

FILED
NOV 18 1988

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

- - - - -

In the Matter of the Accusation of)	No. H-5200 SF
PASQUALE DANIEL LUNETTA,)	N 25164
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On December 15, 1983, an Amended Decision was rendered herein revoking the real estate broker license of respondent but granting respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to respondent on April 9, 1984, and respondent has operated as a restricted licensee without cause for disciplinary action against him since that time.

On April 18, 1988, respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

/ / / / /

1 I have considered the petition of respondent
2 and the evidence and arguments in support thereof. Respondent
3 has demonstrated to my satisfaction that he meets the
4 requirements of law for the issuance to him of an unrestricted
5 real estate broker license and that it would not be against the
6 public interest to issue said license to him.

7 NOW, THEREFORE, IT IS ORDERED that respondent's
8 petition for reinstatement is granted and that a real estate
9 broker license be issued to him if he satisfies the following
10 conditions within six months from the date of this order:

11 1. Submittal of a completed application and payment
12 of the fee for a real estate broker license.

13 2. Submittal of evidence of having, since the most
14 recent issuance of an original or renewal real estate license,
15 taken and successfully completed the continuing education
16 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
17 for renewal of a real estate license.

18 This Order shall be effective immediately.

19 DATED: 11-15-98
20

21
22 JAMES A. EDMONDS, JR.
23 Real Estate Commissioner
24
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27

COPY

FILED
NOV 25 1985

DEPARTMENT OF REAL ESTATE

By *Mary A. Morello*
Mary A. Morello

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of) No. H-5200 SF
PASQUALE DANIEL LUNETTA,) N 25164
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On December 15, 1983, an Amended Decision was rendered herein revoking the real estate broker license of respondent.

On March 19, 1985, respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered respondent's petition and the evidence and arguments in support thereof. Insufficient time has elapsed since respondent's commission of the acts that resulted in revocation of his broker license to warrant reinstatement of a plenary license that would allow respondent to deal with the public without restitution.

1 NOW, THEREFORE, IT IS ORDERED that respondent's
2 petition for reinstatement of his real estate broker license is
3 denied.

4 This Order shall be effective at 12 o'clock noon on
5 December 16 , 1985.

6 DATED: 11-20-85 .

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8 JAMES A. EDMONDS, JR.
9 Real Estate Commissioner

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1 JOHN K. VAN DE KAMP, Attorney General
2 of the State of California
3 RICHARD F. FINN
4 Deputy Attorney General
5 350 McAllister Street, Room 6000
6 San Francisco, California 94102
7 Telephone: (415) 557-0653

FILED
DEC 19 1983

DEPARTMENT OF REAL ESTATE

8 Attorneys for the Real Estate Commissioner
9 of the State of California

By Roshni R. Kalidin
Roshni R. Kalidin

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA

13 PASQUALE DANIEL LUNETTA,) No. 570664-0
14 NORTH AMERICAN CAPITAL)
15 CORP., a California)
16 corporation, PACIFIC)
17 CAPITAL INVESTMENTS, INC.,) STIPULATION FOR SETTLEMENT
18 a California corporation,)
19 Petitioners,)
20 v.)
21 THE DEPARTMENT OF REAL)
22 ESTATE OF THE STATE OF)
23 CALIFORNIA,)
24 Respondent.)

25 It is hereby stipulated by and between the parties
26 hereto that:

27 1. The Amended Decision attached hereto as exhibit A
be adopted by the Commissioner of Real Estate in the matter of
the accusation of Pasquale Daniel Lunetta, North American Capital
Corp., and Pacific Capital Investments, Inc.;

//

2. Pasquale Daniel Lunetta shall not apply for the restricted real estate broker's license provided for in the Amended Decision, Order section II(2) before 85 days from the effective date of the Amended Decision;

3. Petitioner shall, within 10 days of the issuance of the Amended Decision of the Real Estate Commissioner, dismiss this action with prejudice;

4. Each party shall bear its own costs.

DATED:

9/23/83

By:

PASQUALE DANIEL LUNETTA

DATED:

9/23/83

NORTH AMERICAN CAPITAL CORP.
California Corporation

BY:

DATED:

9/23/83

PACIFIC CAPITAL INVESTMENTS, INC.
California Corporation

BY:

DATED:

9/23/83

BOWIE, BORT & BRUEGMANN

BY:

DAVID J. BOWIE, ESQ.

Attorney for Petitioners

DATED:

12/5/83

JOHN K. VAN DE KAMP
Attorney General

BY:

RICHARD F. FINN
Deputy Attorney General

Attorneys for Real Estate
Commissioner of the State of
California.

2.

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL CORP.,)
and)
PACIFIC CAPITAL INVESTMENTS,)
INC.,)
Respondents.)

No. H-5200 SF

N 18776

FILED
DEC 19 1983

DEPARTMENT OF REAL ESTATE

By *Roshni R. Kalidin*
Roshni R. Kalidin

AMENDED DECISION

This matter was heard before George R. Coan, Administrative Law Judge, State of California, Office of Administrative Hearings, at San Francisco, California, on September 16, 17 and December 13, 1982.

Stephen W. Thomas, Counsel, represented the Department of Real Estate.

Respondent Pasquale Daniel Lunetta appeared and represented himself.

Edgar J. Lana, attorney, appeared for respondents North American Capital Corp., and Pacific Capital Investments, Inc.

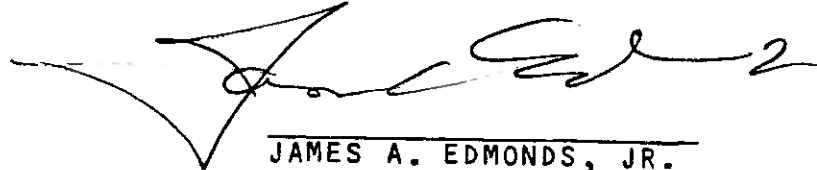
On February 10, 1983, the Real Estate Commissioner adopted the Proposed Decision as his decision with an effective date of April 1, 1983.

Thereafter, on March 31, 1983, respondent Lunetta by and through his counsel, David J. Bowie, Esq. of Bowie, Bort & Bruegmann, brought a petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5 (Alameda County Superior Court No. 570664-0).

As part of the settlement of Alameda County Superior Court Action No. 570664-0, the Real Estate Commissioner hereby issues this Amended Decision in the above-entitled matter.

This Amended Decision shall become effective at twelve o'clock noon on January 9th, 1984.

IT IS SO ORDERED December 15, 1983.

A handwritten signature in black ink, appearing to read "James A. Edmonds, Jr.", written over a horizontal line.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

FINDINGS OF FACT

I

Norman G. Catalano made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Pasquale Daniel Lunetta, North American Capital Corp., and Pacific Capital Investments, Inc., are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code of the State of California).

III

At all times herein mentioned, respondent Lunetta was licensed as a real estate broker by the Department of Real Estate of the State of California. At all times herein mentioned, respondents North American Capital Corporation, dba North American Mortgage (hereinafter referred to as North American) and Pacific Capital Investments, Inc., (hereinafter referred to as Pacific Capital) were licensed by the Department as real estate brokers by and through respondent Lunetta as designated officer.

