

FILED

March 14, 2019

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of:)	DRE No. H-6577 SAC
)	
MAURINE RUTH JOHNSON and)	OAH No. 2017080882
LINDA E. MYERS,)	
)	
Respondents.)	
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In the Matter of the Preliminary Bar Order and)	DRE No. H-6579 SAC
Intention to Issue Bar Order Against:)	
)	OAH No. 2017080882
LINDA E. MYERS,)	
)	
Respondent.)	
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FIRST AMENDED ORDER DENYING RECONSIDERATION

On, January 22, 2019, a Decision was rendered in the above-entitled matters. The Decision was to become effective on February 12, 2019, and was stayed by separate Order to March 14, 2019.

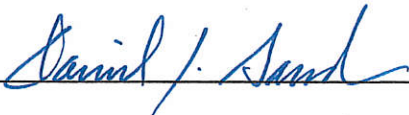
On February 7, 2019, Respondent MAURINE RUTH JOHNSON petitioned for reconsideration of the revocation of her mortgage loan originator license endorsement, as set forth in the Decision of January 22, 2019.

1 On February 11, 2019, Respondent LINDA E. MYERS petitioned for
2 reconsideration of the revocation of her real estate license and the Bar Order prohibiting her from
3 engaging in any business activity involving real estate that is subject to regulations under the real
4 estate law, as set for the in the Decision of January 22, 2019.

5 I have given due consideration to the petition of Respondent. I find no good cause
6 to reconsider the Decision of January 22, 2019, and reconsideration is hereby denied.

7 IT IS SO ORDERED MARCH 14, 2019.

8 DANIEL J. SANDRI
9 ACTING REAL ESTATE COMMISSIONER

10 
11 _____

FILED

February 11, 2019

DEPARTMENT OF REAL ESTATE

By 

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

In the Matter of the First Amended Accusation
Against:

**MAURINE RUTH JOHNSON, and
LINDA E. MYERS,**

Respondents.

DRE No. H-6577 SAC

OAH No. 2017080882

In the Matter of the Preliminary Bar Order and
Notice of Intention to Issue Bar Order Against:

LINDA E. MYERS,

Respondent.

DRE No. H-6579 SAC

OAH No. 2017090744

ORDER STAYING EFFECTIVE DATE

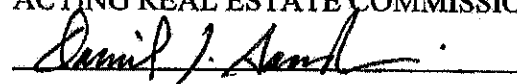
On January 22, 2019, a Decision was rendered in the above-entitled matter to become effective February 12, 2019.

IT IS HEREBY ORDERED that the effective date of February 12, 2019, is stayed for a period of 30 days to allow Respondents MAURINE RUTH JOHNSON and LINDA E. MYERS to each file a petition for reconsideration.

The Decision of January 22, 2019, shall become effective at 12 o'clock noon on March 14, 2019.

DATED: FEBRUARY 11, 2019.

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



January 22, 2019

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By



In the Matter of the First Amended Accusation)	DRE No. H-6577 SAC
Against:)	
)	OAH No. 2017080882
MAURINE RUTH JOHNSON, and)	
LINDA E. MYERS,)	
)	
Respondents.)	
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In the Matter of the Preliminary Bar Order and)	DRE No. H-6579 SAC
Notice of Intention to Issue Bar Order Against:)	
)	OAH No. 2017090744
LINDA E. MYERS,)	
)	
Respondent.)	

DECISION

The Proposed Decision dated December 21, 2018, 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 matters.

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

The Mortgage Loan Originator License Endorsement, for Respondent MAURINE RUTH JOHNSON, is REVOKED. The real estate broker license, for Respondent MAURINE RUTH JOHNSON, is REVOKED; but the right to a restricted broker license is granted.

The real estate broker license of Respondent LINDA E. MYERS is REVOKED. For a period not to exceed 36 months, respondent is suspended or barred under Business and Professions Code Section 10087.

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

1. Page 2, Factual Findings, Paragraph 2, Line 8, date of June 24, 2014, is corrected to June 20, 2014.
2. Page 2, Factual Findings, Paragraph 2, Line 9, date of June 30, 2014, is corrected to July 30, 2014.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on February 12, 2019.

