global Pacific Realty, soon after he left Wells Fargo. He said he communicated with Ms. C. because they were friends and he wanted to follow-up with her regarding her mortgage modification. In fact, as he stated at the hearing in this matter, respondent sought to maintain contact with Ms. C. because he recognized her as a good business prospect because of the assets in her bank account and his need to develop his real estate practice.

5. Between August 22, 2014, and October 1, 2014, Ms. C. wrote \$16,500 in checks to respondent and to his real estate company, Global Pacific Realty, which he cashed. Ms. C. was suffering from Alzheimer's disease and dementia at this time.² She now resides in an assisted living facility in Louisiana. When respondent was visiting Ms. C. at her home, she was about nine months in arrears on her mortgage.

6. Respondent obtained the checks when he visited Ms. C. at her home on the dates identified on the checks: August 22, August 28, September 18, and October 1, 2014. Ms. C. wrote the following checks to respondent and his company:

- On August 22, 2014, \$2,500 to respondent Vanderhei;

¹ All references are to the Business and Professions Code and to California Code of Regulations, title 10.

² A neurologist assessed Mrs. C., based on a brain MRI study done in November 2014, with brain functioning loss "most consistent with Alzheimer's dementia." A protective order sealing this record was issued at complainant's request. Respondent did not oppose the request.

- On August 28, 2014, \$2,500 to respondent Grand Pacific Realty;
- On September 18, 2014, \$2,500 to respondent Vanderhei;
- On October 1, 2014, \$4,500 to respondent Grand Pacific Realty;
- On October 1, 2014, \$4,500 to respondent Vanderhei.

7. In the memorandum portion of the October 1 check to respondent Vanderhei, Ms. C. wrote "Service Rendered." Respondent testified he did not ask Ms. C. to write "Service Rendered." At the time, respondent said he was helping Ms. C. with an unspecified problem with her homeowner's association (HOA); providing information to Ms. C, who was interested in buying a home next door to the home she owned; and mailing one of her mortgage payments to the bank. He said he ran "comps," comparable home prices in her area, for Mrs. C. in connection with her interest in buying the home next door. He also ascertained who owned the property for her. He said he called both the HOA and Wells Fargo from Mrs. C's home on speaker phone to talk to HOA and bank representatives. He said Mrs. C. asked him to mail her mortgage check to Wells Fargo, which he did.

8. Respondent described his contact with Ms. C. as a friendly effort to follow-up with a client. Exactly what he meant by describing her as a client was not clear. He could not remember whether she had called him, but he said she asked him to come by and look at some paperwork. When he went to her home, he said he saw a document Wells Fargo sent to Ms. C. that approved the mortgage modification and, because it was approved, he said he was not involved in counseling her or advising her concerning the mortgage modification.

9. During his visits with Ms. C., he discussed his wife's cancer; how "expensive it was"; and her family. He denied Ms. C. was forgetful or confused on those visits. Ms. C. told respondent she was sympathetic because she had had a hysterectomy. She also told respondent her son, Kevin, had problems with drug addiction and she was involved in watching his children.

10. Respondent said the checks Ms. C. gave him were loans even though there were no terms for these loans and no time period specified for repayment. Respondent said Ms. C. was sympathetic because of his wife's illness and she offered to help him. She wanted to pay him cash. But, he insisted Ms. C. provide him with checks to document her payments. Respondent also said the payment Ms. C. gave him in the amount of \$4,500 for "Service Rendered" was for his providing help with her HOA problem and for running real estate home price comparables for properties in her area due to her interest in buying the home next door to her. Later, in his testimony, respondent said he chose to consider the \$4,500 sum a loan along with the \$12,000 in other payments Ms. C. gave him.

11. Ms. C's son, Kevin, learned his mother had paid respondent \$16,500 after he received a text from his aunt that said a suspicious man was at his mother's house and she

was concerned. According to his testimony and a declaration admitted under Government Code section 11514, Kevin went to his mother's house and found respondent sitting at a table with his mother. Her check book was out and opened; he saw a handwritten note in his mother's writing that said "withdraw CDs and savings"; and respondent and his mother were on a call on speaker phone with an unknown party. As soon as Kevin entered the house, respondent ended the phone call. Respondent told Kevin he was helping Ms. C. with her mortgage and was trying to get problems with her mortgage straightened out. Kevin believed he saw documents in his mother's house relating to a home mortgage modification.

