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FILED
MAY - 5 1997
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
MICHAEL LAZZERI,) No. H-6247 SF
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On August 12, 1991, a Decision and Order was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 27, 1991, and Respondent has operated as a restricted licensee since that time.

On May 7, 1996, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to

1 demonstrate to my satisfaction that Respondent has undergone
2 sufficient rehabilitation to warrant the reinstatement of
3 Respondent's real estate salesperson license, in that Respondent
4 has failed to discharge adjudicated debts including the following:

- 5 1. \$81,208.96 Judgment in Bank of Santa Clara vs.
6 Lazzeri, Santa Clara County Superior Court Case No. CV752908.
- 7 2. \$35,608.77 Judgment in Wells Fargo Bank vs. Lazzeri,
8 Santa Clara County Superior Court Case No. CV747861.
- 9 3. \$223,000 Judgment in National Funding vs. Lazzeri,
10 Santa Clara County Superior Court Case No. CV747232.
- 11 4. \$1,800 Judgment in Costa vs. Lazzeri, Santa Clara
12 County Municipal Court Case No. AS95206340.
- 13 5. \$5,000 Judgment in Cramer vs. Lazzeri, Santa Clara
14 County Municipal Court Case No. AS94205610.
- 15 6. \$4,000 Judgment in Sternzon vs. Lazzeri, Santa Clara
16 County Municipal Court Case No. AS94203974.
- 17 7. \$2,400 Judgment in GECC vs. Lazzeri, Santa Clara
18 County Municipal Court Case No. AS96219113.

19 Further, in response to a question in the petition
20 application, "Have you ever been a defendant in any civil court
21 litigation, including small claims court", Respondent answered
22 "No". Respondent failed to disclose in his petition the judgments
23 described above. Respondent's concealment of facts and lack of
24 candor, demonstrates that Respondent has not changed his attitude
25 from that which existed at the time the disciplinary action was
26 taken in this matter.

27 ///



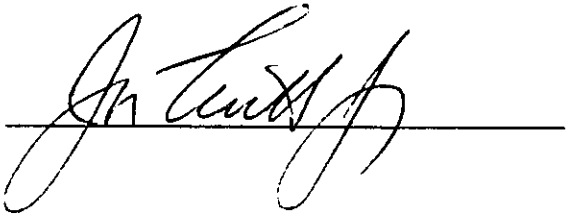
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NOW, THEREFORE, IT IS ORDERED that Respondent's petition
for reinstatement of his real estate salesperson license is
denied.

This Order shall become effective at 12 o'clock
noon on May 27, 1997.

DATED: 4/15/97

JIM ANTT, JR.
Real Estate Commissioner



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FILED
FEB 14 1994

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-6247 SF
JOHN RAYMOND MORRISSEY,)	
)	
Respondent.)	
_____)	

ORDER DENYING REINSTATEMENT OF LICENSE

On April 15, 1991, a Decision was rendered herein revoking the real estate broker license of Respondent but granting Respondent the right to apply for a restricted real estate broker license upon terms and conditions. A restricted real estate broker license was issued to Respondent on May 10, 1991.

On May 8, 1992, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone

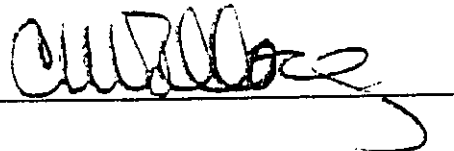
1 sufficient rehabilitation to warrant the reinstatement of
2 Respondent's real estate broker license, in that an Accusation was
3 filed on October 13, 1993, in Case No. H-6986 SF charging
4 Respondent with violations of Sections 10176(a), 10176(i), 10148
5 and 10177(d) of the Business and Professions Code. Respondent's
6 violation of said Sections, occurring after the disciplinary
7 action taken in this matter, demonstrates an absence of
8 rehabilitation on the part of Respondent.

9 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
10 for reinstatement of Respondent's real estate broker license is
11 denied.

12 This Order shall become effective at 12 o'clock
13 noon on March 7, 1994.

14 DATED: 2/8/94

15 CLARK WALLACE
16 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-6247 SF
)	
RICK GROSS, INC. dba)	
PEOPLE'S MORTGAGE,)	<u>STIPULATION IN</u>
JOHN RAYMOND MORRISSEY,)	<u>SETTLEMENT;</u>
RICHARD ALLEN GROSS and)	<u>DECISION & ORDER</u>
MICHAEL LAZZERI,)	
)	
Respondents.)	

The California Department of Real Estate (Department) filed an Accusation against Rick Gross, Inc. dba People's Mortgage (RGI), John Raymond Morrissey (Morrissey) and Richard Allen Gross (Gross) on December 20, 1989. The Department later filed a First Amended Accusation on March 6, 1990, naming Michael Lazzeri (Lazzeri) as a Respondent. On November 21, 1990, and January 30, 1991, a hearing was held where written and oral evidence was submitted. On March 22, 1991, the Administrative Law Judge issued a Proposed Decision determining, among other things, that the real estate salesperson license of Lazzeri should be revoked. On April 15, 1991, the Chief Deputy

1 Commissioner adopted the Proposed Decision as his Decision
2 effective May 10, 1991. Lazzeri filed a Petition for Writ of
3 Administrative Mandamus on May 29, 1991. As a result of
4 extended discussions between Lazzeri's Counsel, Gary W. Sullivan
5 and the Department's Counsel, Daniel E. Lungren, Attorney General
6 of the State of California, by Richard F. Finn, Deputy Attorney
7 General, concerning a mutually agreeable resolution of the
8 mandate proceeding, Lazzeri and the Department have agreed upon
9 the following disposition of the matter.