IT IS SO ORDERED January 22, 2019

DANIEL J. SANDRI
ACTING REAL ESTATE COMMISSIONER



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

MAURINE R. JOHNSON and
LINDA MYERS,

Respondents.

Case No. H-6577 SAC

OAH No. 2017080882

In the Matter of the Preliminary Bar
Order and Notice of Intention to Issue Bar
Order Against:

LINDA MYERS,

Respondent.

Case No. H-6579 SAC

OAH No. 2017090744

PROPOSED DECISION

A hearing in this matter convened before Marilyn A Woollard, Administrative Law Judge, Office of Administrative Hearings (OAH), Sacramento, California, on August 6, 7 and 8, 2018.

Staff Counsel Jason D. Lazark represented complainant Tricia D. Parkhurst, in her official capacity as a Supervising Special Investigator with the Department of Real Estate (Department).¹

Frank M. Buda, Attorney at Law, represented respondent Linda E. Myers (Myers), who was present throughout the hearing.

Kevin J. Sweeney, Attorney at Law, represented respondent Maurine R. Johnson (Johnson), who was present on August 6 and 8, 2018.

¹ Effective July 1, 2018, the Bureau of Real Estate (Bureau) became the Department. (Bus. & Prof. Code, § 10005.) All references in this decision to the Department prior to that date are to actions taken by the Bureau.

Oral and documentary evidence was received. At the conclusion of the evidentiary hearing, the record remained open for receipt of written closing argument. The parties' closing briefs were then timely received and marked for identification as follows: Exhibits 22 and 23 (complainant's opening and reply briefs); Exhibit CC (Myers' closing brief); and Exhibit J.A (Johnson's closing brief). Pursuant to the order dated October 1, 2018, the record was closed and the matter was submitted for decision on November 1, 2018.

FACTUAL FINDINGS

License History

1. Maurine Johnson (B/00709207): Johnson has been a real estate licensee since May 22, 1979, when she was issued a salesperson license. On May 3, 1985, she was issued a broker license. This license was most recently renewed on May 3, 2017, and will expire on May 2, 2021, unless revoked or surrendered. There is no history of prior discipline associated with this license. Johnson also holds an Individual Mortgage Loan Originator (MLO) License Endorsement, which was approved as active on January 19, 2011, and was most recently approved on February 23, 2016.²

2. Linda Myers (B/00665865): Myers received a real estate salesperson license on August 23, 1978, which expired in 1982 and was reissued in July 1987. An Accusation was filed against this license on January 28, 1988, which resulted in a 30-day suspension, stayed, during a two-year probationary period, effective August 17, 1998. On May 1, 2002, Myers was issued a broker license. An Accusation was filed on February 28, 2008, which resulted in revocation of this license, with a right to a restricted salesperson license on terms and conditions. Effective August 17, 2009, Michael Moller (Moller) was Myers' designated employing broker. On June 24th, 2014, the Real Estate Commissioner (Commissioner) granted Myers' second petition for reinstatement of her broker's license. Effective June 30, 2014, an unrestricted broker license was issued to her and she ceased employment with Mr. Moller. On November 18, 2014, Myers' added the DBA of "Summit Real Estate" to this license. On July 29, 2018, Myers' broker license expired and has not been renewed.

Procedural Background

3. Accusation: On July 12, 2017, complainant filed an Accusation against Johnson and Myers (respondents), alleging they entered into a scheme in which Myers conducted mortgage loan brokerage business under Johnson's MLO license endorsement in a manner designed to circumvent the Real Estate Law. Complainant alleged a single mortgage loan transaction pursuant to this scheme, which involved respondents' actions in connection with a loan transaction related to the attempted purchase of residential real property located at 411 C Street in Biggs, California (the subject property), which began in July 2014.

² Johnson's Company MLO Endorsement was issued on January 19, 2011, terminated January 1, 2016 for failure to renew, and approved as inactive on December 12, 2016.

Complainant sought discipline against respondents' broker licenses and Johnson's MLO endorsement for making a substantial misrepresentation, fraud or dishonest dealing, willfully violating the real estate law, and/or negligence/incompetence. (Bus. & Prof. Code, §§ 10176, subds. (a) & (i), and 10177, subds. (d), (g) & (j).) Complainant also sought license discipline against Myers for failing to obtain an MLO endorsement and for unauthorized use of a fictitious business name (Bus. & Prof. Code §§ 10166.02, subd. (b); 10166.051; 10177, subd. (d), 10159.5; 10 Cal. Code Regs., § 2731) and alleged Myers' previous license disciplinary history. Complainant requested an order that respondents pay the costs of her investigation and enforcement in this matter.

