

FLAG

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

FILED

SEP 24 2008

DEPARTMENT OF REAL ESTATE

By K. Max

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
HARLAN EARL THOMAS,
Respondent.

No. H-6319 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 21, 1992, in Case No. H-6319 SF, a Decision was rendered revoking the real estate salesperson license of Respondent effective May 22, 1992, 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 May 22, 1992, and Respondent has operated as a restricted licensee since that time.

On May 31, 2007, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

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

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
reinstatement is granted and that a real estate salesperson license be issued to Respondent if
Respondent satisfies the following conditions within nine (9) months from the date of this Order:

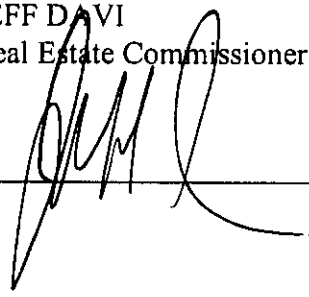
1. Submittal of a completed application and payment of the fee for a real estate
salesperson license.

2. Submittal of evidence of having, 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.

This Order shall become effective immediately.

IT IS SO ORDERED 9-18-08

JEFF DAVI
Real Estate Commissioner



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

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for reinstatement is granted and that a real estate broker license be issued to Respondent if Respondent satisfies the following conditions within six (6) months from the date of this Order:

1. Submittal of a completed application and payment of the fee for a real estate broker license.
2. Submittal of evidence of having, 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.

This Order shall be effective immediately.

DATED: 1/24/94

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

COPY

FILED
MAY 04 1992

*Flag
Sac
k2*

DEPARTMENT OF REAL ESTATE
BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Victoria Dillon
Victoria Dillon

* * *

In the Matter of the Accusation of)
)
KURT JOSEPH KNABKE and)
HARLAN EARL THOMAS,)
)
)
Respondent(s).)
_____)

No. H- 6319 SF
OAH N 36539

DECISION

The Proposed Decision dated April 6, 1992,
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 22, 1992.

IT IS SO ORDERED April 21, 1992.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
by: JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:) No. H-6319 SF
)
KURT JOSEPH KNABKE and) OAH No. N-36539
HARLAN EARL THOMAS,)
)
)
Respondents.)
_____)

PROPOSED DECISION

Hearing was before Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings on January 24, 1991 and January 27, 1992 at San Francisco, California.

John Van Driel, Counsel, represented the complainant.

Jon J. Rathjen, Esq. represented Kurt Joseph Knabke

Michael Gardner, Esq. represented Harlan Earl Thomas.

FINDINGS OF FACT

FIRST CAUSE OF ACTION

I

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

II

A. As of January 1, 1988, Kurt Joseph Knabke (Knabke) was a licensed broker with a Real Property Securities Dealer endorsement doing business as San Ramon Valley Investments at 2817 Crow Canyon Road, Suite 103, San Ramon, California. His mailing address was P.O. Box 348, San Ramon, California.

As of March 31, 1988, his new mailing address was 2807 Crow Canyon Place, San Ramon, California. Knabke's Real Property Securities Dealer endorsement canceled on January 1, 1990. His broker license expired January 27, 1991.

The Department issued a broker license to Knabke on January 28, 1991. His office and mailing address is 2817 Crow Canyon Road, Suite 103, San Ramon, California.

The Department issued a branch license to Knabke at 901 Shorepoint Court, Suite A, Alameda, California on September 4, 1991. Knabke's d.b.a¹ there is Executive Equities. Knabke's broker license will expire January 27, 1995.

B. The Department issued a license to Knabke as officer of SRVI, Inc. on December 12, 1989. The main office and mailing address is 2917 Crow Canyon Road, #103, San Ramon, California. DBAs added as of said date are: Executive Mortgage and San Ramon Valley Investments. This officer license will expire December 13, 1993.

The Department issued a license to Knabke as officer of Christian Realty Services, Inc. on April 25, 1991. The office and mailing address is 2550 Appian Way, Suite 222, Pinole, California. DBAs added are Dove Realty and Montgomery Mortgage. This officer license canceled on August 19, 1991.

The Department issued a license to Knabke as officer of Jaye Investments, Inc. on September 16, 1991. The main office address is 2817 Crow Canyon Road, #204A, San Ramon. The mailing address is 401 Eagle Creek Court, San Ramon. This officer license will expire September 15, 1995.

C. Knabke's residence address is 125 Shoreline Circle, #352, San Ramon.

III

The Department issued a salesperson license to Harlan Earl Thomas (Thomas) which expired December 14, 1988. Thomas' employing broker was Knabke. The Department issued a salesperson license to Thomas on December 16, 1988. Thomas' employing broker was Knabke. Knabke ended Thomas' employment on November 15, 1989. On June 7, 1991, Thomas began working for Vanda, Inc.

Thomas' salesperson license will expire December 14, 1992. His residence address is 18929 North Jack Tone Road, Lockeford, California.

IV

In March 1988, Knabke owned a certain property in Arnold, California (the property). On March 28, 1988, Jay Tamburina contracted with Knabke to purchase the property.

¹ Doing-business-as.

Documentation relating to this transaction shows that the residence on the property was two years old and never used.

Tamburina financed the purchase with a down payment and a new loan from Financial Center Mortgage (lender). Tamburina's promissory note and deed of trust to lender state that any assumption by a subsequent transferee is subject to lender's prior consent. Further, transference of the property without lender's consent will result in calling the loan upon transfer at the option of lender.

On June 13, 1988, Tamburina sold the property back to Knabke without prior notice to lender.

V

In June 1988, Thomas, while employed as a real estate salesperson by Knabke, advertised the property for sale in the San Francisco Chronicle.²

VI

Barbara Jean Brown (Brown) contacted Thomas by telephone and confirmed that the loan was assumable. Brown and her husband wanted to purchase property in both their names but were concerned because Brown's husband had gone through a recent bankruptcy. Thomas assured Brown that qualifying for the loan was unnecessary.³

VII

Brown and her husband then looked at the property with Thomas. Thomas was uncertain of the age of the house and promised to obtain that information. The house appeared unused. Brown made an offer of \$80,000. Knabke accepted this offer.

Paragraph IX of the offer stated:

"Seller shall within three (3) days of acceptance, provide purchaser with copies of all notes and deeds or trust or mortgages to be assumed or taken subject to, and within five (5) days of receipt

² The advertisement read as follows:

"Calaveras Cnty near Arnold, new 3BT/2 BA cabin on heavy tree'd cov'd lot, close to town, assume high loan, small down, only \$89,990. Agt, 415-831-0181"

³ Brown did not tell Thomas of her husband's recent bankruptcy.

thereof purchaser shall in writing notify seller of his approval or disapproval of such terms, which shall not be unreasonable withheld. Within three (3) days of acceptance seller shall submit written request for a current beneficiary statement on the above loan or loans."

VIII

Thomas completed a purchase agreement committing Brown to make a \$500 deposit with the balance, \$15,500, due at the close of escrow. Thomas checked the "subject to" box in the agreement thereby showing that the \$64,000 first loan was "subject to" the existing first loan of record. Additional terms included the seller repairing existing woodpecker holes in the house and tightening the carpet.

Thomas did not tell Brown who the lender was on the existing loan. He did explain it was an ARM⁴ and that all of the information contained in the purchase agreement came from the seller. He did promise to provide a copy of the existing loan for Brown's review.

When Brown asked why the "assumption of" box in the agreement was not checked, Thomas explained that he had checked the "subject to" box as a safeguard for Brown. By doing this, according to Thomas, Brown would have a right of refusal after he provided a copy of the note for her review.

VIII

Brown believed she had the opportunity to review the note and that the loan was assumable. Thomas told Brown that "subject to" was the same as an assumption. Thomas informed Brown that the note was new, there were no points or fees and that she and her husband would not have to qualify. Thomas stated that the lender's consent to assume would be arranged through escrow. Brown assumed that the lender would be told of the assumption.

IX

When Brown inquired about Tamburina, Thomas told her that Tamburina had taken out the loan, not Knabke, that he had then sold the property to Knabke and there had been insufficient time to change names. When Brown expressed some concern about for whom she would be assuming the loan, Thomas assured her that this was not a problem. It was just a matter of the paper work not catching up with the status of the property ownership.

⁴ Adjustable Rate Mortgage.

X

Brown understood that Financial Center was the holder of the note. Thomas advised Brown that she would receive new coupons containing her name. Thomas also told Brown she would have to make a payment outside of escrow with a coupon containing Tamburina's name. He instructed her to line out his name, insert her name and send the coupon in with the payment. She would receive new coupons by the next payment. Brown then approved the note and deed of trust.

XI

Thomas went to Brown's office to complete the transaction. He told her the property was about three years old, was unused and that the roof was new. He also stated an inspection of the property occurred when the loan was taken out and no new termite inspection was necessary. Brown signed the escrow closing papers in her office at Thomas' suggestion.

XII

Escrow closed July 13. Brown made the first payment as instructed by Thomas. Two weeks later, the August payment was due. Brown contacted Thomas and advised she did not have new coupons. Thomas sent her one of Tamburina's coupons and suggested she make the payment as she had the first payment. In mid-August, Brown called the lender for new coupons. She learned then, for the first time, that she was not the owner of record.

XIII

By letter dated September 6, 1988, the lender notified Tamburina that it was declaring the loan due and payable because the loan was assumable upon lender qualification and such had not occurred. Brown contacted lender and Thomas. The latter suggested she contact Knabke. She, her husband, Thomas and Knabke met in Knabke's office.

Brown told Thomas that her \$16,000 and the property were at risk because lender was not informed of the assumption. Thomas stated that this type of transaction is commonly done to save clients money. Knabke suggested that, since the lender discovered what had occurred, Brown should assume the loan and pay the point.⁵ Brown wanted Knabke to return the \$16,000 and suggested he take back the property.

XIV

At the end of December, Brown assumed the loan for one point. Lender would agree only to Brown assuming the loan

⁵ Lender was asking for one point.

personally because Brown's husband had been declared bankrupt within the past seven years. The fee cost Brown \$639.

XV

Knabke has been a real estate broker for twelve years. Thomas worked for Knabke four years to 1990. Knabke signed the transfer disclosure statement on June 28 and 29, 1988 when Brown made her offer on the property. The information contained in said document came from a former transfer statement. Knabke gave the document to Thomas for Brown's signature.

XVI

Knabke understood that the loan on the property was "subject to" lender's approval of buyer's credit worthiness. He also knew that a loan fee of \$600 was necessary. Based upon the documents reviewed by Knabke, he saw nothing to indicate that lender should be notified. The evidence did not establish that Knabke had a disclaimer placed with the escrow papers.

XVII

When Knabke sold the property to Tamburina, he (Knabke) was aware of the due-on-sale clause. Knabke bought the property back from Tamburina "subject to" the loan. He was aware that the loan was assumable or "subject to" and that one transfer had occurred (to Knabke) without lender's knowledge. Knabke acknowledges that, had Brown taken the property "subject to" the outstanding loan, said loan was callable because of the undisclosed prior transfer from Tamburina to Knabke. Neither Knabke nor Thomas gave this information to Brown.

XVIII

Thomas did not submit a written request to lender on behalf of seller for a current beneficiary statement on the Tamburina loan within three days of acceptance by Knabke of Brown's offer. At no time during the transaction did Thomas give notice to lender of the transfer of the property from Knabke to Brown or otherwise receive lender's prior consent to the transfer.

XIX

The evidence established:

1. lender did not receive notice of the intended transfers from Tamburina back to Knabke and from Knabke to Brown;
2. if Brown wanted to assume the Tamburina loan, Brown had to qualify and pay a fee to lender;

3. taking the property "subject to" the Tamburina loan without prior written notice to lender would violate the terms of the Tamburina note and deed of trust thereby allowing lender to exercise its option to call the loan as due and payable;

4. the property was about seven years old at the time Brown made the offer to buy.

SECOND CAUSE OF ACTION

XX

Findings I through XIX of the First Cause of Action are incorporated herein.

XXI

Knabke did not exercise reasonable supervision over the licensed activities of Thomas and was negligent in that Knabke knew or should have known that:

1. Thomas represented to Brown that the property was new when it was, in fact, seven years old;

2. lender had the option to call the Tamburina loan for unauthorized transfers of the property including Tamburina's prior transfer to Knabke and Knabke's transfer to Brown;

3. lender was not given notice of the unauthorized transfers from Tamburina to Knabke and Knabke to Brown;

4. Brown was not fully told of potential liabilities about either assuming or taking "subject to" the Tamburina loan.

XXII

Knabke breached his fiduciary duty to Brown by:

1. not taking steps to assure that Brown was aware of the process of and the potential liabilities associated with the financing options for the property;

2. not telling Brown that the Tamburina loan was already the subject of an unauthorized transfer from Tamburina to Knabke at the time of Brown's offer.

DETERMINATION OF ISSUES

FIRST CAUSE OF ACTION

I

A real estate agent has the obligation "of undivided loyalty" toward his client. He is charged with full disclosure

of material facts which might affect his client's decisions (de St. Germain v. Watson [1950] 95 CA2d 862). Respondent Thomas violated his fiduciary duty to Brown.

II

Cause for disciplinary action exists under Business and Professions Code sections 10176(a) and (c) and 10177(g).⁶

III

Cause for disciplinary action under Section 10176(i) does not exist.

SECOND CAUSE OF ACTION

III

Cause for disciplinary action exists under Sections 10177(g) and (h).

IV

Cause for disciplinary action under Sections 10176(i) and 10177(j) does not exist.

ORDER

I. All licenses and licensing rights of respondent Harlan Thomas under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6:

1. The restricted license issued to respondent 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 is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to

⁶ All statutory references are to said Code.

the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one (1) year has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within six (6) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 a hearing pursuant to the Administrative Procedure Act to present such evidence.
6. Respondent shall, within six (6) months from the effective date of the restricted license, take and pass the professional Responsibility Examination administered by the department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

II. All licenses and licensing rights of respondent Kurt Knabke under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6:

6. The restricted license issued to respondent 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 is substantially related to respondent's fitness or capacity as a real estate licensee.
7. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
8. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until one (1) year has elapsed from the effective date of this Decision.
9. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 a hearing pursuant to the Administrative Procedure Act to present such evidence.
10. Respondent shall, within six (6) months from the effective date of the restricted license, take and

pass the Professional Responsibility Examination administered by the department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of the restricted license until respondent passes the examination.

Dated:

April 6, 1992



STEWART A. JUDSON
Administrative Law Judge
Office of Administrative Hearings

SAJ:wc

COPY

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

DEC 02 1991

*Inlag
jac*

In the Matter of the Accusation of

KURT JOSEPH KNABKE and
HARLAN EARL THOMAS,

}

By *Victoria Dillon*
Victoria Dillon

Case No. H-6319 SF

OAH No. N 36539

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
455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

(1 day hearing)

on the 27th day of January, 19 92, 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 2, 1991

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

COPY

Alleg
sk

FILED
JUL 02 1991

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

KURT JOSEPH KNABKE and
HARLAN EARL THOMAS,

}

By Victoria Dillon
Victoria Dillon

Case No. H-6319 SF

OAH No. N 36539

Respondent

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, Room 2248, San Francisco, CA 94102

(1 Day Hearing)

on the 22nd day of August, 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: July 2, 1991

By John Van Driel
JOHN VAN DRIEL, Counsel

uk

COPY

Flag Gas

FILED
APR 12 1991

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

KURT JOSEPH KNABKE and
HARLAN EARL THOMAS,

}

By *Victoria Dillon*
Victoria Dillon

Case No. H-6319 SF

OAH No. N 36539

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, Room 2248, San Francisco, CA 94102

on the 3rd day of June, 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. (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: April 12, 1991

By *John Van Driel*
JOHN VAN DRIEL, Counsel

JVD

COPY

Flag the
FILED
NOV 08 1990

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

By *Victoria Dillon*
Victoria Dillon

In the Matter of the Accusation of

KURT JOSEPH KNABKE and
HARLAN EARL THOMAS,

}

Case No. H-6319 SF

OAH No. N 36539

Respondent

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 24th day of January, 1991, 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: November 8, 1990

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

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

III

At all times mentioned below, KURT JOSEPH KNABKE (Knabke) was licensed as a real estate broker doing business as San Ramon Valley Investors (SRVI). Said license will expire on January 27, 1991.

IV

At all times mentioned below, HARLAN EARL THOMAS (Thomas) was licensed as a real estate salesperson with Knabke as his employing broker. Said license will expire on December 14, 1992.

V

In approximately March 1988, Knabke was the owner of the real property known as 1268 Shady Circle, Arnold, California (the property). On or about March 28, 1988, Jay Tamburina (Tamburina) entered into a contract with Knabke to purchase the property. A real estate transfer disclosure statement provided by Knabke to Tamburina in connection with the transaction disclosed that the property was approximately two years old but had never been lived in. Escrow for this transaction closed on or about May 17, 1988. Tamburina financed his purchase of the property from Knabke with a downpayment and new loan (the Tamburina loan) from Financial Center Mortgage (lender). Tamburina's promissory note and deed of trust to the lender both stated that any assumption by a subsequent transferee would be effective only with the lender's prior consent and that if the property was transferred without lender's prior consent, the loan would be due and payable upon transfer at the option of the

1 lender. On or about June 13, 1988 Tamburina transferred the
2 property back to Knabke, without prior notice to the lender.

3 VI

4 In approximately June 1988 Knabke advertised the
5 property for sale. The printed advertisement stated that the
6 property was "new" and that the loan on the property was
7 assumable.

8 VII

9 On or about June 27, 1988 Thomas, acting for or in
10 expectation of compensation, prepared a Real Estate Purchase
11 Agreement and Deposit Receipt (offer) on behalf of Barbara Brown
12 and Ramsey Carter (Brown) to purchase the property. At this
13 time, Thomas was acting on behalf of his broker Knabke dba SRVI
14 representing both Knabke as seller of the property and also
15 Brown as buyer of the property. The offer stated that Brown
16 would finance the purchase by paying \$16,000 cash at or before
17 close of escrow and by taking the property "subject to (the)
18 existing first loan of record". Paragraph IX of the offer
19 stated that:

20
21 "Seller shall within three (3) days of acceptance,
22 provide purchaser with copies of all notes and deeds
23 of trust or mortgages to be assumed or taken subject
24 to, and within five (5) days of receipt thereof
25 purchaser shall in writing notify seller of his
approval or disapproval of such terms, which shall not
be unreasonably withheld. Within three (3) days of
acceptance seller shall submit written request for a
current beneficiary statement on the above loan or
loans."

26 Brown's offer was accepted by Knabke on or about June 28, 1988.

27 // // // // //

VIII

1
2 At the time Brown's offer was prepared, Thomas told
3 Brown that Brown's taking the property "subject to the existing
4 first loan of record" meant that the transaction would be
5 subject to Brown's review of the underlying note and deed of
6 trust for the Tamburina loan. Shortly before Brown's offer was
7 prepared, Thomas also told Brown that they would not have to
8 qualify for a loan or pay any loan fees in connection with this
9 transaction. Based on Thomas' representations as stated above,
10 Brown believed that they would be "assuming" or taking over the
11 Tamburina loan on its existing terms and without any further
12 fee.

13 IX

14 On or about June 30, 1988 Thomas gave a written real
15 estate transfer disclosure statement to Brown on behalf of
16 Knabke. The disclosure statement contained a representation by
17 Thomas (as agent of Knabke) that the property needed cleaning
18 and was a "brand new home". At about the same time, Thomas gave
19 Brown copies of the underlying Tamburina promissory note and
20 deed of trust. Thomas did not submit a written request to the
21 lender on behalf of seller for a current beneficiary statement
22 on the Tamburina loan within three (3) days of acceptance by
23 Knabke of Brown's offer. At no time during this transaction did
24 Thomas give notice to the lender of the transfer of the property
25 from Knabke to Brown or otherwise receive lender's prior consent
26 to the transfer.