12. Subsequently, Kevin discovered his mother had withdrawn all her money from her accounts and put the money into a cashier's check. The cashier's check was never found. His mother was not able to tell him why she did this and he believed she did not know the reason because of her mental condition. Over a three month period, working with the bank, Kevin was able to get the bank to cancel the cashier's check and the money was deposited back into her account.

13. During his efforts to have the money from the cashier's check returned, Kevin learned his mother had written the checks to respondent that are at issue in this matter. When he asked his mother why she wrote the checks, she told him respondent was helping her with her mortgage. It was at this time that he learned his mother was nine months in arrears on her mortgage payment and her house was in foreclosure. He said his mother thought everything was fine; she didn't realize she hadn't paid her mortgage in nine months. He described his mother's mental state at this time as forgetful. Once he returned the money she deposited into the cashier's check back to her account, he paid the mortgage arrears.

14. Once Kevin learned his mother had paid respondent \$16,500, he and his sister contacted respondent, who met them at a coffee shop in San Marcos in early November 2014. When asked why he took the money from their mother, respondent was very vague and very nervous. He said he was helping her with her mortgage and he was a "mortgage guy." Respondent appeared apologetic; admitted that he took about "\$11,000" from their mother; told Kevin that he knew what he did was wrong; and said he would try to get the money returned to her, although he did not give any assurance of this. Respondent offered the pink slip to his car, which Kevin declined. Respondent did not tell Kevin the money he received from Ms. C. was a loan. Subsequently, Kevin met a second time with respondent; respondent said he would return the money during that meeting.

15. On March 4, 2016, respondent paid Ms. C.'s son and daughter \$16,500 to reimburse the money he received from their mother.

Respondent's Testimony, Mitigation and Rehabilitation Evidence

16. Respondent said he apologized to Kevin for his conduct. He emphasized in his testimony that when he went to Ms. C's home he helped her with a problem she had with her homeowner's association and with her mortgage payments. Respondent did not recall whether he initiated the contact with her. Respondent said he mailed one mortgage check for

Ms. C. by certified mail and contacted the HOA and to help her resolve the unspecified problem with the HOA. He was able to talk to the HOA and Wells Fargo because he was on speaker at Ms. C's house with Ms. C. on the phone. In exchange for his assistance in helping her with her HOA problem and for running home price comparables, she paid him \$4,500. As noted, respondent said he chose to consider this money a loan along with the \$12,000 Ms. C. loaned him.

Respondent testified he is active in charitable organizations through his church and said he has fed the homeless twice every week for the last four years.

Respondent's testimony was only partially credible. His claim that Ms. C. loaned him \$12,000 was not credible considering her diminished mental state; the fact there were no terms for the loan; respondent's statement to Ms. C.'s children that he knew what he had done was wrong; the fact that he did not mention that Ms. C. had loaned him the money during his conversation with Ms. C.'s children; and the circumstances under which the checks were written and provided to him, which suggest Ms. C. wrote the checks and delivered the checks to respondent at his instruction. For the same reasons, his claim that Ms. C. paid him for his efforts related to the resolution of her HOA problem and for obtaining home price comparables was not credible.

17. Ron McLeish testified on respondent's behalf as a character witness. He has known respondent for the last six or seven years through church. At this church Mr. McLeish has run a program that feeds the homeless. Respondent has been involved in that program for the last four years. Mr. McLeish described respondent as a person with a good heart who is truthful and doesn't take advantage of others.

Respondent's Arguments

18. Respondent argued that discipline was not warranted because he did not engage in dishonest dealing, misrepresentation, concealment, or have any intent to defraud Ms. C., or engage in any other misconduct. He further argued that he did not engage in negotiations relating to Ms. C.'s loan modification as negotiations are defined under California Code of Regulations, Title 10, section 2841.