10 IT IS HEREBY STIPULATED by and between Michael Lazzeri
11 (sometimes referred to as Respondent) and his attorney of record,
12 Gary W. Sullivan, and the California Department of Real Estate,
13 acting by and through John Van Driel, Counsel for the Department,
14 as follows for the purpose of settling and disposing of the First
15 Amended Accusation filed by the Department on March 6, 1990 in
16 this matter and the Petition for Writ of Administrative Mandamus
17 filed by Lazzeri on May 29, 1991:

18 1. It is understood by the parties that the Real
19 Estate Commissioner (Commissioner) may adopt the Stipulation in
20 Settlement as his decision in this matter thereby imposing the
21 penalty and sanctions on Respondent's real estate license and
22 license rights as set forth in the below "Decision and Order".
23 If the Commissioner does adopt the Stipulation by signing the
24 Decision and Order set out below, Respondent Lazzeri agrees to
25 dismiss the administrative mandamus proceeding now pending in the
26 Superior Court of California in and for the County of Santa
27 Clara. In the event the Commissioner in his discretion does not

1 adopt the Stipulation in Settlement, the Stipulation shall be
2 void and of no effect, and Respondent shall retain the right to
3 proceed with his administrative mandamus proceeding and shall not
4 be bound by any admission or waiver made herein.

5 By reason of the foregoing and solely for the purpose
6 of settlement of the March 6, 1990 First Amended Accusation
7 without further administrative mandamus proceedings, it is
8 stipulated and agreed that the following order shall be amended
9 in connection with the First Amended Accusation filed against
10 Lazzeri in place of the order relating to Lazzeri in the Decision
11 of the Department filed on April 22, 1991. All findings of fact
12 and determinations of issues in their entirety, which are set out
13 in the Proposed Decision dated March 22, 1991, and which were
14 adopted by the Chief Deputy Commissioner on April 15, 1991, and
15 all orders relating to respondents other than Lazzeri shall
16 remain the same and shall not be affected by this Stipulation.

17 ORDER

18 I

19 All licenses and license rights of Respondent Michael
20 Lazzeri under the Real Estate Law (Part 1 of Division 4 of the
21 Business and Professions Code) are revoked pursuant to
22 Determination of Issues IV. However, a restricted real estate
23 salesperson license shall be issued to Respondent Lazzeri
24 pursuant to Section 10156.5 of the Business and Professions Code
25 if he makes application therefor and submits to the Department of
26 Real Estate the appropriate fee within sixty (60) days of the
27 effective date of the decision. The restricted license issued to

1 Respondent Lazzeri shall be subject to all the provisions of
2 Section 10156.7 of the Business and Professions Code and to the
3 following restrictions imposed under authority of Section 10156.6
4 of said Code:

5 A. The restricted license may be suspended prior to
6 hearing by order of the Real Estate Commissioner in the event of
7 Respondent's conviction or plea of nolo contendere to a crime
8 which bears a substantial relationship to Respondent's fitness or
9 capacity as a real estate licensee, or upon evidence satisfactory
to the Commissioner that Respondent has violated the provisions
of the California Real Estate Law, the Subdivided Lands Law,
Regulations of the Real Estate Commissioner or conditions
attaching to this restricted license.

10 B. Respondent shall submit with his application for
11 license under an employing broker or his application for a
12 transfer to a new employing broker a statement signed by the
prospective employing broker which shall certify:

- 13 1. That the decision of the Commissioner which granted
the right to a restricted license has been read;
- 14 2. That close supervision will be exercised over the
15 licensee of activities for which a real estate
license is required.

16 C. Respondent shall, within six (6) months from the
17 effective date of this decision, present evidence satisfactory to
18 the Real Estate Commissioner that he has, since the most recent
19 issuance of an original or renewal real estate license, taken and
20 successfully completed the continuing education requirements of
21 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
22 real estate license. If Respondent fails to satisfy this
condition, the Commissioner may order the suspension of the
restricted license until the Respondent presents such evidence.
The Commissioner shall afford Respondent the opportunity for
hearing pursuant to the Administrative Procedure Act to present
such evidence.

23 D. Respondent shall submit periodic reports to the
24 Commissioner regarding his compliance with the terms of this
restricted license, at such intervals and in such form as
directed by the Commissioner.

25 E. Respondent shall not be eligible to apply for the
26 issuance of an unrestricted real estate license, nor the removal
27 of any of the conditions of the restricted license, until one (1)
year has elapsed from the date of issuance of the restricted
license.

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DATED: 7-31-91

John Van Driel
Counsel for Complainant

APPROVED AS TO FORM:

DANIEL E. LUNGREN, Attorney General
of the State of California

DATED: 8/5/91

by [Signature]
Attorneys for the California
Real Estate Department

DATED: 7/26/91

[Signature]
Attorneys for Michael Lazzeri

* * *

I have read the Stipulation In Settlement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am agreeing to dismiss the administrative mandamus proceeding pending in the Superior Court, Santa Clara County, and I willingly, intelligently and voluntarily agree to dismiss that action on behalf of myself in exchange for the Department entering into this Stipulation.

DATED: 7/26/91

[Signature]
MICHAEL LAZZERI

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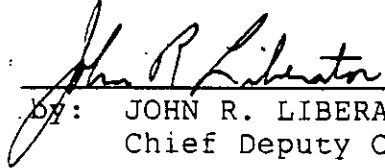
* * *

DECISION AND ORDER

The foregoing Stipulation in Settlement, which includes
an amended Order, is hereby adopted by the Commissioner as the
Decision and order of the Department and shall become effective
immediately.

IT IS SO ORDERED August 12, 1991.

CLARK WALLACE
Real Estate Commissioner


By: JOHN R. LIBERATOR
Chief Deputy Commissioner

COPY

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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE *By Victoria Dillon*
STATE OF CALIFORNIA
Victoria Dillon

In the Matter of the Accusation of)
RICK GROSS, INC. dba PEOPLE'S)
MORTGAGE,)
JOHN RAYMOND MORRISSEY,)
RICHARD ALLEN GROSS and)
MICHAEL LAZZERI,)
Respondent(s).)

No. H-6247 SF
OAH N-35574

DECISION

The Proposed Decision dated March 22, 1991,
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 May 10, 1991.