IV .

Pacific Capital had as its officers respondent Lunetta, his wife Geraldine and Edgar Lana. Ownership was in respondent Lunetta, Edgar Lana and William West who was the salesperson on the Mary Connelley transaction.

North American's principals were Lana, respondent Lunetta and William West.

Pacific Capital Investors I was a California limited partnership with respondents Lunetta and Pacific Capital as general partners.

North American Securities Corp., was composed of Lana, respondent Lunetta and West. This corporation acted as trustee of the deeds of trust involved in the transactions hereinafter set forth.

V

Pacific Capital purchased the property 26-30 California Avenue, Reno, Nevada, which included a building. Pacific Capital sold the building and improvements only to Pacific Capital Investors I, the limited partnership (hereinafter referred to as PCI I). Pacific Capital gave PCI I a five-year lease. Thereafter, PCI I solicited loans to raise funds to rehabilitate the property. North American was the broker on these transactions.

VI

William West solicited and obtained a \$10,000 loan from Mary Connelley in July 1980. West represented that the loan would be secured by a deed of trust on the California Avenue property and that a title insurance policy would be issued to her. He did not inform her that the deed of trust was on the building only and did not include the land. He did not inform her that PCI I did not hold fee title to the property but had only a five-year ground lease. A title insurance policy was never issued to Connelley because the title company would not issue a title policy on buildings only.

VII

Mahmoud T. Salari had made several loans through North American. In December, 1980, he loaned \$20,000 through North American without first ascertaining the details of the loan. The loan was to PCI I and involved the Reno property. Salari was never informed that the deed of trust was on the building only nor that PCI I had only a five-year ground lease. He never received a title policy.

VIII

In March, 1981, James Hale loaned \$5,000 on behalf of his children, William and Caleen Hale, to PCI I through North American. James Hale was informed by an employee of North American that the loan would be secured by a first trust deed on the Reno property. He was not informed that the trust deed would be on the building only nor that PCI I had only a five-year ground lease.

IX

No evidence was introduced on the Maximouitch loan.

X

The failure to inform the lenders (Connelley, Salari and Hale) that the deed of trust was on the building only and

did not include the land and that PCI I had only a five-year ground lease are material and substantial facts which would have influenced those lenders in their willingness to make the loans.

XI

Respondents failed to cause the deed of trust or any assignment thereof to be recorded prior to the disbursement of the loan to the limited partnership in each of the transactions set forth in Findings VI, VII and VIII.

XII

None of these three loans were paid off timely. Each lender was greatly inconvenienced in resolving their unpaid loans. Respondent Lunetta eventually increased the interest rates on the loans and made regular payments. The investors have now been paid in full.

XIII

Respondent Lunetta has been in the savings and loan business for twenty years. He is currently the chief executive officer of a California savings and loan company. He has been licensed by the Department for twenty years, ten of which have been as a broker. He has not renewed his license and at present has no intention of acting as a broker.

He organized the various corporations involved and hired West to be responsible for the day-to-day operations. He terminated West after the Connelley transaction. There were financial problems with the Reno property because of the depression in the real estate market. Eventually, he paid off the investors.

He has no record of prior disciplinary action against his licenses.

XIV

The evidence established that the forms presented to the three investors did not reveal that the trust deed did not include the land. In fact the trust deed form had a legal description of the real property but said nothing about the trust deed being on the buildings only. Assignments of deeds of trust were not recorded timely.

Respondent Lunetta's supervision of his staff and salesman consisted of evening meetings with them. He instructed West and the staff to record the assignments of deeds of trust. There is no evidence that he reviewed the individual transactions themselves; he relied upon his salesmen (West and William Board).

DETERMINATION OF ISSUES

I

On the facts found in Findings V, VI, VII, VIII, and X grounds for disciplinary action against each respondent have been established pursuant to Business and Professions Code sections 10176(a) and 10177(f).

II

On the facts found in Finding XI, grounds for disciplinary action have been established against each respondent pursuant to Business and Professions Code sections 10234 and 10177(d).

III

On the facts found in Finding XIV, grounds for disciplinary action have been established against respondent Lunetta pursuant to Business and Professions Code section 10177(h).

IV

The standard of proof applied in this decision is clear and convincing proof to a reasonable certainty, Ettinger v. Board of Medical Quality Assurance, 135 Cal.App.3d 853.

ORDER

I

All the licenses and licensing rights of respondents North American Capital Corporation, dba North American Mortgage, and Pacific Capital Investments, Inc., under the provisions of Part 1 and Division 4 of the Business and Professions Code are revoked.

II

1. All licenses and licensing rights of respondent Pasquale Daniel Lunetta under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

2. A restricted real estate broker license shall be issued to said respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application

therefor and pays to the Department of Real Estate the appropriate fee for said license within 90 days from the effective date of the Decision herein.

3. The restricted license issued to said respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of said Code:

- a) The restricted license may be suspended by order of the Real Estate Commissioner pending a final determination after a hearing if the respondent fails to present evidence satisfactory to the Commissioner within six months from the effective date of the Decision of having taken and completed 45 hours of approved continuing education offerings within the four-year period immediately preceding the date on which the respondent presents such evidence to the Department. Such evidence shall be presented to the Department within six (6) months from the effective date of this decision.
- b) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee.
- c) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner; that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.
- d) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

END

David J. Bowie, Esq.
BOWIE, BORT & BRUEGMANN
ATTORNEYS AT LAW
703 MARKET STREET 20th FLOOR
SAN FRANCISCO CALIFORNIA 94103
415 777-0700

ENDORSED
FILED

MAR 31 1983

RENE C. DAVIDSON, County Clerk
By: R. L. Hunter

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL)
CORP., a California)
corporation, PACIFIC)
CAPITAL INVESTMENTS, INC.,)
a California corporation,)
Petitioners,)
vs.)
THE DEPARTMENT OF REAL)
ESTATE OF THE STATE OF)
CALIFORNIA,)
Respondent.)

570664-0

NO:

APPLICATION FOR
ORDER GRANTING STAY

Pursuant to California Code of Civil Procedure §1094.5(g),
petitioners hereby make application for this court's order
granting a stay of enforcement of the decision and order rendered
by respondent in that certain proceeding entitled "In the Matter
of the Accusation of PASQUALE DANIEL LUNETTA, NORTH AMERICAN

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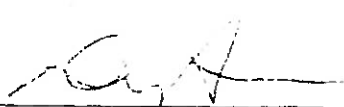
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1 CAPITAL CORP. and PACIFIC CAPITAL INVESTMENTS, INC."

2 This application is based upon the verified petition
3 and the memorandum of Points and Authorities filed and served
4 concurrently herewith.