4. Order to Desist and Refrain (D & R Order): On July 14, 2017, in Case Number H-6578 SAC, the Commissioner filed an Order to Desist and Refrain against Myers, concluding she had violated Business and Professions Code section 10166.02, subdivision (b), by engaging in business as a mortgage loan originator without first having obtained an MLO endorsement, based on facts alleged in the Accusation. Myers was ordered "to immediately desist and refrain from engaging in business within the State of California as a mortgage loan originator, unless and until she obtains a real estate license endorsement identifying her as a licensed mortgage loan originator. The Department received Myers' Acknowledgment of Receipt of the D & R Order, signed July 20, 2017, on August 4, 2017.

5. Preliminary Bar Order and Notice of Intention to Issue Bar Order (Preliminary Order): On July 14, 2017, in Case Number H-6579 SAC, the Commissioner issued a Preliminary Bar Order in which he notified Myers of his intention to issue a Bar Order under Business and Professions Code section 10087, subdivision (a)(2), based on the same facts and conduct alleged in the Accusation. Respondent was notified that: "the Commissioner seeks to bar and prohibit" her, for a period of 36 months, from holding any position in a real estate business, participating in any business activity as a real estate licensee or where such activity is being conducted, and from "participating in any real estate related business activity of a finance lender, residential mortgage lender, bank credit union, escrow company, title company, or underwritten title company." In addition, Myers was issued a Preliminary Bar Order which provided:

YOU ARE IMMEDIATELY PROHIBITED FROM ENGAGING
IN ANY BUSINESS ACTIVITY INVOLVING REAL ESTATE
THAT IS SUBJECT TO REGULATIONS UNDER THE REAL
ESTATE LAW. (Capitalization original.)

6. Myers' Request for Hearing: On July 20, 2017, Myers submitted a request for a hearing, "as soon as possible on this notice of intention to issue bar order and preliminary bar order." In it, Myers indicated that she "at no time conducted activities that required an NMLS license or solicited business as a mortgage loan originator." She also wrote: "This order PRECLUDES ME FROM FURTHER INGAGING [sic] IN A SUBSTANTIAL PORTION OF MY BUSINESS. . . . I have substantial financial obligations. I have no one to conduct business while waiting for a hearing and I pray that I can resume normal real estate activities, pending a hearing." (Capitalization original.)

7. The Department considered this letter as Myers' Notice of Defense to the Preliminary Bar Order. Respondents separately filed their respective Notices of Defense to the Accusation. These matters were then set for evidentiary hearings before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

8. On September 21, 2017, complainant filed a Motion to Consolidate the Accusation against respondents (OAH No. 2017080882) with the Preliminary Bar Order against Myers (OAH Case No. 2017090744) for hearing. Myers opposed consolidation and requested additional time to retain counsel. On October 6, 2017, the motion was granted. The December 2017 hearing dates were confirmed, but were later continued following Johnson's November 16, 2017 unopposed motion.

9. First Amended Accusation: On April 6, 2018, complainant filed the First Amended Accusation against respondents, which reiterated all previous facts and causes for discipline against them. Complainant added a separate cause for discipline against Myers only, for engaging in business activity involving real estate after receiving the Preliminary Bar Order, as evidenced by her licensed activity on three separate properties after being served with that order. Complainant asserted that Myers' actions constituted violations of its notice of intent to issue bar order and were grounds for discipline as fraud or dishonest dealing, negligence/incompetence, and/or willful violation of the real estate law. (Bus. & Prof. Code, §§ 10176, subd. (i) and 10177, subds. (d), (g) and/or (j).)

10. On April 17, 2018, Myers requested a continuance of the hearing based on the new allegations in the First Amended Accusation and to accommodate her newly retained attorney. On April 19, 2018, the unopposed motion was granted. On April 20, 2018, Mr. Buda filed Myers Notice of Defense-Objections to the First Amended Accusation and Preliminary Bar Order, which raised the three-year statute of limitations set forth in Business and Professions Code section 10101, and asserted that the Preliminary Bar Order denied Myers due process because it was issued prior to a hearing.