In his trial brief respondent stated he "had a very viable opportunity to complete a real estate transaction on a totally unrelated property, which would have enabled (respondent) to pay back the majority of the amount owed within a couple of months of borrowing the money from (Ms. C.)." Respondent stressed that he agreed to pay back the money when he met Kevin and his sister at their request, including the "\$12,000" he borrowed and the \$4,500 "he was paid for services rendered." Respondent otherwise flatly denied the allegations contained in the other causes of action; he claimed the money he borrowed from Ms. C. did not constitute mortgage loan origination activity; he claimed he only performed "clerical" tasks concerning a unilateral pre-approved loan modification relating to the \$4,500 Ms. C. paid him for "services rendered"; and he argued that no disciplinary action is warranted against him because he did not engage in any wrongdoing for failing to supervise Global

Mortgage. In the alternative, respondent orally argued that at most two months of "probation" was justified.

Evaluation of Evidence

19. Respondent took advantage of Ms. C. when she was not able to look after her own affairs by soliciting and obtaining five checks from her over a two month period that totaled \$16,500. The checks were payable to respondent and to his real estate company, Global Pacific Realty. Ms. C. wrote three checks that were payable to respondent and to his real estate company in the amount of \$2,500 when he visited her on August 22, August 28, and September 18 and wrote two checks in the amount of \$4,500 when he visited her on October 1. On this date, one check was payable to Global Pacific Realty and one check was payable to respondent with the notation "Service Rendered." Even assuming he did not tell her what to write in the notation, respondent must have suggested that Ms. C. write the checks in these specific amounts, and he must have directed her to make them payable either to himself or to Global Realty. Respondent did not explain why the three checks were written to him and two checks were written to Global Pacific Realty.

When respondent was taking money from Ms. C., Ms. C. was not in a financial position to give her money away. She was nine months in arrears on her mortgage payments and was facing foreclosure; she had placed all of her savings into a cashier's check that was missing; she was forgetful and was assessed at the time with brain functioning consistent with Alzheimer's disease and dementia. Respondent's testimony that Ms. C. loaned him the \$12,000 was not credible in light of these facts and in light of the credible testimony of Ms. C.'s son that respondent told him what he did was wrong and wanted to return the money he took from Ms. C. In that conversation respondent did not characterize or describe the money Ms. C. gave respondent as a loan.

No distinction is made between the \$12,000 respondent said Ms. C. loaned him and the \$4,500 check she wrote to him on October 1 bearing the notation "Service Rendered." Respondent most likely suggested Ms. C. write this notation. That he deemed this sum a "loan" at the hearing along with the \$12,000 was not a magnanimous gesture on his part, but a recognition that no reasonable person would believe he earned this sum considering Ms. C.'s limited ability to look after her interests and the circumstances under which the check was written.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof in this matter is on complainant to show by clear and convincing evidence to a reasonable certainty that respondent's license should be suspended or revoked. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-56.)

Duties of a Real Estate Broker and Designated Officer of A Real Estate Broker Corporation

2. The duties of a real estate broker include "sell[ing], offer[ing] to sell, buy[ing] or offer[ing] to buy, solicit[ing] or obtain[ing] listing of, [and] solicit[ing] prospective sellers or purchasers of . . . real property." (Bus. & Prof. Code, § 10131, subd. (a).)

3. A designated officer of a corporate broker licensee has the duty to supervise the conduct of persons acting on behalf of the corporation. (Bus. & Prof. Code, § 10159.2.) A corporation licensed shall not engage in the business of a real estate broker while not in good standing with the Office of the Secretary of State. (Cal. Code Regs., tit. 10, § 2742, subd. (c). A broker shall exercise reasonable supervision over his salespersons. (Cal. Code Regs., tit. 10, § 2725.)

Duties of a Mortgage Loan Originator

4. A mortgage loan originator is an individual who takes a residential loan application or offers or negotiates terms of a residential mortgage loan application for compensation or gain. (Bus. & Prof. Code, § 10166.01, subd. (b)(1).) Negotiation is defined under California Code of Regulations, title 10, section 2841, subdivision (a), as follows:

(a) The term "negotiation" as used in Section 10133.1(c) of the Code does not include any of the limited activities described as follows when done by an employee of a real estate broker under the control, direction and supervision of the broker:

(1) Preparing and designing advertising relating to loan transactions for broker review and written approval prior to its distribution, circulation, use or publication.

(2) Distributing, circulating, using or publishing preprinted brochures, flyers, fact sheets or other written materials relating to loans secured by real property which the broker can make or negotiate and which have been reviewed and approved in writing by the broker prior to their being distributed, circulated or published. Materials subject to this subdivision may not contain the name, address or telephone number of the nonlicensed employee.