5 DATED: March 31, 1983

BOWIE, BORT, BRUEGMANN, & GIACOMINI

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8 DAVID J. BOWIE
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1 BOWIE, BORT & BRUEGMANN
2 ATTORNEYS AT LAW
3 703 MARKET STREET, 20th FLOOR
4 SAN FRANCISCO, CALIFORNIA 94103
5 (415) 777-0700

ENDORSED
FILED

MAR 31 1983

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7
8 RENE C. DAVIDSON, County Clerk
9 By: R. L. Hunter
10 Attorneys for Petitioners

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 PASQUALE DANIEL LUNETTA,)
14 NORTH AMERICAN CAPITAL)
15 CORP., A California)
16 Corporation, PACIFIC)
17 CAPITAL INVESTMENTS, INC.,)
18 a California Corporation)

570664-0

No.

19 Petitioners,)

OPDER

20 vs.)

21 THE DEPARTMENT OF REAL)
22 ESTATE OF THE STATE OF)
23 CALIFORNIA)

24 Respondent.)

25 GOOD CAUSE appearing,

26 IT IS ORDERED that operation of the decision of
Respondent, DEPARTMENT OF REAL ESTATE, made on February 10, 1983,
in the matter entitled "In the Matter of the Accusation of
PASQUALE DANIEL LUNETTA, NORTH AMERICAN CAPITAL CORP., and
PACIFIC CAPITAL INVESTMENTS, INC.," be stayed pending the

1 judgment in the above-entitled proceeding and until a notice
2 of appeal from the judgment has been filed or until the time
3 for filing such a notice has expired.

4 MAR 3 1 1983

5 Dated: _____

6 DONALD P. McCULLUM

7 _____
8 Judge of the Superior Court
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David J. Bowie, Esq.
BOWIE, BORT & BRUEGMANN
ATTORNEYS AT LAW
703 MARKET STREET 20th FLOOR
SAN FRANCISCO CALIFORNIA 94103
(415) 777-0700

ENDORSED
FILED

MAR 31 1983

RENE C. DAVIDSON, County Clerk
By: R. L. Hunter

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

570664--0

PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL)
CORP., a California)
corporation, PACIFIC)
CAPITAL INVESTMENTS, INC.,)
a California corporation,)

NO: 0-199029

Petitioners,)

PETITION FOR WRIT OF
MANDATE (Code of Civil
Procedure §1094.5)

vs.)

THE DEPARTMENT OF REAL)
ESTATE OF THE STATE OF)
CALIFORNIA,)

Respondent.)

Petitioners respectfully represent:

1. At all times herein mentioned, petitioner PASQUALE DANIEL LUNETTA ("LUNETTA") was a California licensed real estate broker. The principal place of business of said petitioner is the County of Alameda, California.

2. At all times herein mentioned, petitioners NORTH AMERICAN CAPITAL CORP. ("NORTH AMERICAN") and PACIFIC CAPITAL INVESTMENTS, INC. ("PACIFIC") were and are corporations, duly

1 licensed as such by and under the laws of the State of California.
2 Said petitioners were and are real estate licensees (as brokers)
3 by and through petitioner LUNETTA as designated officer.

4 3. Respondent, THE DEPARTMENT OF REAL ESTATE OF THE STATE
5 OF CALIFORNIA ("DEPARTMENT OF REAL ESTATE") is and at all times
6 herein mentioned was a statewide administrative agency created
7 and existing under the laws of the State of California and
8 possessing sole jurisdiction to issue, suspend, and revoke
9 licenses to or for persons engaged in the business of real
10 estate as that term is defined at Business and Professions Code
11 §1131.

12 4. Pursuant to the provisions of the Business and
13 Professions Code §10176, et seq., the Commissioner of respondent
14 DEPARTMENT OF REAL ESTATE has the discretion to investigate the
15 actions of any real estate licensee to determine whether or
16 not grounds for discipline exist. Pursuant to Business and
17 Professions Code §10100 and Government Code §§1150-11528,
18 respondent is required to hold a hearing and take evidence in
19 its proceedings for the determination of facts supporting
20 discipline, if any.

21 5. Prior to September 16, 1982, Norman G. Catalano, in
22 his official capacity as a deputy real estate commissioner,
23 filed an accusation against petitioners alleging certain mis-
24 conduct. Thereafter, respondent ordered a hearing for the
25 purpose of obtaining evidence as to which charge, if any, might
26 be true and whether or not petitioners' licenses should be

1 revoked or suspended should those charges (or any of them) be
2 found to be true. A hearing was held before the Office of
3 Administrative Hearings before the Honorable George R. Coan,
4 Administrative Law Judge, on September 16 and 17 and December
5 13, 1982.

6 6. On January 25, 1983, the hearing officer prepared a
7 proposed decision finding grounds for disciplinary action
8 against petitioners under the provisions of Business and
9 Professions Code §§10176(a) and (i) and §§10177(f) and (j). A
10 copy of the proposed decision is attached hereto as Exhibit A
11 and incorporated herein by this reference. Respondent adopted
12 the proposed decision as its decision and order on February 10,
13 1983, and said order will become effective at 12:00 noon on
14 April 1, 1983. At such latter time, unless stayed by order of
15 this court, the licenses and licensing rights of petitioners
16 will be revoked. Attached hereto as Exhibits B and C, respectively,
17 are the order adopting the proposed decision as the decision of
18 respondent and the order concerning the effective date thereof.

19 7. The grounds for the decision and order made by
20 respondent were stated to be the following:

21 a) Petitioners failed to record a trust deed
22 evidencing a loan secured thereby prior to disbursement of
23 loan funds.

24 b) Petitioners failed to exercise reasonable super-
25 vision over sales persons.

26 c) Petitioners made substantial misrepresentations

1 and/or otherwise engaged in conduct constituting fraud or
2 dishonest dealing.

3 8. Respondent's decision and order are invalid in that
4 the findings made by the hearing officer are not supported by
5 evidence introduced at the time of the hearing. Thus,
6 petitioners took all reasonable steps to cause the recordation
7 of trust deeds prior to disbursement of loan proceeds; exercised
8 adequate supervision; and did not misrepresent any material
9 facts pertaining to the transactions which were the subject of
10 the disciplinary proceedings.

11 9. A transcription of the record of the hearing was made
12 during the course thereof by tape and by a certified shorthand
13 reporter. A written request for preparation of that transcript
14 has been made. A verbatim transcript of the record of the
15 hearing will be submitted to this court as soon as the same has
16 been obtained.

17 10. Petitioners have relevant evidence which was not
18 presented at the hearing. Such evidence includes, but is not
19 limited to, the following:

20 a) Despite objections voiced by petitioners, the
21 cross-examination of Joann Mahoney was improperly limited by
22 the Administrative Law Judge apparently on the basis that said
23 witness had changed her employment from respondent to the
24 Department of Corporations of the State of California. The
25 improper limitation of cross-examination prevented petitioners
26 from introducing evidence relevant to the case.

1 b) Mahmoud T. Salari testified as a witness on
2 direct examination from certain records and documents produced
3 at the administrative proceedings. At the request of counsel
4 for petitioners, said witness was ordered to leave in the
5 courtroom all documentation upon which direct examination was
6 based. Despite such order, the witness removed documents from
7 the hearing room making those documents utterly unavailable
8 for cross-examination. Requests of the Administrative Law
9 Judge to halt disobedience to the order were unsuccessful.