11. At the consolidated hearing, complainant called the following witnesses: Amalia Murillo, Benjamin Baltazar Garcia, Jr., Ramona Garcia, Devon Maple, Mike Moller and Mark Alan Habib. Each of the respondents testified on their own behalf.

Background

12. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), 12 U.S.C., § 5101 et seq., was designed to "increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud." It encouraged the establishment of a Nationwide Mortgage Licensing System (NMLS) and Registry for the residential mortgage industry to accomplish a variety of purposes, including: providing for uniform license applications and reporting requirements for State-licensed loan originators; providing increased accountability and tracking of loan originators; enhancing consumer

protections and supporting anti-fraud measures; and establishing "a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer." (12 U.S.C., § 5101.) The SAFE Act provides that, subject to the existence of a licensing or registration regime, an individual may not engage in the business of a loan originator without obtaining and maintaining either: a registration as a registered loan originator, or a license and registration as a State-licensed loan originator; and obtaining a unique identifier. (12 U.S.C., § 5103.)

13. The Real Estate Law, Business and Professions Code, §10000 et seq., governs the conduct of licensees in California. In 2009, California enacted Senate Bill 36 to implement the SAFE Act (Bus. & Prof. Code, § 10166.01 et seq). These provisions define: (1) a "mortgage loan originator" as "an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain;" and (2) a "residential mortgage loan" as, *inter alia*, any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling, which means a residential structure that contains one to four units. (Bus. & Prof. Code, § 10166.01, subds. (b)(1), (d).)

Any broker, or salesperson acting in a similar capacity under a broker, "who makes, arranges, or services loans secured by real property containing one to four residential units" is required to notify the Department of that activity in writing by no later than January 31, 2010, or within 30 days of commencing that activity, whichever is later. (Bus. & Prof. Code, § 10166.02, subs. (a).) As stipulated by the parties, effective January 1, 2012, "no individual may engage in business as a mortgage loan originator . . . without first doing both of the following: (1) obtaining and maintaining a real estate license; and (2) obtaining and maintaining a real estate license endorsement pursuant to this article identifying that individual as a licensed mortgage loan originator." (Bus. & Prof. Code, § 10166.02, subd. (b).)

14. The SAFE Act and the Real Estate Law impose minimum standards for MLO licensing and registration, with specific requirements for pre-licensing education, passage of a written examination, and continuing education. (12 U.S.C., § 5104; subds. (c) & (d); Bus. & Prof. Code, §§ 10166.06, 10166.10.) Areas covered include ethics, federal and state laws and regulations pertaining to mortgage loan origination, and instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues. (*Ibid.*)

Alleged Scheme

15. Complainant alleged that respondents entered into their scheme "beginning in approximately 2009 and continuing thereafter," with Myers conducting mortgage loan brokerage business under Johnson's MLO endorsement and/or under Johnson's direction and control. As part of the scheme, Johnson earned 20 percent and Myers earned 80 percent of the commission on loans closed by Myers. Johnson and Myers have known each other for

many years. As discussed below, each respondent testified about the arrangement they made for mortgage loan origination, which was confirmed by Moller.

16. Johnson's Testimony: Johnson has been a real estate licensee since 1979 and a broker since 1985. She has received and maintained an MLO endorsement on her license since the first year it was required. Johnson has known Myers for 25 years. In 2011, Johnson first became aware of Myers' prior license discipline. Myers told her that she "felt she had been unfairly treated" by the Department, did not have a broker's license and had her restricted salesperson license under Moller. Myers asked for Johnson's help. Myers had been in the private loan business for years before the SAFE Act came into effect. She told Johnson that many agents were coming to her to secure private loans for their clients. Myers needed someone to "help her with the legal part of it," and that this was the only way she had to make a living. In 2011, Johnson believed Myers needed an MLO endorsement to work on the loans she proposed they do. When asked why she could not go through her own broker, Myers told Johnson that Moller did not want to go through the testing required to get a MLO license. Johnson never spoke to Moller to confirm this.