(3) Providing written factual information about loan terms, conditions or qualification requirements to a prospective borrower that has been either prepared by the broker, or reviewed and approved in writing by the broker. A nonlicensed employee may discuss such information with a prospective borrower in general terms, but may not provide counseling or advice to a prospective borrower.

- (4) Notifying a prospective borrower of the information needed in order to complete a loan application without providing counseling or advice to a prospective borrower.
- (5) Entering information provided by the prospective borrower on a pre-printed application form without providing counseling or advice to a prospective borrower.
- (6) Entering information provided by a prospective borrower or third party into a preformatted computer database.
- (7) Accepting and providing a receipt on behalf of a broker for funds received from a prospective borrower for credit or appraisal fees.
- (8) Preparing and mailing requests for verification of employment, verification of deposits, credit reports or appraisal reports. Obtaining such reports for transmission to the broker.
- (9) Assembling, under the direction of the broker, materials obtained in the course of a loan transaction for submission to a prospective lender or loan committee, providing the final determination as to completeness or compliance is made by the broker.
- (10) Communicating with a service provider in connection with a loan transaction to determine when reports or other information needed concerning any aspect of the transaction will be delivered, or when certain services will be performed or completed.
- (11) Mailing, delivering, picking up, or arranging the mailing, delivery, or picking up of documents or instruments related to the loan transaction, including obtaining signatures to the documents or instruments from principals, parties or service providers in connection with the loan transaction, as long as the nonlicensed employee does not interpret or explain the content, relevance, significance or effect of the document or signature and such documents or instruments have been reviewed and approved in writing by the broker.
- (12) Contacting a prospective lender to determine the status of a loan application.

(13) Responding to an inquiry or notifying a prospective borrower or his or her agent of the status of the loan application as long as the nonlicensed employee does not interpret or explain the relevance, significance or effect of that status. A nonlicensed employee may communicate omissions to a party or principal to the loan as long as the nonlicensed employee does not interpret or explain the relevance or significance of those omissions.

(14) Preparing and completing documents and instruments under the supervision and direction of the broker if the final documents or instruments will be or have been reviewed and approved in writing by the broker.

(15) Arranging or making appointments for third party service providers to enter the real property securing the loan, or arranging or making appointments for the prospective borrower or lender to meet with the broker, lender or other party or service provider in connection with the loan.

5. No person may engage in business as a mortgage loan originator unless he or she is licensed as a real estate licensee and has obtained a mortgage loan originator endorsement. (Bus. & Prof. Code, § 10166.02, subd. (b)). It is unlawful for any licensee who negotiates a residential mortgage loan modification to claim, demand, receive, collection or contract an advance fee as defined under 10026. (Bus. & Prof. Code, § 10085.6)

Applicable Statutes Concerning Fraud, Misrepresentation and Dishonest Dealing

6. A real estate licensee's license may be temporarily suspended or permanently revoked if the licensee engages in conduct identified under Business and Professions Code section 10176. Business and Professions Code section 10176, subdivisions (a), (b) and (i), prohibits a licensee in the course of his duties from making any substantial misrepresentation, making false promises of a character likely to influence, persuade, or induce, or engaging in conduct which constitutes fraud or dishonest dealing.

7. A real estate licensee may be subject to discipline for conduct identified under Business and Professions Code section 10177. Business and Professions Code section 10177, subdivision (d), authorizes the suspension or revocation of a real estate licensee for "willfully" disregarding or violating the Real Estate Laws or the Commissioner's Regulations.

8. Business and Professions Code section 10177, subdivision (j), authorizes the suspension or revocation of a real estate license for conduct that constitutes fraud or dishonest dealing.

Case Law Addressing Dishonest Dealing

9. California courts have considered the term “dishonesty” within various statutory schemes and have relied on the common understanding involving fraud, deception, betrayal, faithlessness; absence of integrity; or a disposition to cheat, deceive, or defraud. (*Chodur v. Edmonds* (1985) 174 Cal.App.3d 565, 570, holding that the term “dishonest dealing” is not void for vagueness.)