10 c) Despite objection from petitioners, the
11 accusation was amended following two days of proceedings to
12 add further grounds for discipline. The granting of the motion
13 to amend the accusation by the Administrative Law Judge over
14 petitioners' objections was prejudicial to petitioners in that
15 the new alleged ground for discipline broadened the scope of
16 the accusation at a time when witnesses favorable to the
17 petitioners were unavailable and only affidavit testimony from
18 such witnesses could be submitted into evidence.

19 The actions of the Administrative Law Judge in sustaining
20 objections limiting the scope of petitioners' cross-examination
21 of respondent's witnesses, in failing to enforce his order to
22 protect documents for cross-examination, and in expanding
23 improperly the scope of the accusation by amendment prevented
24 petitioners from producing evidence tending to show that no
25 grounds for discipline as found by the Administrative Law Judge
26 exist.

1 11. Petitioners have no plain, speedy and adequate
2 remedy in the ordinary course of law.

3 12. As an incident of bringing and maintaining this
4 proceeding, petitioners have become and are obligated personally
5 to pay to their counsel, Bowie, Bort, Bruegmann & Giacomini,
6 attorneys' fees exceeding the sum of \$1500.

7 WHEREFORE, petitioners pray judgment as follows:

8 1. For an alternative writ of mandate directing respondent
9 DEPARTMENT OF REAL ESTATE to set aside its order of February 10,
10 1983, revoking petitioners' licenses, or, in the alternative,
11 to show cause why a peremptory writ of mandate to the same
12 effect should not be issued;

13 2. For an order restraining respondent DEPARTMENT OF REAL
14 ESTATE from giving effect to its order of February 10, 1983,
15 revoking the licenses of petitioners, until further order of
16 the court, and to show cause why operation of that order should
17 not be stayed pending the judgment in this proceeding;

18 3. For a peremptory writ of mandate to the same effect
19 as the alternative writ, except for the order to show cause;

20 4. For reasonable attorneys' fees in addition to any
21 other relief granted or other costs awarded;

22 5. For costs of suit herein incurred, including those
23 expenses incurred with respect to preparation of administrative
24 records; and

25 6. For such other and further relief as this court may

26 //

1 deem just and proper.

2
3 Dated: 31 March 1983

BOWIE, BORT & BRUEGMANN

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5
6 By David J. Bowie, Esq.
7 Attorneys for Petitioner
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ATTORNEY'S VERIFICATION

I, DAVID J. BOWIE, declare and say:

I am an attorney at law, duly admitted and licensed to practice before all courts of this state, and am a member of the firm Bowie, Bort, Bruegmann & Giacomini, 703 Market Street, 20th Floor, San Francisco, California 94103. I am the attorney of record for _____ Petitioners in the foregoing matter.

Said party is absent from the county in which I have my offices and for that reason I am making this verification in his behalf. I have read the foregoing Petition and know the contents thereof. I am informed and believe that the matters stated therein are true and on that ground I state that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on 3/31/83.



DAVID J. BOWIE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
PASQUALE DANIEL LUNETTA,)	NO. R-5200 SF
NORTH AMERICAN CAPITAL CORP.,)	N 18776
and)	
PACIFIC CAPITAL INVESTMENTS,)	
INC.,)	
Respondents.)	

PROPOSED DECISION

This matter was heard before George R. Coan, Administrative Law Judge, State of California, Office of Administrative Hearings, at San Francisco, California, on September 16, 17 and December 13, 1982.

Stephen W. Thomas, Counsel, represented the Department of Real Estate.

Respondent Pasquale Daniel Lunetta appeared and represented himself.

Edgar J. Lana, attorney, appeared for respondents North American Capital Corp., and Pacific Capital Investments, Inc.

The following decision is proposed and recommended for adoption:

FINDINGS OF FACT

I

Norman G. Catalano made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Pasquale Daniel Lunetta, North American Capital Corp., and Pacific Capital Investments, Inc., are presently and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code of the State of California).

III

At all times herein mentioned, respondent Lunetta was licensed as a real estate broker by the Department of Real Estate of the State of California. At all times herein mentioned, respondents North American Capital Corporation, dba North American Mortgage (hereinafter referred to as North American) and Pacific Capital Investments, Inc., (hereinafter referred to as Pacific Capital) were licensed by the Department as real estate brokers by and through respondent Lunetta as designated officer.

IV

Pacific Capital had as its officers respondent Lunetta, his wife Geraldine and Edgar Lana. Ownership was in respondent Lunetta, Edgar Lana and William West who was the salesperson on the Mary Connelley transaction.

North American's principals were Lana, respondent Lunetta and William West.

Pacific Capital Investors I was a California limited partnership with respondents Lunetta and Pacific Capital as general partners.

North American Securities Corp., was composed of Lana, respondent Lunetta and West. This corporation acted as trustee of the deeds of trust involved in the transactions hereinafter set forth.

V

Pacific Capital purchased the property 26-30 California Avenue, Reno, Nevada, which included a building. Pacific Capital sold the building and improvements only to Pacific Capital Investors I, the limited partnership (hereinafter referred to as PCI I). Pacific Capital gave PCI I a five-year lease. Thereafter, PCI I solicited loans to raise funds to rehabilitate the property. North American was the broker on these transactions.

VI

William West solicited and obtained a \$10,000 loan from Mary Connelley in July 1980. West represented that the loan would be secured by a deed of trust on the California Avenue property and that a title insurance policy would be issued to her. He did not inform her that the deed of trust was on the building only and did not include the land. He did not inform her that PCI I did not hold fee title to the property but had only a five-year ground lease. A title insurance policy was never issued to Connelley because the title company would not issue a title policy on buildings only.

VII

Mahmoud T. Salari had made several loans through North American. In December, 1980, he loaned \$20,000 through North American without first ascertaining the details of the loan. The loan was to PCI I and involved the Reno property. Salari was never informed that the deed of trust was on the building only nor that PCI I had only a five-year ground lease. He never received a title policy.

VIII

In March, 1981, James Hale loaned \$5,000 on behalf of his children, William and Calleen Hale, to PCI I through North American. James Hale was informed by an employee of North American that the loan would be secured by a first trust deed on the Reno property. He was not informed that the trust deed would be on the building only nor that PCI I had only a five-year ground lease.

IX

No evidence was introduced on the Maximovitch loan.

X

The failure to inform the lenders (Connelley, Salari and Hale) that the deed of trust was on the building only and did not include the land and that PCI I had only a five-year ground lease are material and substantial facts which would have influenced those lenders in their willingness to make the loans.

XI

Respondents failed to cause the deed of trust or any assignment thereof to be recorded prior to the disbursement of the loan to the limited partnership in each of the transactions set forth in Findings VI, VII and VIII.

XII

None of these three loans were paid off timely. Each lender was greatly inconvenienced in resolving their unpaid loans. Respondent Lunetta eventually increased the interest rates on the loans and made regular payments. The investors have now been paid in full.

XIII

Respondent Lunetta has been in the savings and loan business for twenty years. He is currently the chief executive officer of a California savings and loan company. He has been licensed by the Department for twenty years, ten of which have been as a broker. He has not renewed his license and at present has no intention of acting as a broker.

He organized the various corporations involved and hired West to be responsible for the day-to-day operations. He terminated West after the Connelley transaction. There were financial problems with the Reno property because of the depression in the real estate market. Eventually, he paid off the investors.

He has no record of prior disciplinary action against his licenses.

XIV

The evidence established that the forms presented to the three investors did not reveal that the trust deed did not include the land. In fact the trust deed form had a legal description of the real property but said nothing about the trust deed being on the buildings only. Assignments of deeds of trust were not recorded timely.

Respondent Lunetta's supervision of his staff and salesman consisted of evening meetings with them. He instructed West and the staff to record the assignments of deeds of trust. There is no evidence that he reviewed the individual transactions themselves; he relied upon his salesmen (West and William Boord).

DETERMINATION OF ISSUES

I

On the facts found in Findings V, VI, VII, VIII and X, grounds for disciplinary action against each respondent have been established pursuant to Business and Professions Code sections 10176(a) and (i) and sections 10177(f) and (j).

II

On the facts found in Finding XI, grounds for disciplinary action have been established against each respondent pursuant to Business and Professions Code sections 10234 and 10177(d).

III

The evidence did not establish grounds for disciplinary action against respondent Lunetta pursuant to Business and Professions Code section 10177(h) when the standard of proof set forth in Determination of Issues IV is applied. It would have been established under the preponderance of evidence standard.

IV

The standard of proof applied in this decision is clear and convincing proof to a reasonable certainty, Ettinger v. Board of Medical Quality Assurance, 135 Cal. App. 3d 853.

ORDER

I

All the licenses and licensing rights of respondents North American Capital Corporation, dba North American Mortgage, and Pacific Capital Investments, Inc., under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

II

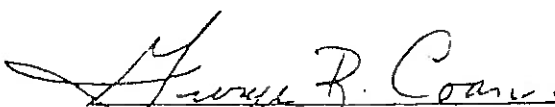
1. All licenses and licensing rights of respondent Pasquale Daniel Lunetta under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

2. A restricted real estate broker license shall be issued to said respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for said license within 90 days from the effective date of the Decision herein.

3. The restricted license issued to said respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of said Code:

- a) The restricted license may be suspended by order of the Real Estate Commissioner pending a final determination after a hearing if the respondent fails to present evidence satisfactory to the Commissioner within six months from the effective date of the Decision of having taken and completed 45 hours of approved continuing education offerings within the four-year period immediately preceding the date on which the respondent presents such evidence to the Department. Such evidence shall be presented to the Department within six (6) months from the effective date of this decision.
- b) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee.
- c) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.
- d) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

DATED: January 25, 1983


GEORGE R. COAN
Administrative Law Judge

GRC:lhj

COPY

FILED
FEB 10 1983

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Mary A. Morrell
Mary A. Morrell

In the Matter of the Accusation of)
PASQUALE DANIEL LINETIA,)
NORTH AMERICAN CAPITAL CORP.,)
and)
PACIFIC CAPITAL INVESTMENTS,)
INC.,)
Respondents.)

NO. H-5200 SF

N 18776

DECISION

The Proposed Decision dated January 25, 1983, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on March 2, 1983.

IT IS SO ORDERED Thomas, 1983.

W. Jerome Thomas
W. JEROME THOMAS
Acting Real Estate Commissioner

EXHIBIT B

COPY

FILED
FEB 25 1983

DEPARTMENT OF REAL ESTATE

By Mary J. Morello
Mary J. Morello

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

- - -

In the Matter of the Accosation of)
PASQUALE DANIEL LUNDELL,)
NORTH AMERICAN CAPITAL CORP.,)
and)
PACIFIC CAPITAL INVESTMENTS,)
INC.,)
Respondents.)

NO. H-5200 SF

ORDER STAYING EFFECTIVE DATE

On February 8, 1983, a Decision was rendered in the
above-entitled matter to become effective at 12 o'clock noon
on March 2, 1983.

IT IS HEREBY ORDERED that the effective date of the
Decision of February 8, 1983 is stayed for a period of thirty
(30) days.

///

///

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EXHIBIT

C

1 The Decision of February 2, 1983 shall become
2 effective at 12 o'clock noon on April 1, 1983.

3 DATED: February 25, 1983

5 W. JEROME THOMAS
6 Acting Real Estate Commissioner

7 By: *John R. Liberator*

8 JOHN R. LIBERATOR
9 Assistant Commissioner

David J. Bowie, Esq.

BOWIE, BORT & BRUEGMANN

ATTORNEYS AT LAW

703 MARKET STREET 20th FLOOR

SAN FRANCISCO CALIFORNIA 94103

(415) 777-0700

Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL)
CORP., a California)
corporation, PACIFIC)
CAPITAL INVESTMENTS, INC.,)
a California corporation,)

Petitioners,)

vs.)

THE DEPARTMENT OF REAL)
ESTATE OF THE STATE OF)
CALIFORNIA,)

Respondent.)

NO:

570664-0

ALTERNATIVE WRIT
OF MANDATE (Code
of Civil Procedure
§1087)

TO: RESPONDENT, THE DEPARTMENT OF REAL ESTATE OF THE STATE
OF CALIFORNIA:

GOOD CAUSE APPEARING, you are commanded, immediately after
receipt of this Writ to set aside your decision made February
10, 1983, in the matter entitled "In the Matter of the
Accusation of PASQUALE DANIEL LUNETTA, NORTH AMERICAN CAPITAL
CORP., and PACIFIC CAPITAL INVESTMENTS, INC."; or in the
alternative to appear on April 26, 1983, at 2:00 PM

1 or as soon thereafter as the matter may be heard in Department
2 19 of the above captioned court, located at 1225 Fallon Street,
3 Oakland, Alameda County, California, and then and there to show
4 cause why you have not done so.
5

6 Dated: March 31, 1983

RENE C. DAVIDSON, CLERK

7
8 By _____

Deputy Clerk

9
10 Let this Alternative Writ of Mandate issue.

11 Dated: **MAR 31 1983**

DONALD P. McCULLUM

12
13 Judge of the Superior Court
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David J. Bowie, Esq.
BOWIE, BORT & BRUEGMANN
ATTORNEYS AT LAW
703 MARKET STREET 20TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103
415/777-0700

Attorneys for Petitioners

ENDORSED
FILED

MAR 31 1983

RENE C. DAVIDSON, County Clerk
By: R. L. Hunter

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL)
CORP., a California)
corporation, PACIFIC)
CAPITAL INVESTMENTS, INC.,)
a California corporation,)
Petitioners,)
vs.)
THE DEPARTMENT OF REAL)
ESTATE OF THE STATE OF)
CALIFORNIA,)
Respondent.)