IT IS SO ORDERED April 15, 1991.

JOHN R. LIBERATOR
Chief Deputy Real Estate Commissioner

John R. Liberator

II

oss, Inc. ("RGI"), dba People's Mortgage, John y ("Morrissey"), Richard Allen Gross ("Gross") eri ("Lazzeri") are presently licensed and/or hts under the Real Estate Law, Part 1 of Division nia Business and Professions Code ("BPC").

III

times mentioned herein, RGI, a California licensed by the Department of Real Estate s a real estate broker by and through Morrissey ficer. RGI's real estate broker license ary 6, 1994.

IV

times mentioned herein, Morrissey was licensed by s a real estate broker in his individual capacity d officer of RGI. Morrissey's individual real cense expires on January 30, 1992. Morrissey's nated officer of RGI was cancelled as of February reinstated as of August 14, 1989. Morrissey's expires on August 13, 1993.

V

times mentioned herein, Gross was licensed by the real estate salesperson. Gross' real estate pires on January 29, 1993.

VI

was licensed by the Department as a real estate eptember 2, 1987. Said license expires on l.

VII

times mentioned herein, respondents engaged in acted in the capacity of real estate licensees California within the meaning of BPC section ing the operation of a mortgage loan brokerage e public wherein lenders and borrowers were soli- secured directly or collaterally by liens on real ns were arranged, negotiated, processed and conf l of others, all for or in expectation of

VIII

times mentioned herein, Morrissey, as the desig- icer of RGI, was responsible for the supervision e activities conducted on behalf of RGI by its

officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of salespersons licensed to RGI in the performance of acts for which a real estate license is required, as provided by BPC section 10159.2.

IX

At all times mentioned herein, Gross was the president and majority shareholder of RGI and directed and controlled its business activities and conducted its affairs.

X

In approximately June of 1987, Richard and Linda Leier requested and received an application for a \$16,500 loan from RGI to be secured by a second deed of trust on their real property located at 965 Cape Anita Place, San Jose California ("the property"). The Leiers completed the loan application and returned it to RGI's agent Dan Moreno ("Moreno"). Escrow was opened with California Land Title Company.

XI

In the course of the loan application approval process, an appraisal of the property was obtained by RGI. The appraisal report was received by RGI on July 3, 1987. Moreno determined based on the appraisal that the combination of the existing first mortgage plus the proposed second mortgage would result in a loan-to-value ("LTV") ratio of approximately 83 percent.

During the period in question, RGI was primarily a "hard money lender," i.e., it placed second mortgages with private investors rather than with mortgage bankers or other lending institutions. The company policy with respect to private placement of second mortgages was a maximum LTV ratio of 75 percent, with a 70 percent LTV preferred.

On approximately July 23, 1987, Moreno informed the Leiers that RGI could not fund the loan using its private investors. Moreno offered to try to find a lender that would consider the higher LTV. Moreno located an institutional lender, H.P.F. Inc., ("HPF"), which approved the Leiers' loan application.

XII

In late September, 1987, the Leiers received a telephone call from "Marni," a clerical person at RGI, telling them that their loan had been approved and that the papers were ready to sign at the title company. On September 27, 1987, the Leiers went to the title company office and signed the required loan documents for the second mortgage.

XIII

From the time the Leiers first contacted RGI until the date they signed the required loan papers at California Land Title Company, neither respondents RGI, Gross nor Morrissey delivered a borrower disclosure statement to the Leiers as required by BPC section 10240.

Respondents concede that they did not deliver a borrower disclosure statement to the Leiers. Respondents contend that RGI was not obligated to deliver the borrower disclosure statement since HPF was the lender. This contention is not persuasive; RGI and its agents were clearly acting in the capacity of a mortgage loan broker in connection with the Leier transaction, as an intermediary between the borrower and the lender.

Respondents next contend that their failure to make the disclosure is excused because the disclosure requirement does not become operative until the borrower becomes obligated to complete the loan. In this instance, the Leiers became obligated to complete the loan when they signed the papers at the title company on September 27, 1987, and respondents should have made the disclosure before that time. Respondents had actual knowledge that the loan papers were ready to sign, in that an employee of RGI notified the Leiers that the loan had been approved, as set forth in Finding XII above; the fact that the documents were presented to the Leiers at the title company instead of at RGI's office does not relieve RGI of its obligation.

Respondents' conduct in failing to deliver a borrower disclosure statement to the Leiers was "willful" within the meaning of BPC section 10177(d) in that they intended not to prepare such a statement; the fact that respondents may not have intended to violate the law is not material to a determination of whether grounds for discipline exists under BPC section 10177(d), but rather shall be considered as a factor in mitigation.

XIV

When the Leiers first discussed with Moreno the possibility of obtaining a loan through RGI in June of 1987, Moreno told them that the total costs for the loan would not exceed 5 points, or 5 percent of the loan amount. Moreno told the Leiers that the fee for the appraisal of the property would be approximately \$250. The Leiers were never given any other estimate of the loan fees by anyone else at RGI in connection with the loan. The Leiers never received any written document from Moreno or anyone else at RGI setting forth loan fees or costs, either estimated or actual. At no time prior to October 5, 1987 were the Leiers told that loan fees and costs might exceed 5 percent of the loan amount.

XV

On September 27, 1987, when the Leiers went to California Land Title Company to sign the loan documents for their loan, they were given a Borrower Settlement Statement prepared by the title company which indicated that the loan fee charged to the Leiers for the loan was the sum of \$685, characterized as a "loan origination fee." There was also an appraisal review fee of \$150. The loan origination fee was approximately 4.2 percent of the loan amount. The Leiers signed the loan documents in reliance on the loan fee representation set out in the Borrower Settlement Statement, which was consistent with Moreno's earlier oral representation of the estimated loan fees to the Leiers.

XVI

When the Leiers signed the loan documents, the escrow officer told them their check would be ready to be picked up around October 5 or 6, 1987, and that they should call in October to see if the check was ready.

When the Leiers called California Land Title Company in early October, 1987, they were told that the funds could not be released, since RGI had made a written demand in escrow for payment of loan fees and costs in the amount of \$1,240 to RGI and \$165 to HPF, calculated as follows:

4 % x 16,500	= \$	660
Processing	=	300
Appraisal	=	250
<u>Credit</u>	=	<u>30</u>
Total to RGI	=	\$1,240
Plus: 1% to		
<u>HPF</u>	=	<u>165</u>
TOTAL LOAN		
FEES & COSTS	=	\$1,405

The loan fees and costs demanded by RGI on its behalf and on behalf of HPF amounted to 8.5 percent of the loan amount. Since these fees and costs exceeded the estimated fee quoted by Moreno, the Leiers refused to pay the loan fee demanded and did not accept the loan proceeds.

XVII

The Leiers attempted to negotiate the claimed fees with Gross in behalf of RGI. When the loan did not fund in early October, 1987, HPF also added fees and charges which increased the cost of the loan to the Leiers. When Gross and Leier were unable to agree on the amount of loan fees, which were in excess

of the estimated fee quoted to Leier by Moreno, the Leiers cancelled their loan application with RGI.

XVIII

RGI expected HPF to include RGI's costs and fees in its information to the title company so that they would appear on the Borrower Settlement Statement. RGI neglected to submit a written demand to the title company prior to the Leiers signing the loan documents on September 27, 1987. As a consequence of RGI's failure to deliver to the Leiers the statement required pursuant to BPC sections 10240 and 10241, the Leiers were not informed of the costs and expenses of making the loan prior to becoming obligated to complete the loan on September 27, 1987.

XIX

RGI's belated demand for fees and costs in connection with the Leier loan constitutes the claiming by a licensee of an undisclosed amount of compensation, in that the demand was made prior to the the signing of any agreement evidencing the meeting of the minds of the contracting parties concerning the authorization or employment of the licensee (RGI) to do acts for which a license is required for compensation or commission; as noted previously, there was no written document memorializing the estimated or actual fees due in connection with the loan which was prepared or signed by RGI and the Leiers.

Under the facts herein, it was not established that RGI or Gross engaged in fraud or dishonest dealing in connection with the Leier transaction; rather, the problems herein arose as a result of negligence on the part of RGI and its employees.

XX

In approximately January of 1987, RGI employed Lazzeri as a loan agent trainee, at an initial salary of \$2,000 per month, which was increased to \$2,600 by the end of January. Lazzeri was paid approximately \$3,000 in gross salary for February, 1987; his gross salary was raised to \$5,000 per month in March, 1987 and \$6,000 in April, 1987. Lazzeri was hired by Gross because he had numerous business contacts in the real estate field and was perceived as a source of potential borrowers. Lazzeri was studying for his real estate license during the winter of 1987; his duties as a trainee included observing Gross and the other agents to "learn the business", carrying loan packets to clients and assisting them with filling out forms, and helping to process loans in the office.

XXI

In January of 1987, Alex Castro desired to obtain a refinance loan through RGI to be secured by the property located at 6105 Strelow Court, San Jose, California. Castro was referred

to RGI from another mortgage loan broker. Castro was a friend of Lazzeri's uncle, which provided some impetus for Castro to utilize RGI.

In February of 1987, Lazzeri, acting as the agent of RGI for or in expectation of compensation, met with Castro, discussed loan options and interest rates available and helped Castro complete his loan application. Lazzeri was the only person from RGI who dealt with Castro; Castro did not meet Gross or Morrissey during the time he was applying for his loan. Gross' claim that he was the agent on the Castro loan is not credible.

XXII

In approximately March of 1987, the Castro loan was funded by a lender who also paid a commission for the loan brokerage to RGI. Around that same time, RGI compensated Lazzeri for his work for RGI. It was not established that Lazzeri received a separate commission in connection with the Castro loan.

XXIII

In performing the services set forth in Finding XXI for Castro, Lazzeri engaged in the business and acted in the capacity of a real estate licensee within the meaning of BPC section 10131(d). At the time he engaged in the acts described herein, Lazzeri did not possess a real estate license issued by the Department.

XXIV

RGI employed and compensated Lazzeri for performing acts for which a real estate license is required, at a time when Lazzeri did not possess a real estate license issued by the Department.

Respondents claim that Lazzeri exceeded the scope of his authority as a loan officer trainee by quoting interest rates and negotiating the Castro loan, and that this conduct was neither known to respondents nor condoned by them. This contention is not persuasive; Lazzeri was the only person from RGI who interacted with Castro in connection with the loan, for which RGI was compensated as set forth in Finding XXII above. Thus, respondents had actual or constructive knowledge of Lazzeri's activities and acquiesced in said conduct.

XXV

Morrissey, as the officer designated by the RGI corporate broker license, was required to exercise reasonable supervision and control over the activities of RGI and its employees for which a real estate license is required. During 1987, Morrissey was in the RGI office an average of 4 days per week, 5-10 hours per day. Morrissey's duties included reviewing

transactions which were expected to close the following day; meet with licensees, either individually or collectively, to discuss the progress of transactions; meet with loan processors regarding the progress of transactions; meet with Gross to address questions regarding transactions, supervision issues and procedural questions; and the review of files and recap sheets.

Morrissey was generally aware of the Leier transaction and met with Moreno on at least one occasion to discuss the Leier loan, since the LTV ratio of the loan exceeded the guidelines for funding by RGI. Morrissey was aware that RGI did not prepare or cause to be delivered to the Leiers the statement required by BPC section 10240; it was Morrissey's opinion at that time that RGI did not need to make this disclosure because it was not "doing the loan." Morrissey was not aware that RGI's demand for fees had not been given to the escrow company until after Leier discovered that the title company would not release the loan proceeds and Leier had an angry confrontation with RGI employees at RGI's offices. Morrissey should have taken steps to insure that full disclosure of the amounts of fees and costs of the loan were made to the Leiers and were transmitted to the title company.