Fraud and dishonesty are closely related. Fraud is defined as a dishonest stratagem. It may consist in the misrepresentation or the concealment of material facts or in a statement of fact made with consciousness of its falsity. It is not essential that the person charged with fraud should have received any benefit therefrom. The key is predicated upon the fact that another has been misled to his prejudice and not on the fact that the individual profited by his wrong. (*Fort v. Board of Medical Quality Assurance* (1982) 136 Cal.App.3d 12, 19.)

Cause Exists to Discipline Respondent's License for Dishonest Dealing and Fraud

10. Cause is established to find that respondent violated Business and Professions Code sections 10176, subdivision (i), and 10177, subdivision (j), and permanently revoke his license. Respondent engaged in deceptive, dishonest and fraudulent conduct in the course of his duties as a licensee with respect to his dealings with elderly consumer, Joelle C.

Under the guise of helping Ms. C. purchase a second property near the home where she lived, respondent took advantage of her. He gained her trust and confidence by discussing his wife's cancer with her, mentioning how “expensive [his wife's cancer care] was”; and talking with her about her own family issues. He then, over a close to two month period, convinced her to give him \$16,500 in checks payable to him and to his real estate company, Global Pacific Realty, on August 22, August 28, September 18 and October 1, 2014. Ms. C. was having substantial problems looking after her own affairs due to her declining mental capacity at the time. She was nine months in arrears on her home mortgage payments and seemed unaware of this; she had placed all her savings into a cashier's check that was missing and she could not tell her son why she did this, or what happened to the check; and her son described her general mental condition as forgetful. On November 1, 2014, a neurologist diagnosed her with Alzheimer's disease and dementia.

By the manner in which the checks were written and their very specific amounts, it was clear that respondent actively solicited these payments from Ms. C., who was susceptible to respondent's influence. He collected checks from her at her home on August 22, August 28, September 18, and October 1, with each date on a check corresponding to a date respondent visited Ms. C. at her home. When Ms. C.'s son confronted respondent at his mother's home, he saw respondent sitting at a table with his mother, whose checkbook was open. The checks on August 22, August 28, and September 18, were in the amount of \$2,500; the two checks on October 1st were in the amount of \$4,500. The checks in the amount of \$2,500 were payable to respondent and to his real estate company, Global Pacific Realty. On October 1st, Ms. C. made the check payable for \$4,500 to respondent on October

1, 2014, for "Service Rendered" at the same time she wrote a second date check payable for \$4,500 to Global Pacific Realty.

Respondent gained Ms. C.'s confidence and took money from her in the course of his duties as a real estate licensee. Respondent solicited Ms. C., ostensibly, as a prospective purchaser of a real estate property and, as he testified, towards this end, he obtained comparable home prices in the area and ascertained who owned the property.³ He admitted he contacted Ms. C. as part of his effort to restart his real estate business after he left Wells Fargo. Saliently, Ms. C. wrote two of the checks to respondent in the name of his real estate company, "Global Pacific Realty," on August 28, 2014, and October 1, 2014.

Respondent admitted to respondent's children that what he did was wrong, and he did not deny taking advantage of their mother when they confronted him. He told them that he would pay the money back.

Contrary to respondent's claims, Ms. C. did not loan him the money. No terms of repayment supported a loan, and he did not tell Ms. C.'s children that the money was a loan when they confronted him. Ms. C. did not agree to pay him \$4,500 for helping her with an unspecified HOA problem and for running comparables for home prices in her neighborhood in light of her diminished mental capacity and the facts and circumstances under which the \$4,500 check was written. Respondent's claims to the contrary were nothing more than an effort to justify taking money from Ms. C. when she was unable to take care of her own financial affairs.

11. Cause was not established to find that respondent made a substantial misrepresentation or a false promise of a character likely to influence, persuade, or induce engaged violation of Section 101776, subdivision (a) and (b). No evidence was introduced to conclude that respondent made a misrepresentation or false promise to Ms. C.

Cause Does Not Exist to Find that Respondent Engaged in Unlicensed MLO Activity

12. Cause does not exist to find that respondent performed work for Ms. C. as a mortgage loan originator in violation of Business and Professions Code section 10166.02, subdivision (b), when respondent did not hold mortgage loan originator license endorsements. The evidence does not show that respondent took Ms. C.'s residential loan application or offered or negotiated terms of a residential mortgage loan application for compensation or gain. The evidence shows that Ms. C.'s loan modification was already approved when respondent went to Ms. C.'s home in August to October 2014.