27 //

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

X

Thomas' statements to Brown about the age of the property and the necessity of Brown's qualification for and payment of fees for a loan as set out in Paragraphs VIII and IX above were false and at the time they were made Thomas knew or should have known that they were false. The true facts were that (1) the lender had not been given notice of the intended transfers from Tamburina back to Knabke and from Knabke to Brown; (2) if Brown wanted to assume the Tamburina loan, Brown would be required to qualify and pay a fee to the lender; (3) taking the property "subject to" the Tamburina loan without prior written notice to the lender would violate the terms of Tamburina's note and deed of trust and allow the lender to exercise its' option to call the loan as due and payable for the unauthorized transfer; and (4) the property was approximately seven years old at the time the offer was made by Brown, although the property had never been lived in.

XI

Escrow for the sale of the property from Knabke to Brown closed on or about July 19, 1988. Prior to close of escrow, Thomas did not: (1) notify the lender of Brown's intention to assume the Tamburina loan or (2) request Brown to execute any documents evidencing their intention to take title to the property "subject to" the Tamburina loan.

XII

After title to the property was transferred from Knabke to Brown, the lender notified Tamburina and/or Brown of

1 its intention to exercise its option to call the loan as due and
2 payable because of the unauthorized transfers to Knabke and
3 Brown. Brown did not take title to the property subject to the
4 Tamburina loan and was unable to assume the Tamburina loan
5 without qualification and payment of fees and ultimately had to
6 qualify and pay a fee to the lender to secure financing for the
7 property.

8 XIII

9 The acts and/or omissions of Thomas alleged in
10 Paragraphs V through XII are grounds for discipline under the
11 provisions of Sections 10176(a), (c), and (i) and Section
12 10177(g) of the Code.

13 SECOND CAUSE OF ACCUSATION

14 XIV

15 There is hereby incorporated into this second,
16 separate and distinct cause of accusation, all of the
17 allegations contained in Paragraphs I through XIII of the first
18 cause of accusation with the same force and effect as if fully
19 set forth herein.

20 XV

21 Knabke failed to exercise reasonable supervision over
22 the licensed activities of Thomas and was negligent in that
23 Knabke knew or should have known that:

24 (1) Thomas had represented to Brown that the property
25 was "brand new" or "new" when it was, in fact, approximately (7)
26 seven years old;

27 (2) the lender had the option to call the Tamburina

1 loan for unauthorized transfers of the property, including
2 Tamburina's 6-13-88 transfer to Knabke and Knabke's subsequent
3 transfer to Brown;

4 (3) the lender was not given notice of the
5 unauthorized transfers from Tamburina to Knabke and from Knabke
6 to Brown; and

7 (4) Brown had not been clearly made aware of their
8 potential liabilities concerning their plan to either assume or
9 take subject to the Tamburina loan.

10 XVI

11 Knabke, as Thomas' broker, owed a fiduciary duty to
12 Brown in their purchase of the property. He breached that duty
13 by:

14 (1) failing to take steps to assure that Brown was
15 aware of the process of and the potential liabilities associated
16 with their financing options for the property;

17 (2) failing to notify Brown that the Tamburina loan
18 was already the subject of an unauthorized transfer from
19 Tamburina to Knabke at the time of Brown's offer.

20 XVII

21 The acts and/or omissions of Knabke as alleged in
22 Paragraphs XIV and XV constitute grounds for disciplinary action
23 under the provisions of Sections 10177(g) and (h) of the Code.

24 XVIII

25 The acts and/or omissions of Knabke as alleged in
26 Paragraphs XIV and XVI constitute grounds for disciplinary
27 action under the provisions of Section 10177(j) and/or Section

1 10176(i) of the Code.

2 WHEREFORE, Complainant prays that a hearing be
3 conducted on the allegations of this Accusation and that upon
4 proof thereof, a decision be rendered imposing disciplinary
5 action against all licenses and license rights of respoendent
6 under the Real Estate Law (Part 1 of Division 4 of the Business
7 and Professions Code), and for such other and further relief as
8 may be proper under other provisions of law

Edward V. Chio

9
10 EDWARD V. CHIOLO
Deputy Real Estate Commissioner

11 Dated at San Francisco, California
12 this 24th day of April, 1990.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27