Morrissey failed to exercise reasonable supervision and control of the activities of RGI in the Leier transaction and was negligent in performing his function as the designated broker officer of RGI in that he failed to assure RGI's full compliance with the Real Estate Law as set forth above.

With regard to the employment of Lazzeri, Morrissey met with Lazzeri when he was first hired as a trainee to explain the limitations of his authority. However, Morrissey failed to adequately monitor Lazzeri's activities to confirm that he was acting within the bounds of his authority. If in fact Morrissey reviewed the file of the Castro transaction, it should have been apparent that Lazzeri was the only employee of RGI involved with the transaction, and that Lazzeri was performing acts for which a real estate license is required.

Morrissey failed to exercise reasonable supervision and control of the activities of Lazzeri and RGI in the Castro transaction and was negligent in performing his function as the designated broker officer of RGI in that he failed to assure RGI's and Lazzeri's full compliance with the Real Estate Law as set forth above.

XXVI

In mitigation, it was established that the Leier transaction was one of the first "brokered loans" handled by RGI in which a lender other than one of RGI's private investors provided the financing at a LTV ratio greater than 80 percent; respondents believed that HPF would provide all necessary disclosures and would properly include RGI's fees in the information provided to the title company. In response to the problems encountered in the Leier transaction, respondents now give the BPC section 10240

disclosure in all transactions, and they give clients good faith estimates in writing even when they expect such information to also be provided by the lender.

Morrissey has been a real estate licensee for 23 years and has been a licensed real estate broker for 21 years, with no prior disciplinary action or complaints concerning his conduct. Morrissey has taught junior college courses in real estate since 1982.

Gross was first licensed as a real estate salesperson in 1984, with no prior disciplinary action or complaints concerning his conduct.

DETERMINATION OF ISSUES

I

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent RGI's license pursuant to BPC section 10177(d) in that RGI violated BPC section 10240 by reason of Findings I-XIII.

II

Clear and convincing evidence to a reasonable certainty established cause for discipline of the licenses of respondents RGI and Gross pursuant to BPC sections 10176(g) and 10177(g) by reason of Findings I-XIX.

III

No cause for discipline of the licenses of respondents RGI and Gross was established pursuant to BPC section 10176(i) by reason of Findings I-XIX.

IV

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent Lazzeri's license pursuant to BPC section 10177(d) in that Lazzeri violated BPC section 10130 by reason of Findings XX-XXIII.

V

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent RGI's license pursuant to BPC sections 10137 and 10177(d) by reason of Findings XX-XXIV.

VI

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent Morrissey's license pursuant to BPC sections 10177(g) and (h) by reason of Findings I-XXV.

ORDER

I

All licenses and license rights of respondent Michael Lazzeri under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are revoked pursuant to Determination of Issues IV.

II

All licenses and license rights of respondent Richard Alan Gross under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are revoked pursuant to Determination of Issues II. However, a restricted real estate salesperson license shall be issued to respondent Gross pursuant to Section 10156.5 of the Business and Professions Code if respondent Gross makes application therefor and submits to the Department of Real Estate the appropriate fee within sixty (60) days of the effective date of this decision. The restricted license issued to respondent Gross shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following restrictions imposed under authority of Section 10156.6 of said Code:

A. The 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 substantial relationship to respondent's fitness or capacity as a real estate licensee, or upon evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

B. Respondent shall submit with his application for license under an employing broker or his application for a transfer to a new employing broker a statement signed by the prospective employing broker which shall certify:

1. That the decision of the Commissioner which granted the right to a restricted license has been read;
2. That close supervision will be exercised over the licensee of activities for which a real estate license is required.

C. Respondent shall, within nine (9) months from the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to

satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for hearing pursuant to the Administrative Procedure Act to present such evidence.

D. Respondent shall submit periodic reports to the Commissioner regarding his compliance with the terms of this restricted license, at such intervals and in such form as directed by the Commissioner.

E. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, nor the removal of any of the conditions of the restricted license, until two (2) years have elapsed from the date of issuance of the restricted license.

III

All licenses and license rights of respondent Rick Gross, Inc. dba People's Mortgage under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are revoked pursuant to Determination of Issues I, II and V. However, a restricted real estate broker license shall be issued to respondent RGI 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 within sixty (60) days of the effective date of this decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following restrictions imposed under authority of Section 10156.6 of said Code:

A. The 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 substantial relationship to respondent's fitness or capacity as a real estate licensee, or upon evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

B. Respondent shall submit periodic reports to the Commissioner regarding its compliance with the terms of this restricted license, at such intervals and in such form as directed by the Commissioner.

C. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license, nor the removal of any of the conditions of the restricted license, until two (2) years have elapsed from the date of issuance of the restricted license.

IV

All licenses and license rights of respondent John Raymond Morrissey under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) are revoked pursuant to Determination of Issues VI. However, a restricted real estate broker license shall be issued to respondent Morrissey 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 within sixty (60) days of the effective date of this decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions Code and to the following restrictions imposed under authority of Section 10156.6 of said Code:

A. The 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 substantial relationship to respondent's fitness or capacity as a real estate licensee, or upon evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

B. Respondent shall, within six (6) months of the effective date of this decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for hearing pursuant to the Administrative Procedure Act to present such evidence.

C. Respondent shall submit periodic reports to the Commissioner regarding his compliance with the terms of this restricted license, at such intervals and in such form as directed by the Commissioner.

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 of the restricted license, until two (2) years have elapsed from the date of issuance of the restricted license.

DATED: March 22, 1991

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge

COPY

Flag Inc
FILED
DEC 12 1990
DEPARTMENT OF REAL ESTATE

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Accusation of
RICK GROSS, INC., dba PEOPLE'S MORTGAGE,
JOHN RAYMOND MORRISSEY, RICHARD ALAN
GROSS and MICHAEL LAZZERI,



By *Victoria Dillon*
Victoria Dillon

Case No. H-6247 SF

OAH No. N 35574

Respondent^s

CONTINUED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
OFFICE OF ADMINISTRATIVE HEARINGS, State Building
455 Golden Gate Avenue, Rm 2248, San Francisco, CA 94102

(1 day hearing)

on the 30th day of January, 19 91, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: December 12, 1990

By *John Van Driel*
JOHN VAN DRIEL, Counsel
JVD

COPY

FILED
Aug 22 1990
Flag Inc

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

RICK GROSS, INC. dba PEOPLE'S
MORTGAGE, JOHN RAYMOND MORRISSEY,
RICHARD ALAN GROSS and
MICHAEL LAZZERI,

}

By Victoria Dillon
Victoria Dillon

Case No. H-6247 SF

OAH No. N 35574

Respondent s

(CONTINUED)

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
OFFICE OF ADMINISTRATIVE HEARINGS, State Building
455 Golden Gate Avenue, Rm 2248, San Francisco, CA 94102

on the 28th day of November, 19 90, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon the Accusation served upon you. (1 day hearing)

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: August 22, 1990

By John Van Driel
JOHN VAN DRIEL, Counsel
JVD

COPY

File

FILED
JUL 03 1990

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *Victoria Miller*

In the Matter of the Accusation of

RICK GROSS, INC. dba PEOPLE'S
MORTGAGE, JOHN RAYMOND MORRISSEY,
RICHARD ALAN GROSS and
MICHAEL LAZZERI,

Case No. H-6247 SF

OAH No. N 35574

Respondent s

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
OFFICE OF ADMINISTRATIVE HEARINGS, State Building
455 Golden Gate Avenue, Rm 2248, San Francisco, CA 94102

on the 22nd day of August, 1990, at the hour of 9:00 a.m. (1 day hearing)
as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: July 3, 1990

By *John Van Driel*
JOHN VAN DRIEL Counsel

Jvd

COPY

FILED
MAR 06 1990

1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 5816
4 San Francisco, California 94107-1770
5
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9
10 (415) 557-3220

DEPARTMENT OF REAL ESTATE

By C. Westbrook
C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 RICK GROSS, INC.,)
13 dba PEOPLE'S MORTGAGE,)
14 JOHN RAYMOND MORRISSEY,)
15 RICHARD ALAN GROSS, and)
16 MICHAEL LAZZERI,)
17 Respondents.)

NO. H-6247 SF
FIRST AMENDED
ACCUSATION

17 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
18 Commissioner of the State of California, for cause of accusation
19 against RICK GROSS, INC., dba PEOPLE'S MORTGAGE, JOHN RAYMOND
20 MORRISSEY, RICHARD ALAN GROSS and MICHAEL LAZZERI, is informed
21 and alleges as follows:

22 FIRST CAUSE OF ACCUSATION

23 I

24 EDWARD V. CHIOLO makes the Accusation in his official
25 capacity as Deputy Real Estate Commissioner of the State of
26 California.

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II

Rick Gross, Inc. (RGI), John Raymond Morrissey (MORRISSEY), Richard Alan Gross (GROSS) and Michael Lazzeri (LAZZERI) 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 (Code)).

III

At all times mentioned herein, RGI, a California corporation, was licensed by the Department of Real Estate (Department) as a real estate broker by and through MORRISSEY as designated officer. RGI's real estate broker license expires on February 6, 1990.

IV

At all times mentioned herein, MORRISSEY was licensed by the Department as a real estate broker in his individual capacity and as designated officer of RGI. MORRISSEY's individual real estate broker license expires January 30, 1992. His license as designated officer of RGI was cancelled as of February 27, 1989.

V

At all times mentioned herein, GROSS was licensed by the Department as a real estate salesperson. GROSS's real estate sales license expires January 29, 1993.

VI

LAZZERI was licensed by the Department as a real estate salesperson on or about September 2, 1987. Said license expires on September 1, 1991.

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11 VII

12 At all times mentioned herein, respondents engaged in
13 the business and acted in the capacity of real estate licensees
14 in the State of California within the meaning of Section
15 10131(d) of the Code, including the operation of a mortgage loan
16 brokerage business with the public wherein lenders and borrowers
17 were solicited for loans secured directly or collaterally by
18 liens on real property and loans were arranged, negotiated,
19 processed, and consummated on behalf of others, all for or in
20 expectation of compensation.

21 VIII

22 At all times mentioned herein, MORRISSEY, as the
23 designated broker officer of RGI, was responsible for the
24 supervision and control of the activities conducted on behalf of
25 RGI by its officers and employees as necessary to secure full
26 compliance with the provisions of the Real Estate Law including
27 the supervision of salespersons licensed to RGI in the
performance of acts for which a real estate license is required,
as provided by Section 10159.2 of the Code.

IX

At all times mentioned herein, GROSS was the President
and majority shareholder of RGI and directed and controlled its
business activities and conducted its affairs.

X

In approximately June 1987 Richard and Linda Leier
(LEIER) requested and received an application for a \$16,500 loan
from RGI to be secured by a second deed of trust on their real

1 property located at 965 Cape Anita Place, San Jose, California.
2 LEIER completed the loan application and returned it to RGI's
3 agent Dan Moreno (MORENO).

4 XI

5 On or about September 27, 1987, LEIER's loan
6 application having been approved by a lender, LEIER signed the
7 required loan documents for the above mentioned loan at
8 California Land Title Co.

9 XII

10 From the time LEIER first contacted respondents until
11 the date they signed the required loan papers at California Land
12 Title Co., respondents did not deliver a borrower disclosure
13 statement to LEIER as required by Code Section 10240.

14 XIII

15 By reason of the acts or omissions alleged in
16 Paragraphs I thru XII, RGI violated Section 10240 of the Code
17 and such acts or omissions constitute grounds for the suspension
18 or revocation of respondent's license under the provision of
19 Section 10177(d) of the Code.

20 SECOND CAUSE OF ACCUSATION

21 XIV

22 There is hereby incorporated in this second, separate
23 and distinct cause of Accusation, all of the allegations
24 contained in Paragraphs I through XII of the First Cause of
25 Accusation with the same force and effect as if herein fully set
26 forth.

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XV

In connection with LEIER's loan application, in approximately August 1987, MORENO told LEIER that LEIER's total costs for the loan would not exceed 5 points, or 5% of the loan amount. LEIER was never given any other estimate of the loan fees by anyone else at RGI in connection with this loan.

XVI

On or about September 27, 1987, when LEIER went to California Land Title Co. to sign the loan documents for their loan, they were given a Borrower Settlement Statement which indicated that the loan fee charged to LEIER for the loan was the sum of \$685.00 or 4% of the loan amount. LEIER signed the loan documents in reliance on the loan fee representation set out in the Borrower Settlement Statement, which was consistent with MORENO's earlier representation of LEIER's estimated loan fees.

XVII

On or about October 10, 1987, LEIER went to California Land Title Co. to pick up the loan proceeds. At that time, LEIER was told that RGI had made a written demand in escrow for payment of loan fees in the amount of \$1,240.00. Since the \$1,240.00 loan fee claimed by RGI exceeded the estimated fee quoted by MORENO, LEIER refused to pay the loan fee demanded and did not accept the loan proceeds.

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XVIII

LEIER attempted to negotiate the claimed fees with GROSS in behalf of RGI. When GROSS and LEIER couldn't agree on the amount of loan fees (which were in excess of the estimated fee quoted to LEIER by MORENO), LEIER cancelled his loan application with RGI.

XIX

The acts or omissions of RGI and GROSS alleged in Paragraphs XIV through XVIII, constitute grounds for the suspension or revocation of respondents' licenses under the provisions of Sections 10176(g) and (i) of the Code.

THIRD CAUSE OF ACCUSATION

XX

There is hereby incorporated in this third, separate and distinct cause of Accusation, all of the allegations contained in Paragraphs I through XII of the First Cause of Accusation, and Paragraphs XIV through XVIII of the Second Cause of Accusation with the same force and effect as if herein fully set forth.

XXI

Beginning approximately January 1, 1987, RGI employed and compensated LAZZERI for soliciting or performing services for borrowers or lenders and negotiating loans to be secured by liens on real property.

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XXII

In January 1987 Alex Castro (CASTRO) desired to obtain a re-finance loan through RGI to be secured by the property known as 6105 Strelow Court, San Jose, California.

XXIII

In January 1987 LAZZERI, acting as the agent of RGI for or in expectation of compensation, met with CASTRO, discussed loan options and interest rates available and helped CASTRO complete his loan application.

XXIV

In approximately March 1987, the CASTRO loan was funded by a lender who also paid a commission for the loan brokerage to RGI. Around that same time, RGI compensated LAZZERI for his work for RGI.

XXV

In performing the acts mentioned above, LAZZERI engaged in the business and acted in the capacity of a real estate licensee within the meaning of Section 10131(d) of the Code. At the time of engaging in the acts described herein, LAZZERI did not possess a real estate license issued by the Department.

XXVI

The acts and/or omissions of LAZZERI as set out in Paragraphs XXI through XXV violate Section 10130 of the Code and are grounds for discipline under the provisions of Section 10177(d) of the Code.

/ / / / /

1 XXVII

2 The acts and/or omissions of RGI as alleged in
3 Paragraphs XX through XXVI are grounds for discipline under the
4 provisions of Section 10137 of the Code.

5 FOURTH CAUSE OF ACCUSATION

6 XXVIII

7 There is hereby incorporated in this fourth, separate
8 and distinct cause of Accusation, all of the allegations
9 contained in Paragraphs I through XII of the First Cause of
10 Accusation, Paragraphs XIV through XVIII of the Second Cause of
11 Accusation and Paragraphs XX through XXVI of the Third Cause of
12 Accusation with the same force and effect as if herein fully set
13 forth.

14 XXIX

15 At all times mentioned herein, MORRISSEY failed to
16 exercise reasonable supervision and control of the activities of
17 RGI for which a real estate license is required and was
18 negligent or incompetent in performing acts for which a real
19 estate license is required, in that he knew or should have known
20 all the facts set forth in the allegations of the First, Second
21 and Third Causes of Accusation and that he could have and should
22 have taken steps to assure respondents' full compliance with the
23 Real Estate Law.

24 XXX

25 MORRISSEY's acts and omissions alleged above
26 constitute grounds for disciplinary action under the provisions
27 of Sections 10177(g) and (h) of the Code.

1 WHEREFORE, complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that, upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of the
5 respondents under the Real Estate Law and for such other and
6 further relief as may be proper under other applicable
7 provisions of law.
8

Edward V. Chiolo

10 _____
11 EDWARD V. CHIOLO
 Deputy Real Estate Commissioner

12 Dated at San Francisco, California
13 this 5th day of MARCH, 1990.
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1 JOHN VAN DRIEL, Counsel
2 DEPARTMENT OF REAL ESTATE
3 185 Berry Street, Room 5816
4 San Francisco, California 94107-1770

5 Telephone: (415) 557-3220

FILED
DEC 20 1989
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 - - - -

11 In the Matter of the Accusation of)
12 RICK GROSS, INC.,) NO. H-6247 SF
13 dba PEOPLE'S MORTGAGE,)
14 JOHN RAYMOND MORRISSEY, and) ACCUSATION
15 RICHARD ALAN GROSS,)
Respondents.)

16 The Complainant, EDWARD V. CHIOLO, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 accusation against RICK GROSS, INC., dba PEOPLE'S MORTGAGE, and
19 JOHN RAYMOND MORRISSEY and RICHARD ALAN GROSS, is informed and
20 alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

23 Edward V. Chiolo makes the Accusation in his official
24 capacity as Deputy Real Estate Commissioner of the State of
25 California.

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II

Rick Gross, Inc. (RGI), (John Raymond Morrissey) (MORRISSEY) and (Richard Alan Gross) (GROSS) 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 (Code)).

III

At all times mentioned herein, RGI, a California corporation, was licensed by the Department of Real Estate (Department) as a real estate broker in the State of California, by and through MORRISSEY as designated officer. RGI's license expires on February 6, 1990.

IV

At all times mentioned herein, MORRISSEY was licensed by the Department to act as a real estate broker in the State of California in his individual capacity and as a designated officer for RGI. MORRISSEY's individual real estate broker license expires January 30, 1992. His license as designated officer of RGI was cancelled as of February 27, 1989.

V

At all times mentioned herein, GROSS was licensed by the Department to act as a real estate salesperson in the State of California. GROSS's real estate sales license expires 1-29-93.

VI

At all times mentioned herein, respondents engaged in the business and acted in the capacity of real estate licensees

1 in the State of California within the meaning of Section
2 10131(d) of the Code, including the operation of a mortgage loan
3 brokerage business with the public wherein lenders and borrowers
4 were solicited for loans secured directly or collaterally by
5 liens on real property and loans were arranged, negotiated,
6 processed, and consummated on behalf of others, all for or in
7 expectation of compensation.

8 VII

9 At all times mentioned herein, MORRISSEY, as the
10 designated broker officer of RGI, was responsible for the
11 supervision and control of the activities conducted on behalf of
12 RGI by its officers and employees as necessary to secure full
13 compliance with the provisions of the Real Estate Law including
14 the supervision of salespersons licensed to RGI in the
15 performance of acts for which a real estate license is required,
16 as provided by Section 10159.2 of the Code.

17 VIII

18 At all times mentioned herein, GROSS was the President
19 and majority shareholder of RGI and directed and controlled its
20 business activities and conducted its affairs.

21 IX

22 In approximately June 1987 Richard and Linda Leier
23 (LEIER) requested and received an application for a \$16,500 loan
24 from RGI to be secured by a second deed of trust on their real
25 property located at 965 Cape Anita Place, San Jose, California.
26 LEIERS completed the loan application and returned it to RGI's
27 agent Dan Moreno (MORENO).

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X

On or about September 27, 1987, LEIER's loan application having been approved by a lender, LEIER signed the required loan documents for the above mentioned loan at California Land Title Co.

XI

From the time LEIER first contacted respondents until the date they signed the required loan papers at California Land Title Co., respondents did not deliver a borrower disclosure statement to LEIER as required by Code Section 10240.

XII

By reason of the acts or omissions alleged in Paragraphs 1 thru XI, RGI violated Section 10240 of the Code and such acts or omissions constitute grounds for the suspension or revocation of respondent's license under the provisions of Section 10177(d) of the Code.

SECOND CAUSE OF ACCUSATION

XIII

There is hereby incorporated in this second, separate and distinct cause of Accusation, all of the allegations contained in Paragraphs 1 through XI of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIV

In connection with LEIER's loan application, in approximately August 1987, MORENO told LEIER that LEIER's total

1 costs for the loan would not exceed 5 points, or 5% of the loan
2 amount. LEIER was never given any other estimate of the loan
3 fees by anyone else in connection with this loan.

4 XV

5 On or about September 27, 1987, when LEIER went to
6 California Land Title Co. to sign the loan documents for their
7 loan, they were given a Borrower Settlement Statement which
8 indicated that the loan fee charged to LEIER for the loan was
9 the sum of \$685.00 or 4% of the loan amount. LEIER signed the
10 loan documents in reliance on the loan fee representation set
11 out in the Borrower Settlement Statement, which was consistent
12 with MORENO's earlier representation of LEIER's estimated loan
13 fees.

14 XVI

15 On or about October 10, 1987, LEIER went to California
16 Land Title Co. to pick up the loan proceeds. At that time,
17 LEIER was told that RGI had made a written demand in escrow for
18 payment of loan fees in the amount of \$1,240.00. Since the
19 \$1,240.00 loan fee claimed by RGI exceeded the estimated fee
20 quoted by MORENO, LEIER refused to pay the loan fee demanded and
21 did not accept the loan proceeds.

22 XVII

23 LEIER attempted to negotiate the claimed fees with
24 GROSS in behalf of RGI. When GROSS and LEIER couldn't agree on
25 the amount of loan fees (which were in excess of the estimated
26 fee quoted to LEIER by MORENO), LEIER cancelled his loan
27 application with RGI.

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XVIII

The acts or omissions of RGI and GROSS alleged in Paragraphs XIII thru XVII, constitute grounds for the suspension or revocation of respondents licenses under the provisions of Sections 10176(g), (i) and 10177(g) of the Code.

THIRD CAUSE OF ACCUSATION

XIX

There is hereby incorporated in this third, separate and distinct cause of Accusation, all of the allegations contained in Paragraphs I through XI of the First Cause of Accusation and Paragraphs XIII through XVII of the Second Cause of Accusation with the same force and effect as if herein full set forth.

XX

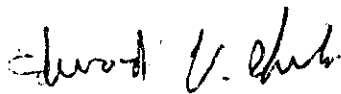
At all times mentioned herein, MORRISSEY failed to exercise reasonable supervision and control of the activities of RGI for which a real estate license is required and was negligent or incompetent in performing acts for which a real estate license is required, in that he knew or should have known all the facts set forth in the allegations of the First and Second Causes of Accusation and that he could have and should have taken steps to assure respondents' full compliance with the Real Estate Law.

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MORRISSEY's acts and omissions alleged above constitute grounds for disciplinary action under the provisions of Sections 10177(g) and (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 the respondents under the Real Estate Law and for such other and further relief as may be proper under other applicable provisions of law.



EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California
this 9th day of NOVEMBER, 1989.