³ Section 10133, subdivision (a), provides that the duties of a licensed broker include soliciting prospective purchasers of real estate. Respondent solicited Ms. C. as a potential purchaser of real estate, even though it was questionable whether Ms. C. was in a position to purchase a second property, considering that she was in nine months in arrears on her own mortgage and her mental capacity.

Cause Does Not Exist To Find that Respondent Collected an Unlawful Advance Fee for MLO Activity

13. Cause does not exist to find that respondent claimed, demanded, received, or collected an advance fee in connection with Ms. C.'s residential loan modification application in violation of Section 10085.6. As found, respondent did not take Ms. C.'s residential loan application or offer or negotiate terms of a residential mortgage loan application for compensation or gain.

Cause Does Not Exist to Find that Respondent Failed to Supervise the Activities of Global Pacific Mortgage

14. Cause does not exist to find that respondent, as designated officer of Global Pacific Mortgage, Inc., failed to supervise the conduct of persons acting on behalf of the corporation in violation of Business and Professions Code section 10159.2. On June 1, 2010, the Franchise Tax Board suspended Global Pacific Mortgage's rights as a corporate entity and no evidence was offered to show that this suspended status ever changed, although it is noted that Global Mortgage's license certification with the bureau was renewed on January 11, 2013, and is set to expire on January 10, 2017. Regardless of the Global Pacific Mortgage's identification with the bureau, because Global Pacific Mortgage has no rights or powers as a corporate entity as a matter of law, respondent did not violate Section 10159.2.

Cause Does not Exist to Find that Respondent Grand Pacific Mortgage Was Engaged in the Business of a Real Estate Broker While Not in Good Standing

15. Cause does not exist to find that respondent Grand Pacific Mortgage was engaged in the business of a real estate broker while not in good standing with the Office of the Secretary of State in violation of Section 10159.2. The evidence does not show that respondent Grand Pacific Mortgage, as distinct from the entity Grand Pacific Realty, performed work as a real estate broker when respondent procured Ms. C. as potential purchaser of real estate. Grand Pacific Realty's identification with the bureau was cancelled as of October 19, 2012, and the bureau licensure certification does not indicate whether it was reinstated.

Rehabilitation

16. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Discussion Regarding the Degree of Discipline

17. Complainant established cause to permanently revoke respondent's real estate broker's license by clear and convincing evidence. In his capacity as a real estate licensee, respondent gained the trust of an elderly consumer who was unable to attend competently to her own financial affairs. Over a period lasting almost two months, respondent took advantage of her by taking \$16,500 from her. Respondent did not fully acknowledge his misconduct and it was only recently, well after the present accusation was filed, that he reimbursed Ms. C.'s family for his wrongful taking. Belated restitution, under threat of disciplinary proceedings, is not helpful to respondent. (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 59; *Fitzpatrick v. State Bar* (1977) 20 Cal.3d 73.) Respondent's belated reimbursement is not persuasive evidence of rehabilitation. The serious nature of his misconduct does not allow for a different conclusion.

Evaluation Regarding Costs

18. Complainant requested investigation costs totaling \$1,757.75, pursuant to Business and Professions Code Section 10106. In connection with this application, complainant submitted declarations of costs signed by Ms. Keily. These costs are deemed reasonable considering the factors mentioned in California Code of Regulations, title 1, section 1042, subdivision (b)(2). Based upon this declaration, and consistent with the factors articulated in *Zukerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, reasonable costs of investigation and enforcement of this matter are found to be \$500. This represents deductions due to the dismissal of four of the causes of action and considering respondent's financial hardship as addressed in the decision. Respondent is advised that this amount must be paid prior to the reinstatement of any licensing rights, pursuant to section 10106, subdivision (g)(1).

ORDER

1. The accusation against Grand Pacific Mortgage, Inc. is dismissed.
2. All licenses and licensing rights of respondent Steven Robert Vanderhei under the Real Estate Law are permanently revoked.
3. Respondent Vanderhei shall pay to the Bureau of Real Estate \$500 for costs associated with its enforcement of this matter.

DATED: June 13, 2016

DocuSigned by:

Abraham Levy

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ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings