

1 had been revoked, Respondent, in expectation of compensation,
2 solicited and/or negotiated with various borrowers and/or lenders
3 in connection with arranging loans secured directly or
4 collaterally by liens on real property. Said transactions
5 include, but are not limited to, the negotiation of a loan secured
6 by real property known as 213 Correas Avenue, Half Moon Bay,
7 California on behalf of David Labuda and Adrienne Wong during the
8 Spring of 1990. Respondent's violation of the Real Estate Law
9 after his license had been revoked demonstrates that Respondent
10 has not changed his business practices and attitudes from those
11 which existed at the time the grounds for disciplinary action
12 arose.

13 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
14 for reinstatement of Respondent's real estate salesperson license
15 is denied.

16 This Order shall be effective at 12 o'clock noon on
17 June 26, 1992 .

18 DATED: 6/3/92

19 CLARK WALLACE
20 Real Estate Commissioner

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COPY

FILED
JAN 25 1990
DEPARTMENT OF REAL ESTATE

By Emily Sakada

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	
WESTHAVEN FINANCIAL, INC.,)	No. H-6082 SF
JOHN DAMIAN HITTLER, and)	
J. RICHARD THESING,)	OAH No. N 33341
)	
Respondents.)	

ORDER DENYING RECONSIDERATION

On November 30, 1989, a Decision was rendered in the above-entitled matter. The Decision was to become effective at 12 o'clock noon on December 26, 1989. Upon request of respondents, the effective date of the Decision was stayed to January 25, 1990.

On December 22, 1989, respondents WESTHAVEN and HITTLER petitioned for reconsideration of the Decision of November 30, 1989.

On December 26, 1989, respondent THESING petitioned for reconsideration of the Decision of November 30, 1989.

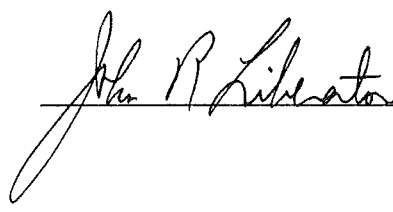
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I have given due consideration to the petitions of respondents. I find no good cause to reconsider the Decision of November 30, 1989, and reconsideration is hereby denied.

IT IS SO ORDERED January 25, 1990.

JAMES A. EDMONDS, JR.
Real Estate Commissioner



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FILED
DEC 26 1989

DEPARTMENT OF REAL ESTATE

By *Victoria Villan*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-6082 SF
WESTHAVEN FINANCIAL, INC.)	OAH No. N-33341
JOHN DAMIAN HITTLER and)	
J. RICHARD THESING,)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On November 30, 1989, a Decision was rendered in the above-entitled matter to become effective at 12 o'clock noon on December 26, 1989.

IT IS HEREBY ORDERED that the effective date of the Decision of November 30, 1989, is stayed for a period of thirty (30) days.

The Decision of November 30, 1989, shall become effective at 12 o'clock noon on January 25, 1990.

DATED: December 26, 1989.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

Joseph J. Mankewich
by: JOSEPH J. MANKEWICH
Deputy Real Estate Commissioner

COPY

FILED
DEC 06 1989

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C. Westbrook
C. Westbrook

In the Matter of the Accusation of)
WESTHAVEN FINANCIAL, INC.,)
JOHN DAMIAN HITTLER and)
J. RICHARD THESING,)
Respondents.)

No. H-6082 SF
OAH No. N 33341

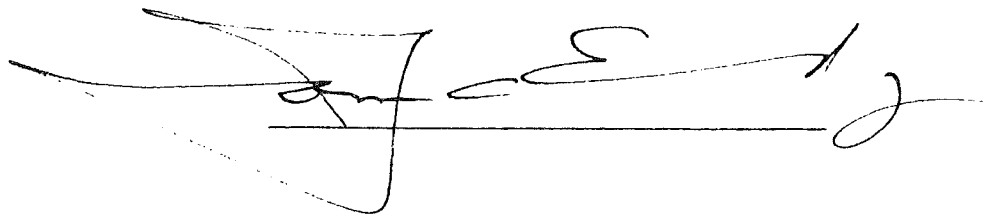
DECISION

The Proposed Decision dated November 15, 1989 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 December 26, 1989.

IT IS SO ORDERED 11-30, 1989.

JAMES A. EDMONDS, JR.
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)
)
WESTHAVEN FINANCIAL, INC.,) Case No. H-6082 SF
JOHN DAMIAN HITTLER, and)
J. RICHARD THESING,) OAH Case No. N-33341
)
Respondents.)
)

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, heard this matter on July 28, 1989.

John Van Driel, Counsel, represented complainant.

Respondents Westhaven Financial, Inc. and John Damian Hittler were represented by Thomas C. Edwards, Attorney at Law, Ferrari, Alvarez, Olsen & Ottoboni, 333 W. Santa Clara Street, Suite 700, San Jose, California 95113.

Respondent J. Richard Thesing was present and represented himself.

Evidence was received, the hearing was closed and the record was held open for the submission of briefs. Complainant's Closing Argument was received on September 28, 1989 and was marked as Exhibit 12. The Opening Brief on behalf of respondents WFI and Hittler was received on September 27, 1989 and was marked as Exhibit M. The Post-Hearing Brief of Respondent Thesing was received on September 28, 1989 and was marked as Exhibit N. By letter dated October 2, 1989, a copy of which is marked as Exhibit 13, complainant declined to file a reply brief. The Closing Brief on behalf of respondents WFI and Hittler was received on October 6, 1989 and was marked as Exhibit O. Respondent Thesing's Reply Letter Brief was received on October 13, 1989 and was marked as Exhibit P. Thereupon, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

The complainant, Edward V. Chiolo, a Deputy Real Estate Commissioner of the State of California, made the accusation in his official capacity.

II

Respondents Westhaven Financial, Inc. (hereinafter "WFI"), John Damian Hittler (hereinafter "Hittler") and J. Richard Thesing (hereinafter "Thesing") are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

III

From approximately July 25, 1986 to July 1, 1988, WFI was a corporation licensed as a real estate broker acting by and through Thesing as its designated officer. WFI's corporate license was scheduled to expire on July 24, 1990. Effective July 1, 1988, Thesing cancelled his status as designated officer of WFI, which thereafter had no designated officer until October 7, 1988, when Alan Ben Loveless became WFI's designated officer. The license will expire unless renewed on July 24, 1990.

IV

From approximately July 25, 1986 to July 1, 1988, Thesing was licensed to act as designated officer for WFI by the Department of Real Estate of the State of California (hereinafter "the Department"); he was also an officer, director and shareholder of WFI.

Thesing was licensed as the designated officer of Southwood Development Corporation on August 24, 1981. His Southwood officer license expired on August 23, 1985, was renewed on August 24, 1985 and expired unless renewed on August 23, 1989.

At no time has Thesing been licensed to act in his individual capacity as a real estate broker.

V

On or about May 16, 1986, Hittler was licensed as a real estate salesperson by the Department; he was also an officer, director and shareholder of WFI. His license will expire unless renewed on May 15, 1990.

VI

At all times mentioned herein, as the designated officer of WFI, Thesing was responsible for the supervision and control of the activities conducted on behalf of WFI by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

VII

Whenever reference is made herein to an act or omission of WFI, such reference shall be deemed to mean that the officers,

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

VIII

Hittler and a partner, Peter Averill, founded WFI in or about July, 1986 and were introduced to Thesing by a mutual friend. Thesing initially agreed to be the "sponsoring broker" for Hittler and Averill, with the understanding that Hittler was going to take the broker examination in the near future. Thesing viewed himself as a "mentor" to Hittler and Averill. Both Hittler and Thesing were aware that Averill did not hold either a real estate salesperson license or a real estate broker license. Thesing held a 10 percent interest in the business, and Hittler and Averill each owned 45 percent.

IX

Thesing, an attorney licensed to practice in California, had no experience in the mortgage brokerage business. Thesing reviewed the laws and regulations of the Department relating to mortgage brokers, and he consulted with Hittler, who Thesing understood to have prior experience working for a mortgage broker. Thesing did not contact the Department or any other resource to determine his responsibilities under the Real Estate Law as WFI's designated officer.

X

Thesing met with Hittler and Averill once every two weeks, and he was available by telephone to consult with Hittler. When Hittler met with Thesing, he did not discuss the facts or circumstances of any particular loan transaction unless the circumstances were unusual, and Thesing did not review documents pertaining to particular files. The meetings were general business development meetings, which included discussion of expanded business ventures and other ideas put forward by Averill. With the exception of one occasion, Thesing did not come to the offices of WFI for any meeting or to observe the work being performed there.

XI

Beginning in approximately July 1986, Hittler managed the daily operations and mortgage loan broker activities of WFI, according to an oral agreement with Thesing.

XII

On or about March 11, 1988, Thesing and Hittler entered into a written "Broker Management Agreement" which provided, among other things, that Hittler was employed by WFI as manager of its daily operations, subject to Thesing's supervision

"according to Section 2725(B) of the California Real Estate Law." (Title 10, California Code of Regulations, section 2725(b)); and that Thesing would not work from the WFI office where Hittler was located.

XIII

At the times mentioned in Findings XI and XII above, Hittler had not accumulated two years full-time experience as a salesperson licensee.

XIV

By entering into the oral and written agreements set forth in Findings XI and XII above, Thesing failed to exercise reasonable supervision and control over the activities of WFI and its employees.

XV

From approximately September 1986 through May 1987, Averill solicited borrowers and lenders and negotiated loans to be secured by liens on real property, for which he received compensation by WFI.

XVI

In or about September, 1986, Charles Epps contacted WFI to obtain a loan for the purchase of his home. During September and October, 1986, Epps dealt with Averill as "loan agent" on the transaction; Averill took Epps' application, discussed loan alternatives with Epps, followed up with the lender, arranged for Epps to sign documents and kept Epps informed during the processing of the loan. With the exception of a few occasions when Hittler answered the telephone when Averill was out of the office, Averill handled the entire transaction.

In or about January, 1987, Averill assisted Epps in attempting to refinance two pieces of real property, by attempting to locate a suitable lender. These refinancing efforts were unsuccessful.

From approximately September 1986 through January 1987, Averill assumed to act as a real estate salesperson by performing services for Epps in connection with loans secured by real property.

XVII

In February or March, 1987, Dr. Peter Bullock and his wife, Elke Schlosser, sent out inquiries to a number of lenders and mortgage brokers, including WFI, to attempt to secure a loan on their home. Averill contacted the Bullocks to set up a meeting to discuss their loan application. Averill came to the Bullocks' residence and they discussed with Averill all aspects

of the proposed loan transaction. Averill quoted loan rates and discussed fees in connection with the proposed transaction; he entered into negotiations with the Bullocks to obtain for them a loan to be secured by a lien on real property.

XVIII

In performing the acts referred to in Findings XVI and XVII, Averill engaged in the business and acted in the capacity of a real estate licensee within the meaning of Business and Professions Code section 10131(d), at a time when Averill did not possess a real estate license issued by the Department.

XIX

Hittler admitted that he was generally aware of Averill's activities on Epps' behalf, but was unconcerned because he felt that Epps was not seriously pursuing the refinance in January 1987 and that Averill's activities were minimal.

Hittler was at all times aware of Averill's activities in connection with the Bullock transaction.

Thesing failed to exercise reasonable supervision and control over the activities of WFI and its employees in that he was unaware of the activities of Averill; Thesing admitted that, as of the date of hearing, he still was not aware of exactly what Averill did on behalf of WFI. By reason of his position as Designated Officer of WFI, Thesing should have been aware of the facts set forth in Findings XVI-XVIII.

XX

Averill, Hittler and Jeff Pfeiffer, a real estate salesperson employed by WFI, all expended many hours in an attempt to assist the Bullocks in obtaining their loan. These efforts included rehabilitation of Schlosser's credit rating, and contacts with the City of Woodside pertaining to the certificate of completion on the Bullocks' residence. Dr. Bullock's credit rating was less favorable than that of his wife; therefore, Hittler and Averill recommended that the Bullocks seek to obtain a loan in Schlosser's name alone. In addition, the Bullocks sought to take out a large sum of cash from the loan proceeds. After consultation with a number of lenders, Hittler and/or Averill recommended that Schlosser record a deed of trust for the amount desired for "cash out" in the name of Peter Bullock, M.D., Inc.

On or about April 15, 1987, Schlosser signed a deed of trust in the wrong amount, which had to be reconveyed by Dr. Bullock. Thereafter, on or about June 1, 1987, Hittler presented a new deed of trust to Schlosser for her signature in the correct amount. However, in order to expedite the transaction, Schlosser and Hittler agreed that Schlosser would also sign a blank deed of

trust; Schlosser was told that the blank deed of trust, if needed, would be used "for her benefit."

XXI

In the course of WFI's activities in arranging a loan for the Bullocks, a dispute arose between WFI and the Bullocks concerning fees owed for services rendered by WFI.

XXII

On or about July 27, 1987, WFI caused an invoice for services rendered to be sent to the Bullocks in the amount of \$530.00. The Bullocks refused to pay the invoice.

XXIII

On or about August 18, 1987, Hittler caused WFI to be named as beneficiary on the blank deed of trust signed by Schlosser securing payment of the sum of \$2,080.00 and caused said deed of trust to be recorded against Bullocks' property located at 3573 Tripp Road, Woodside, California, without the consent of Schlosser or Bullock.

Hittler attempted to contact Thesing by telephone prior to filling in the blank deed of trust, but Thesing was out of town and unavailable for consultation. Hittler did contact the Department's regulatory division in Sacramento to explain the circumstances and his intended action. The Department's representative said: "It's probably not ethical, it's probably not moral, but if [Schlosser] gave you instructions to use [the deed of trust] as you saw fit, there is nothing we can do to stop you from recording it."

XXIV

On or about August 19, 1987, Hittler submitted a Broker's Demand on behalf of WFI to First American Title Guaranty Company against the escrow opened in connection with the refinancing of the Bullocks' residence.

On or about August 20, 1987, in order to prevent the failure of the escrow for the sale of the Tripp Road property, the Bullocks paid the sum of \$2,080.00 to WFI in satisfaction of payments alleged to be due and secured by the deed of trust.

XXV

On September 22, 1987, Hittler was served with a complaint by the Bullocks seeking damages in the amount of \$500,000.00. Hittler took the complaint to Thesing and explained the circumstances of the Bullock transaction. Thesing was completely unaware of the transaction or any of the actions of WFI employees on behalf of the Bullocks prior to the filing and serving of the complaint upon Hittler.

XXVI

Thesing failed to exercise reasonable supervision and control over the activities of WFI and its employees with respect to the Bullock transaction. The Bullock transaction was extraordinary in a number of respects: the expenditure of much more time and effort on the part of WFI employees than the typical mortgage loan; the "creative" use of a deed of trust to get cash out of the loan which the lender would otherwise not have allowed; the receipt of a blank deed of trust from Schlosser; and the dispute over the fees. Even assuming that Thesing would not be advised of strictly routine transactions, the Bullock transaction was not routine by any definition, and Thesing should have been aware of the fact that the blank deed of trust existed and the impropriety of accepting such a document, as well as the fee dispute and Hittler's efforts to collect fees on behalf of WFI.

XXVII

All evidence offered by the parties in mitigation, extenuation and/or rehabilitation was considered in making the Determination of Issues and Order hereinbelow.

DETERMINATION OF ISSUES

I

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondents WFI and Thesing pursuant to Business and Professions Code section 10177(d) and 10 CCR section 2725(b)(2) by reason of Findings XII-XIII.

Thesing and WFI contend that the agreement between Thesing and Hittler to permit Hittler to manage the daily operations of WFI does not violate 10 CCR section 2725(b)(2) in that the Department failed to establish that the transactions involved in the mortgage brokerage business do not require review and initialing by the broker pursuant to 10 CCR section 2725(a). This contention is not persuasive; the Broker Management Agreement signed by Thesing and Hittler prior to Hittler's having accumulated two years of full time salesperson experience references section 2725(b) with respect to the responsibilities and duties of the parties, and the Agreement violates section 2725(b)(2) on its face.

II

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondents WFI and Thesing pursuant to Business and Professions Code sections 10137 and 10177(d) and 10 CCR section 2740 by reason of Findings XV-XVIII.

III

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondents WFI and Hittler pursuant to Business and Professions Code sections 10176(i) and 10177(d) and 10 CCR section 2785(a)(13) by reason of Findings XX-XXIV.

Hittler contends that he did not intend to defraud anyone by filling in and recording the deed of trust; that he had Schlosser's implied consent to use the deed "if necessary;" and that he assumed, based on the statements of the Department's representative, that it was not illegal to record the deed of trust. Hittler's contentions are not persuasive. Schlosser clearly did not consent to the use of the deed of trust by Hittler to collect disputed fees, and Hittler's actions in adding to the deed of trust without Schlosser's consent constitutes fraud and dishonest dealing as defined by 10 CCR section 2785(a)(13). The statements of the Department's representative that Hittler's contemplated action was neither ethical nor moral should have put him on notice that the act was a breach of ethics and professional conduct and, therefore, unlawful.

IV

Clear and convincing evidence to a reasonable certainty established cause for discipline against respondent Thesing pursuant to Business and Professions Code sections 10159.2(a), 10177(d) and 10177(h) by reason of Findings IX-XIV, XVI-XIX, and XX-XXVI.

Thesing contends that he did not "willfully disregard or violate" any provision of the Real Estate Law or regulations, in that the supervisory responsibilities of brokers are unclear. This contention is not persuasive. The circumstances surrounding the Bullock transaction demonstrate the inadequacy of Thesing's supervision of the activities of WFI: while Hittler was supposed to advise Thesing of any unusual transactions or developments, Thesing had no independent means of reviewing any transactions, but instead relied exclusively on Hittler to decide which transactions should be brought to Thesing's attention. Thesing conceded that he had no familiarity with any particular loan transaction and that he was not aware of any transaction by name on any occasion.

ORDER

I

All licenses and license rights of respondent Westhaven Financial, Inc. under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are hereby revoked pursuant to Determination of Issues I, II and III, separately and collectively.

II

All licenses and license rights of respondent J. Richard Thesing under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are hereby revoked pursuant to Determination of Issues I, II and IV, separately and collectively.

III

All licenses and license rights of respondent John Damian Hittler under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are hereby revoked pursuant to Determination of Issues III.

DATED: November 15, 1989

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge

CBF:wc

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JOHN VAN DRIEL, Counsel
DEPARTMENT OF REAL ESTATE
185 Berry Street, Room 5816
San Francisco, CA 94107-1770

(415) 557-3220

DEPARTMENT OF REAL ESTATE

By C. Westbrook
C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
WESTHAVEN FINANCIAL, INC.,)
JOHN DAMIAN HITTLER, and)
J. RICHARD THESING,)
Respondents.)

No. H- 6082 SF
ACCUSATION

The Complainant, EDWARD V. CHILOLO, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against WESTHAVEN FINANCIAL, INC., JOHN DAMIAN HITTLER and J. RICHARD THESING (respondents) is informed and alleges as follows:

FIRST CAUSE OF ACCUSATION

I

The Complainant, EDWARD V. CHILOLO, a Deputy Real Estate Commissioner of the State of California, makes this accusation in his official capacity.

II

WESTHAVEN FINANCIAL, INC., (Westhaven) JOHN DAMIAN HITTLER (Hittler) and J. RICHARD THESING (Thesing) are presently

1 licensed and/or have license rights under the Real Estate Law
2 (Part 1 of Division 4 of the California Business and Professions
3 Code) (Code).

4 III

5 From approximately July 25, 1986 to July 1, 1988,
6 Westhaven was a corporation licensed as a real estate broker
7 acting by and through Thesing as its designated officer.
8 Westhaven's corporate license was scheduled to expire on July
9 24, 1990. Effective July 1, 1988, Thesing cancelled his status
10 as designated officer of Westhaven, which now has no designated
11 officer.

12 IV

13 From approximately July 25, 1986 to July 1, 1988,
14 Thesing was licensed to act as designated officer for
15 Westhaven by the Department of Real Estate of the State of
16 California (Department). He was not licensed to act in his
17 individual capacity as a real estate broker. He was also an
18 officer, director and shareholder of Westhaven.

19 V

20 On or about May 16, 1986, Hittler was licensed as a
21 real estate salesperson by the Department. His license expires
22 on May 15, 1990. He was also an officer, director and
23 shareholder of Westhaven.

24 VI

25 At all times mentioned herein, as the designated
26 officer of Westhaven, Thesing was responsible for the
27 supervision and control of the activities conducted on behalf of

1 Westhaven by its officers and employees as necessary to secure
2 full compliance with the provisions of the Real Estate Law.

3 VII

4 Whenever reference is made in an allegation in this
5 Accusation to an act or omission of Westhaven, such allegation
6 shall be deemed to mean that the officers, directors, employees,
7 agents and real estate licensees employed by or associated with
8 Westhaven committed such act or omission while engaged in
9 furtherance of the business or operation of Westhaven and while
10 acting within the course and scope of their corporate authority
11 and employment.

12 VIII

13 Beginning approximately July 1986, Hittler has
14 managed the daily operations and mortgage loan broker activities
15 of Westhaven, according to an oral agreement with Thesing.

16 IX

17 On or about March 11, 1988 Thesing and Hittler entered
18 into a written "Broker Management Agreement" which provided,
19 among other things, that Hittler was employed by Westhaven as
20 manager of its daily operations, subject to Thesing's
21 supervision; and that Thesing would not work from the Westhaven
22 office where Hittler was located.

23 X

24 At the times mentioned in Paragraphs VIII and IX,
25 Hittler had not accumulated two years full-time experience as a
26 salesperson licensee.

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XI

The acts and omissions of Thesing and Westhaven alleged in Paragraphs I through X violated Sections 2725(b)(2) of Title 10 of the California Code of Regulations (Regulations) and are grounds for disciplinary action under the provisions of Section 10177(d) of the California Business and Professions Code (Code).

SECOND CAUSE OF ACCUSATION

XII

There is hereby incorporated in this second cause of Accusation all of the allegations contained in Paragraphs I through VII of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIII

From approximately September 1986 through May 1987, Westhaven employed and compensated PETER AVERILL (Averill) for soliciting borrowers and lenders and negotiating loans to be secured by liens on real property.

XIV

From approximately September 1986 through January 1987, Averill assumed to act as a real estate salesperson by performing services for Charles Epps in connection with loans secured by real property.

XV

In approximately February 1987, Averill solicited Peter Bullock and Elke Schlosser as prospective borrowers and entered into negotiations with them to obtain for them a loan to

1 be secured by a lien on real property.

2 XVI

3 In performing the acts referred to in Paragraphs XIV
4 and XV, Averill engaged in the business and acted in the
5 capacity of a real estate licensee within the meaning of Section
6 10131(d) of the Code.

7 XVII

8 At the time of engaging in the activities described in
9 Paragraphs XIV and XV, Averill did not possess a real estate
10 license issued by the Department.

11 XVIII

12 The acts and omissions of Thesing and Westhaven
13 alleged in Paragraphs XII through XVII violated Section 2740 of
14 the Regulations and are grounds for disciplinary action under
15 the provisions of Section 10177(d) of the Code. Said acts and
16 omissions are grounds for disciplinary action under the
17 provisions of Section 10137 of the Code.

18 THIRD CAUSE OF ACCUSATION

19 XIX

20 There is hereby incorporated in this third cause of
21 Accusation all of the allegations contained in Paragraphs I
22 through VII of the First Cause of Accusation with the same force
23 and effect as if herein fully set forth.

24 XX

25 Either Averill or Jeff Pfeiffer, a real estate
26 salesperson employed by Westhaven, in the course of obtaining
27 Elke Schlosser's signature on loan documents for the

1 transaction referred to in Paragraph XV of the Second Cause of
2 Accusation, requested Ms. Schlosser to sign a blank deed of
3 trust. Ms. Schlosser was told that the blank deed of trust, if
4 needed, would be used "for her benefit".

5 XXI

6 In the course of Westhaven's activities in arranging a
7 loan for Peter Bullock and Elke Schlosser (Bullocks) a dispute
8 arose between Westhaven and Bullocks concerning fees owed for
9 services rendered by Westhaven.

10 XXII

11 On or about July 27, 1987 Westhaven caused an invoice
12 for services rendered to be sent to Bullocks in the amount of
13 \$530.00. Bullocks refused to pay the invoice.

14 XXIII

15 On or about August 18, 1987 Hittler caused Westhaven
16 to be named as beneficiary on the blank deed of trust signed by
17 Elke Schlosser securing payment of the sum of \$2,080.00 and
18 caused said deed of trust to be recorded against Bullocks'
19 property located at 3573 Tripp Road, Woodside, CA, without the
20 knowledge or consent of Elke Schlosser or Peter Bullock.

21 XXIV

22 On or about August 20, 1987, in order to prevent the
23 failure of the escrow for the sale of the Tripp Road property,
24 Bullocks paid the sum of \$2,080.00 to Westhaven in satisfaction
25 of payments alleged to be due and secured by the deed of trust.

26 XXV

27 The acts and omissions of respondents alleged in

1 Paragraphs XIX through XXIV violated Sections 2785(a)(13) of the
2 Regulations and are grounds for disciplinary action under the
3 provisions of Section 10177(d) of the Code. Said acts and
4 omissions are grounds for discipline under the provisions of
5 Section 10176(i) of the Code.

6 FOURTH CAUSE OF ACCUSATION

7 XXVI

8 There is hereby incorporated in this fourth cause of
9 Accusation all of the allegations contained in Paragraphs I
10 through VII of the First Cause of Accusation with the same force
11 and effect as if herein fully set forth.

12 XXVII

13 From approximately July 1986 through May 1987,
14 Thesing, by reason of his position as Designated Officer of
15 Westhaven, should have known of the facts alleged in the First
16 through Third Causes of Accusation. His failure to exercise
17 reasonable supervision and control of the activities of
18 Westhaven and its employees resulted in whole or in part in the
19 violations of the real estate law set forth in the First through
20 Third Causes of Accusation

21 XXVIII

22 The acts and omissions of Thesing alleged in
23 Paragraph XXVII violated Section 10159.2(a) of the Code and are
24 grounds for disciplinary action under the provisions of Section
25 10177(d) of the Code. Said acts and omissions are grounds for
26 discipline under the provisions of Section 10177(h) of the Code.

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

Edward V. Chio

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California
this *11th* day of *OCTOBER*, 1988.