Johnson concluded that Myers needed someone to help her out, and that she was "the only one who could help her." Johnson did not feel "good" or "right" about this, but did not recall if she told Myers she believed this arrangement was illegal. Myers told Johnson that she would receive \$500 in commission for any such loan activity and Myers would receive the balance of the commission check for the loan. The \$500 Johnson would receive was for "doing the legal, the things that are required by my license, the lenders disclosure and the mortgage loan disclosure, and making sure that everything was correct on the loan documents." This meant the title company would give Johnson the draft note and deed of trust and the lender's instructions to approve. Johnson would review these documents and let the title company know if there were changes she saw according to the loan letter that the parties had to sign.

After this conversation, Johnson was involved in approximately 11 loans with Myers, for which she received \$500 each in commission.³ Johnson denied that she agreed to "partner" with Myers on loan transactions. Instead, she would come to her office "and a packet would be on my desk." Johnson denied that Myers was "assisting" her or employed by her. Myers was not her contractor or transaction coordinator. All of the checks Johnson wrote to Moller for payment to Myers between 2011 and April 2014 were for loan activity Johnson had been involved in with Myers.

Johnson explained that she typically did not communicate with the lenders because Myers would not let Johnson know who her lenders were and did not want Johnson to be involved with them. Myers told Johnson she was "afraid they might come to [Johnson] for loans." The only exception was with Johnson's established lender Mark Habib/Habib Trust (Habib), with whom she had arranged approximately 10 loans. Respondents' first loan was

³ In her March 25, 2016, declaration under penalty of perjury, Johnson declared she had only three or four loan transactions with Myers.

with Habib, who "said he would not do it unless it was through me," based on his history of doing loans with Johnson.

Johnson recalled from her federal and state MLO examination that she was not allowed to pay a referral fee to agents who referred clients to her for loan transactions. Her hesitation about helping Myers was based on this knowledge. Because Myers was getting the loans and Johnson was not negotiating the loans, Johnson felt that Myers was actually paying her a referral fee for the use of her MLO license endorsement. Every time she spoke to Myers, Johnson asked her when she was going to get her own MLO license. Johnson admitted that, at the time of the loan transaction on the subject property, she knew that anyone who was soliciting a borrower or a lender for a loan, and anyone was engaging in any sort of negotiation for loan between a borrower and lender on a residential property, needed an MLO endorsement. This is why Johnson was uncomfortable with the arrangement with Myers.

17. Myers' Testimony: Myers is 62 years old and has been a real estate licensee for approximately 40 years. Myers received an Associate of Arts degree in building inspection and technology; she has never had any legal training. Her real estate activities have primarily involved sales (approximately 400) and private money loans. Between 2002 and 2006, Myers was involved in mortgage loan activities; however, she discontinued this work in 2006 after the construction loan which led to her 2009 discipline. She has never held an MLO endorsement. After her broker license was reinstated, Myers knew an MLO endorsement was necessary to broker loans. This is why she suggested to Johnson that she refer all her loan requests to Johnson.

Myers described her recollection of the 2011 meeting with Johnson, who she has "known forever." At the time, Johnson knew Myers had lost her broker's license. Myers was generally aware of that the MLS regulations had come into effect to regulate the loan industry at large. Myers continued getting loan requests and asked Johnson if she would bring these requests to her and have Johnson handle them. Because she knew Johnson was extremely busy and had her own loans, Myers proposed that she would do "all the leg work" on these loans. For example, Myers would obtain the loan application, the credit reports, information on properties, the purchase agreement and any comps. Myers could also visit the properties and take photographs. This information would be included in the initial packet for Johnson, a copy of which Myers would concurrently drop off to a party she thought would be interested in making the loan.

Myers recalled that Johnson "was fine" with her proposal in general, but wanted to talk to an attorney about how to pay Myers, since she was working under another licensed broker. Johnson never told Myers she believed the proposal was illegal, and never expressed any discomfort about the arrangement until after she received the Accusation. Because Johnson agreed to take responsibility for the loans the same way a broker would, Myers believed she could be involved in this arrangement without her own MLO endorsement. Myers also held Johnson in high regard and believed Johnson would never do anything wrong. She and Johnson completed about 10 loan transactions under this arrangement.

18. Testimony of Michael Moller: Mr. Moller has been a real estate broker since 1990, doing business as Moller Realty Group (MRG). He does not have an MLO endorsement. His wife is a licensed salesperson working under his license. Moller met Myers through his wife, who has been friends with Myers for at least 20 years. He became Myers' employing broker as of August 17, 2009; she was the only restricted licensee with whom he has worked.⁴ Moller was aware that Myers used the name Summit Real Estate for her business before coming under his license. Myers used this name on one occasion while working for him. After he instructed her not to use this name under MRG's license, she complied. Moller had no knowledge whether Myers used Summit Real Estate in connection with her loan transactions.

Moller was aware of the arrangement between Johnson and Myers regarding loan activity. In approximately August 2009, Myers told Moller that she was working with Johnson under her MLO license. Myers explained to him that, because he was her employing broker, any commission checks for closed loans would be sent to MRG from Johnson. Moller would deposit the check into his business account and turn around and cut a check to Myers for her commission. Except for once withholding a small amount Myers owed to him, Moller did not retain any of the commissions from these loans.⁵

Moller never communicated with Johnson. Because he trusted his wife's evaluation of her as a friend, Moller trusted Myers' word that Johnson had the proper license for the loan activity and he trusted that "all was in order." He never saw any of the loan paperwork or talked to any of the individuals involved in the loans. Because the loans were being handled under Johnson's MLO endorsement, he believed Myers' loan activity was being supervised by Johnson and that he did not need to take any action regarding Myers' loan activity.

Moller believed that the arrangement between Johnson and Myers regarding loan transactions was lawful. He based this belief on Myers' representations that Johnson held the appropriate license and that she was working under that license. Myers told him she was assisting Johnson on these loans. He never verified Johnson's MLO endorsement and had no knowledge about what Johnson did with respect to the loans Myers submitted her. He never had any reason to doubt Myers' word.

⁴ Moller did not read the accusation or the proposed decision in that matter. Instead, Myers told him about the circumstances that led to her discipline. Myers explained her perception that the Department's decision to place her on a restricted license "was unreasonable." She planned to work to get her broker license reinstated.

⁵ Myers disagreed with Moller's testimony that she told him how she would be paid by Johnson. Myers believed Johnson received direction from her attorney about that and that this information was relayed to Moller by Johnson's checks.

Attempted Purchase of Subject Property

19. Real estate salesperson Amalia Murillo (Murillo) assisted buyers Ramona Garcia (Garcia) and her adult son, Benjamin Baltazar, Jr. (Baltazar) (the buyers) in their attempts to purchase a home. Albert Tejeda was Murillo's broker. Murillo knew Garcia, worked with her at a cannery, and testified Garcia only spoke Spanish.⁶ In 2014, the buyers decided to buy a home in which Garcia and her younger children could live. Baltazar agreed to help his mother buy a home.

Murillo gave the buyers the Uniform Residential Loan Application (loan application), and helped them by answering any questions they had about completing the application. On June 30, 2014, the buyers signed the loan application, which indicated they sought a conventional loan. Their application for conventional loan was not successful. Murillo told the buyers she knew someone who could help them obtain a private money (hard money) loan. She contacted Myers, who did not directly communicate with the buyers. Myers then solicited lender Habib for a private money loan on the buyers' behalf. The following documents were prepared as part of the real estate transaction.

20. On July 20, 2014, the buyers signed the California Residential Purchase Agreement and Joint Escrow Instructions (Purchase Agreement) to purchase the subject property for \$75,000. The loan was to be by private lender. Escrow was to close on September 8, 2014. An initial deposit of \$1,000 was acknowledged in this agreement.⁷ On July 21, 2014, this offer was accepted subject to a counter offer. On July 23, 2014, the buyers signed the counter offer to purchase the subject property for \$85,000. On July 26, 2014, Murillo helped Garcia write a letter in which she detailed the types of repairs the buyers intended to make on the subject property. After Garcia signed the letter, Murillo provided it to Myers for the lender.

21. On September 2, 2014, the buyers as trustors signed a Deed of Trust with Assignments of Rents, with trustee First American Title Company (First American) for beneficiary Habib/Habib Trust regarding the subject property, which was notarized by escrow officer Becky Bishop (Bishop).