570054-0

NO:

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
OF PETITION FOR WRIT OF
MANDATE; ALTERNATIVE
WRIT OF MANDATE

A writ of mandate may be issued for the purpose of
inquiring into the validity of any final administrative order
or decision made as a result of a proceeding in which by law
a hearing is required to be given, evidence is required to be
taken, and discretion in the determination of the facts is
vested in the inferior tribunal, corporation board or officer.
(Code of Civil Procedure §1094.5) This applies to the decision

1 of an agency revoking a license to engage in a profession or
2 business. See e.g. Savelli vs. Board of Medical Examiners (1964)
3 229 Cal App 2d 124, 40 Cal Rptr 171. A condition precedent to
4 judicial review by way of writ of mandate is that all administra-
5 tive remedies have been exhausted. Pursuant to the terms of
6 Government Code §7523, judicial review is available as to
7 agencies governed by the Administrative Procedure Act even
8 though no petition for reconsideration before the agency has
9 been filed. In this instance, the DEPARTMENT OF REAL ESTATE
10 is an agency governed by the Administrative Procedure Act and
11 petitioners have, therefore, exhausted all other remedies
12 available to them short of judicial review by way of mandamus.

13 The thrust of petitioners' petition for issuance of a
14 peremptory writ of mandate is that the evidence aduced during
15 the administrative proceedings failed to support the findings
16 made by the Administrative Law Judge and the discipline imposed
17 thereafter based upon the legal conclusions set forth in the
18 proposed decision. Petitioners have requested preparation of
19 a verbatim transcript of the administrative proceedings so
20 that the full record will be available to this court at the
21 time of hearing. As noted in the proposed decision, petitioners
22 are entitled to the application of a standard of proof requiring
23 clear and convincing proof to a reasonable certainty (Ettinger
24 vs. Board of Medical Quality Assurance, 135 Cal App 3d 853,
25 _____ Cal Rptr _____ (19)) based upon this court's
26 independent judgment exercised as to the evidence. Bixby vs.

1 Pierno, 4 C 3d 130, 93 Cal Rptr 234 (1971).

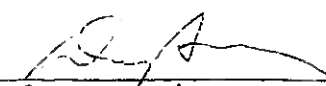
2 Furthermore, petitioners are entitled to introduce additional
3 evidence into the administrative record inasmuch as they were
4 prevented from producing such evidence despite their exercise
5 of reasonable diligence.

6 It is respectfully submitted that the decision of the
7 administrative Law Judge is based upon findings not supported
8 by the evidence. Petitioners request that this court stay
9 the proposed revocation of their licenses and, further, that
10 the decision of respondent be set aside after further hearing.

11
12 Dated: March 31, 1983

Respectfully submitted,

13 BOWIE, BORT & BRUEGMANN

14
15 By 
16 David J. Bowie, Esq.
Attorneys for Petitioners
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26

David J. Bowie, Esq.
BOWIE, BORT & BRUEGMANN
ATTORNEYS AT LAW
703 MARKET STREET 20TH FLOOR
SAN FRANCISCO CALIFORNIA 94103
(415) 777-0700

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

PASQUALE DANIEL LUNETTA,
NORTH AMERICAN CAPITAL
CORP., a California
corporation, PACIFIC
CAPITAL INVESTMENTS, INC.,
a California corporation,

Petitioners,

vs.

THE DEPARTMENT OF REAL
ESTATE OF THE STATE OF
CALIFORNIA,

Respondent.

NO: 570664-0

NOTICE AND ACKNOWLEDGMENT
OF RECEIPT

TO: FRANCIS M. LYONS, Counsel, THE DEPARTMENT OF REAL ESTATE
OF THE STATE OF CALIFORNIA:

The attached Alternative Writ of Mandate and Order are
being served pursuant to Section 415.30 of the California Code
of Civil Procedure. Your failure to complete this form and
return it to the sender within twenty (20) days may subject you
(or the party on whose behalf you are being served) to liability

//

1 for the payment of any expenses incurred in serving the Writ
2 upon you in any other manner permitted by law. If you are
3 served on behalf of a corporation, unincorporated association,
4 (including a partnership), or other entity, this form must be
5 signed in the name of such entity by you or by a person authorized
6 to receive service of process on behalf of such entity. In
7 all other cases, this form must be signed by you personally or
8 by a person authorized by you to acknowledge receipt of the Writ.
9 Section 415.30 provides that the Writ is deemed served on the
10 date of execution of an acknowledgment of receipt of the same.

11
12 Dated: March 31, 1983

BOWIE, BORT & BRUEGMANN

13
14 By David J. Bowie, Esq.
15 Attorneys for Petitioners
16

17 ACKNOWLEDGMENT OF RECEIPT

18 This acknowledges receipt on _____, 1983,
19 of two (2) copies of the Alternative Writ of Mandate and Order
20 at 185 Berry Street, San Francisco, California.

21
22 Dated:

23 By _____
24
25
26

David J. Bowie, Esq.
BOWIE, BORT & BRUEGMANN
ATTORNEYS AT LAW
703 MARKET STREET 20TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103
(415) 777-0700

ENDORSED
FILED

MAR 31 1983

Attorneys for Petitioners

RENE C. DAVIDSON, County Clerk
By: R. L. Hunter

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

570664-0

PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL)
CORP., a California)
corporation, PACIFIC)
CAPITAL INVESTMENTS, INC.,)
a California corporation,)
Petitioners,)
vs.)
THE DEPARTMENT OF REAL)
ESTATE OF THE STATE OF)
CALIFORNIA,)
Respondent.)

NO:

CERTIFICATION OF
NOTICE

I, David Bowie, hereby declare and say:

I am an attorney at law duly licensed by and under the laws of the State of California and am one of the attorneys for the petitioners in the above-captioned action.

On March 31, 1983, I contacted Stephen Thomas, Deputy Counsel for THE DEPARTMENT OF REAL ESTATE OF THE STATE OF CALIFORNIA to inform him of the filing of the Petition for Writ of Mandate in this case together with supportive documentation.

1 At that time, I also informed Mr. Thomas that my office would
2 make application for an Order to stay the effective date of
3 the decision reached by THE DEPARTMENT OF REAL ESTATE, which
4 decision is the subject of the within action. Mr. Thomas
5 indicated that there may or may not be opposition to the
6 application for stay but that he would contact me within
7 approximately one hour if there was to be. At the time of
8 dictation of this Certification, no further communication with
9 THE DEPARTMENT OF REAL ESTATE or Mr. Thomas has been had.
10 From our prior conversation, Mr. Thomas is aware that the
11 application for stay would be filed approximately 3:00 PM
12 March 31, 1983.

13 I declare under penalty of perjury the foregoing is true
14 and correct.

15 Executed at San Francisco, California, this 31st day of
16 March, 1983.

17 
18 David J. Bowie, Esq.

COPY

FILED
FEB 25 1983

DEPARTMENT OF REAL ESTATE

By Mary A. Morelli
Mary A. Morelli

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

- - -

In the Matter of the Accusation of)
PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL CORP.,)
and)
PACIFIC CAPITAL INVESTMENTS,)
INC.,)
Respondents.)

NO. H-5200 SF

ORDER STAYING EFFECTIVE DATE

On February 8, 1983, a Decision was rendered in the above-entitled matter to become effective at 12 o'clock noon on March 2, 1983.

IT IS HEREBY ORDERED that the effective date of the Decision of February 8, 1983 is stayed for a period of thirty (30) days.

/ / / / /

/ / / / /

/ / / / /

1 The Decision of February 8, 1983 shall become
2 effective at 12 o'clock noon on April 1, 1983.

3 DATED: February 25, 1983

5 W. JEROME THOMAS
6 Acting Real Estate Commissioner

7 By: 

8 JOHN R. LIBERATOR
9 Assistant Commissioner

COPY

FILED
FEB 10 1983

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Mary A. Morell
Mary A. Morell

- - -

In the Matter of the Accusation of)
PASQUALE DANIEL LUNETTA,)
NORTH AMERICAN CAPITAL CORP.,)
and)
PACIFIC CAPITAL INVESTMENTS,)
INC.,)
Respondents.)

NO. H-5200 SF
N 18776

DECISION

The Proposed Decision dated January 25, 1983, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon on March 2, 1983.

IT IS SO ORDERED February 8, 1983.

W. Jerome Thomas
W. JEROME THOMAS
Acting Real Estate Commissioner

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)	
PASQUALE DANIEL LUNETTA,)	NO. H-5200 SF
NORTH AMERICAN CAPITAL CORP.,)	N 18776
and)	
PACIFIC CAPITAL INVESTMENTS,)	
INC.,)	
Respondents,)	

PROPOSED DECISION

This matter was heard before George R. Coan, Administrative Law Judge, State of California, Office of Administrative Hearings, at San Francisco, California, on September 16, 17 and December 13, 1982.

Stephen W. Thomas, Counsel, represented the Department of Real Estate.

Respondent Pasquale Daniel Lunetta appeared and represented himself.

Edgar J. Lana, attorney, appeared for respondents North American Capital Corp., and Pacific Capital Investments, Inc.

The following decision is proposed and recommended for adoption:

FINDINGS OF FACT

I

Norman G. Catalano made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

Pasquale Daniel Lunetta, North American Capital Corp., and Pacific Capital Investments, Inc., are presently and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code of the State of California).

III

At all times herein mentioned, respondent Lunetta was licensed as a real estate broker by the Department of Real Estate of the State of California. At all times herein mentioned, respondents North American Capital Corporation, dba North American Mortgage (hereinafter referred to as North American) and Pacific Capital Investments, Inc., (hereinafter referred to as Pacific Capital) were licensed by the Department as real estate brokers by and through respondent Lunetta as designated officer.

IV

Pacific Capital had as its officers respondent Lunetta, his wife Geraldine and Edgar Lana. Ownership was in respondent Lunetta, Edgar Lana and William West who was the salesperson on the Mary Connelley transaction.

North American's principals were Lana, respondent Lunetta and William West.

Pacific Capital Investors I was a California limited partnership with respondents Lunetta and Pacific Capital as general partners.

North American Securities Corp., was composed of Lana, respondent Lunetta and West. This corporation acted as trustee of the deeds of trust involved in the transactions hereinafter set forth.

V

Pacific Capital purchased the property 26-30 California Avenue, Reno, Nevada, which included a building. Pacific Capital sold the building and improvements only to Pacific Capital Investors I, the limited partnership (hereinafter referred to as PCI I). Pacific Capital gave PCI I a five-year lease. Thereafter, PCI I solicited loans to raise funds to rehabilitate the property. North American was the broker on these transactions.

VI

William West solicited and obtained a \$10,000 loan from Mary Connelley in July 1980. West represented that the loan would be secured by a deed of trust on the California Avenue property and that a title insurance policy would be issued to her. He did not inform her that the deed of trust was on the building only and did not include the land. He did not inform her that PCI I did not hold fee title to the property but had only a five-year ground lease. A title insurance policy was never issued to Connelley because the title company would not issue a title policy on buildings only.

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IX

No evidence was introduced on the Maximouitch loan.

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The failure to inform the lenders (Connelley, Salari and Hale) that the deed of trust was on the building only and did not include the land and that PCI I had only a five-year ground lease are material and substantial facts which would have influenced those lenders in their willingness to make the loans.

XI

Respondents failed to cause the deed of trust or any assignment thereof to be recorded prior to the disbursement of the loan to the limited partnership in each of the transactions set forth in Findings VI, VII and VIII.

XII

None of these three loans were paid off timely. Each lender was greatly inconvenienced in resolving their unpaid loans. Respondent Lunetta eventually increased the interest rates on the loans and made regular payments. The investors have now been paid in full.

XIII

Respondent Lunetta has been in the savings and loan business for twenty years. He is currently the chief executive officer of a California savings and loan company. He has been licensed by the Department for twenty years, ten of which have been as a broker. He has not renewed his license and at present has no intention of acting as a broker.

He organized the various corporations involved and hired West to be responsible for the day-to-day operations. He terminated West after the Connelley transaction. There were financial problems with the Reno property because of the depression in the real estate market. Eventually, he paid off the investors.

He has no record of prior disciplinary action against his licenses.

XIV

The evidence established that the forms presented to the three investors did not reveal that the trust deed did not include the land. In fact the trust deed form had a legal description of the real property but said nothing about the trust deed being on the buildings only. Assignments of deeds of trust were not recorded timely.

Respondent Lunetta's supervision of his staff and salesman consisted of evening meetings with them. He instructed West and the staff to record the assignments of deeds of trust. There is no evidence that he reviewed the individual transactions themselves; he relied upon his salesmen (West and William Boord).

DETERMINATION OF ISSUES

I

On the facts found in Findings V, VI, VII, VIII and X, grounds for disciplinary action against each respondent have been established pursuant to Business and Professions Code sections 10176(a) and (i) and sections 10177(f) and (j).

II

On the facts found in Finding XI, grounds for disciplinary action have been established against each respondent pursuant to Business and Professions Code sections 10234 and 10177(d).

III

The evidence did not establish grounds for disciplinary action against respondent Lunetta pursuant to Business and Professions Code section 10177(h) when the standard of proof set forth in Determination of Issues IV is applied. It would have been established under the preponderance of evidence standard.

IV

The standard of proof applied in this decision is clear and convincing proof to a reasonable certainty, Ettinger v. Board of Medical Quality Assurance, 135 Cal. App. 3d 853.

ORDER

I

All the licenses and licensing rights of respondents North American Capital Corporation, dba North American Mortgage, and Pacific Capital Investments, Inc., under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

II

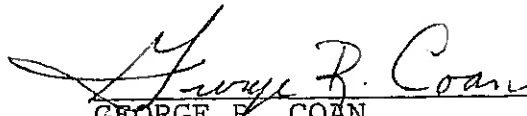
1. All licenses and licensing rights of respondent Pasquale Daniel Lunetta under the provisions of Part 1 of Division 4 of the Business and Professions Code are revoked.

2. A restricted real estate broker license shall be issued to said respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for said license within 90 days from the effective date of the Decision herein.

3. The restricted license issued to said respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of said Code:

- a) The restricted license may be suspended by order of the Real Estate Commissioner pending a final determination after a hearing if the respondent fails to present evidence satisfactory to the Commissioner within six months from the effective date of the Decision of having taken and completed 45 hours of approved continuing education offerings within the four-year period immediately preceding the date on which the respondent presents such evidence to the Department. Such evidence shall be presented to the Department within six (6) months from the effective date of this decision.
- b) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which bears a significant relation to respondent's fitness or capacity as a real estate licensee.
- c) Said restricted license may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.
- d) Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations, or restrictions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

DATED: January 25, 1983



GEORGE R. COAN
Administrative Law Judge

GRC:lhj

COPY

FILED
MAR 31 1982

DEPARTMENT OF REAL ESTATE

By Linda M. Souza
Linda M. Souza

STEPHEN W. THOMAS, Counsel
Department of Real Estate
185 Berry Street, Room 5816
San Francisco, California 94107

Telephone: (415) 557-3220

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	NO. H-5200 SF
PASQUALE DANIEL LUNETTA,	)	
NORTH AMERICAN CAPITAL CORP.,	)	
and	)	<u>ACCUSATION</u>
PACIFIC CAPITAL INVESTMENTS,	)	
INC.,	)	
Respondents.	)	

The complainant, NORMAN G. CATALANO, a Deputy Real Estate Commissioner of the State of California, for cause of action against PASQUALE DANIEL LUNETTA, NORTH AMERICAN CAPITAL CORP., and PACIFIC CAPITAL INVESTMENTS, INC., is informed and alleges as follows:

I

That PASQUALE DANIEL LUNETTA, NORTH AMERICAN CAPITAL CORP., and PACIFIC CAPITAL INVESTMENTS, INC., (hereinafter sometimes referred to as respondents) are presently licensed and/or have license rights under the Real Estate Law (Part 1 of

1 Division 4 of the Business and Professions Code of the State of
2 California).

3 II

4 That at all times herein mentioned, respondent LUNETTA
5 was licensed as a real estate broker by the Department of Real
6 Estate of the State of California (hereinafter referred to as
7 the Department); that at all times herein mentioned, respondents
8 NORTH AMERICAN CAPITAL CORPORATION dba NORTH AMERICAN MORTGAGE
9 (hereinafter referred to as NORTH AMERICAN) and PACIFIC CAPITAL
10 INVESTMENTS, INC., (hereinafter referred to as PACIFIC CAPITAL)
11 were licensed by the Department as real estate brokers by and
12 through respondent LUNETTA as designated officer.

13 III

14 That the complainant, NORMAN G. CATALANO, a Deputy
15 Real Estate Commissioner of the State of California, acting
16 in his official capacity as such and not otherwise, makes this
17 accusation against respondents.

18 IV

19 That at all times herein mentioned, respondents
20 acted in the capacity of real estate licensees as defined but
21 not limited by Section 10131(d) of the Business and Professions
22 Code of the State of California (hereinafter referred to as the
23 Code); that respondents were engaged in the mortgage loan
24 brokerage business wherein loan funds were solicited from
25 lenders and investors by respondents, or by employees or agents
26 under respondents' direction and control, for disbursement to
27 borrowers; that at times, respondents solicited and/or collected

1 loan funds from said lenders and investors for respondents'
2 own account, or for the account of an entity controlled or
3 directed by respondents; that at all times mentioned in this
4 Accusation, when acts of respondents are referred to, said
5 reference shall mean and include, but not be limited to, acts
6 accomplished by respondents through salespeople, through other
7 employees and associates, and through related entities and
8 organizations, whether or not through respondents' direct
9 instructions.

10 V

11 That on or about the dates hereinafter indicated,
12 MARY CONNELLEY, MAHMOUD T. SALARI, WILLIAM & CALEEN HALE
13 and VLADIMIR & CSILLA MAXIMOUITCH (hereinafter sometimes
14 collectively referred to as lenders) were solicited by
15 respondents or their agents or employees to loan money to
16 Pacific Capital Investors #1, a LIMITED PARTNERSHIP (hereinafter
17 referred to as the Limited Partnership) in which respondents
18 LUNETTA and PACIFIC CAPITAL were the General Partners; that
19 respondents represented, or caused to be represented, to the
20 lenders that (1) their loan funds would be secured by a trust
21 deed executed by the Limited Partnership in favor of the lenders
22 against real property commonly known and described as 26-30
23 California Street, Reno, Nevada (hereinafter referred to as the
24 Property); and (2) a title insurance policy would be obtained
25 in the lenders' favor in connection with said loan.

26 / / / / /

27 / / / / /

VI

That in reliance upon the representations referred to in Paragraph V above, the lenders made the following loans to the Limited Partnership:

LENDER	AMOUNT	DATE
MARY CONNELLEY	\$10,000	July 1980
MAHMOUD T. SALARI	\$20,000	December 1980
WILLIAM & CALEEN HALE	\$ 5,000	March 1981
VLADIMIR & CSILIA MAXIMOUITCH	\$ 5,000	March 1981

VII

That at all times herein mentioned, respondents failed to disclose or cause to be disclosed to the lenders that:

- (1) The deed of trust securing the loan would be executed against only the building and improvements of the Property; and
- (2) The Limited Partnership, although trustor of the deed of trust, did not hold fee title to the Property but was merely lessee under a ground lease with a 5 (five) year term in which Pacific Capital was lessor.

VIII

That respondents at all times herein mentioned failed to provide a title insurance policy for the lenders in connection with said loan to the Limited Partnerships.

IX

That had the lenders known the true facts concerning the loan transaction, as referred to in Paragraphs VII and VIII

1 above, lenders would not have made the loan to the Limited
2 Partnerships.

3 X

4 That respondents failed to cause the deed of trust
5 referred to in Paragraphs V and VII above, or any assignment
6 thereof, to be recorded prior to disbursement of the loan to
7 the Limited Partnership in violation of Section 10234 of the
8 Business and Professions Code of the State of California
9 (hereinafter referred to as the Code).

10 XI

11 That by reason of the facts hereinabove alleged,
12 respondents were in violation of Section 10234 of the Code
13 and said acts and omissions constitute grounds for disciplinary
14 action under the provision of Section 10177(d) of the Code.

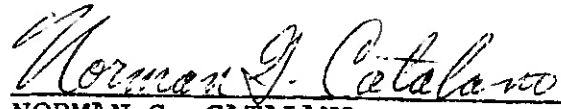
15 XII

16 That by reason of the facts hereinabove alleged,
17 respondents have been guilty of acts or omissions, or both,
18 constituting grounds for disciplinary action under the
19 provision of Sections 10176(a) and (i), and Sections 10177(f)
20 and (j) of the Code.

21 * * * * *

22 WHEREFORE, complainant prays that a hearing be
23 conducted on the allegations of this Accusation and that
24 upon proof thereof, a decision be rendered imposing disciplinary
25 action against all licenses and license rights of respondents
26 under the Real Estate Law (Part 1 of Division 4 of the Business
27 and Professions Code) and for such other and further relief as

1 may be proper under other applicable provisions of law.
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5 NORMAN G. CATALANO
6 Deputy Real Estate Commissioner

7 Dated at San Francisco, California

8 this 31st day of March, 1982.
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