22. On September 9, 2014 the buyers and sellers signed an Extension of Time Addendum to the purchase agreements, extending the close of escrow to September 30, 2014. The buyers and sellers subsequently agreed to a Cancellation of Contract, Release of Deposit and Joint Escrow Instructions pertaining to the subject property, which was signed by the buyers on October 22 and 23, 2014 and the sellers on November 7, 2014.

⁶ While Murillo suggested Garcia needed help completing her loan application because she only spoke Spanish, Garcia testified at hearing without an interpreter.

⁷ On August 8, 2014, American Title prepared a Receipt for Deposit of \$1,000 received from Sabas Ramos for the benefit of Baltazar, for earnest money deposit on the subject property. Ramos was Garcia's husband at the time this transaction.

23. After the purchase of the the subject property fell through, Garcia worked with a different broker, who filed an Enforcement Online Complaint with the Department on February 19, 2015. The complaint alleged Myers was actively soliciting and arranging consumer loans for owner-occupied, one-to-four unit properties without an MLO endorsement, as demonstrated by Garcia's attempt to obtain a private loan to purchase the subject property. Thereafter, Investigator Maples requested and received declarations under penalty of perjury from respondents, conducted telephonic interviews with respondents, lender Habib, Baltazar and his wife, and gathered pertinent documents.

Mortgage Loan Origination Activities Related to Subject Property

24. As discussed more fully below, Myers provided information to Habib in an effort to arrange a private loan for the buyers to purchase the subject property. She also asked Moller to run credit reports on buyers Garcia and Baltazar. On July 2 and 7, 2014, after Myers provided necessary information for buyers (name, Social Security number, date of birth), Mollar/MRG ran these credit reports.⁸ Documents and correspondence prepared in connection with the loan transaction included the following.

25. Loan Term Document: The loan terms for the Baltazar-Garcia loan were memorialized in a one-page, typed, undated sheet addressed to the buyers with the heading, "RE: terms of loan for 411 C St., Biggs 95917." Eight terms were listed.⁹ The terms included: that Habib "will fund \$65,000 on or about August 25, 2014;" that the loan would be secured by a note and first deed of trust on the subject property and lender would be named as an additional insured on the new owners' insurance policy; that the buyers would pay \$541.60 per month, to include 10 percent interest only, all due in three years with a six percent late fee after five days; that the "buyers have \$15,000 dedicated for the improvement of the house;" that the electrical box cover and any hazardous items be repaired prior to funding; and that "brokerage fee to Johnson Real Estate to be \$2,500." On a date not indicated on the document, these loan terms were signed by Habib, Baltazar, and Garcia.

26. Mortgage Loan Disclosure Statement (Borrower): On September 3, 2014, Johnson, doing business as United Country Johnson Real Estate, signed the Mortgage Loan Disclosure Statement (Borrower) for the subject property summarizing the loan terms and

⁸ Moller clarified that he ran these reports at Myers' request because she did not have access to run such reports through MRG; he possibly ran such reports for her previously. Moller did not ask Myers the reason for the request, but knew she was "working on a loan situation" and needed credit reports run. He did not ask her to look at the file because he did not realize there was a file to look at. He did not realize there was a real estate side of the transaction because he was not involved in the purchase agreement and was unaware there was a real estate contract.

⁹ The loan terms were incorrectly numbered 1 through 6, with two terms numbered as "2" and two terms numbered as "6."

providing general information about the loan. Itemized deductions from loan proceeds included a Brokerage Commission/Origination Fee of \$2,500.

27. Lender Purchaser Disclosure Statement (Loan Origination): On September 4, 2014, Johnson signed the Lender Purchaser Disclosure Statement regarding the subject property. This document referenced the August 14, 2014 appraisal of the subject property, which showed its fair market value as \$85,000. In testimony, Johnson disputed that some of the handwriting was hers but acknowledged her signature.

28. Demand for Commission: On September 11, 2014, based on her belief that escrow had not closed as scheduled by September 8, 2014, Johnson wrote, signed and sent a letter to Bishop: as "a demand for my commission of \$2,500 for obtaining the loan of \$65,000 from my client Mark Habib" for the benefit of the buyers. Johnson indicated her understanding that the buyers "did not have the funds to close, or the agreed upon funds to do repairs to the property." She noted "lender is ready to fund the loan if the conditions of the agreement are met by the Buyer/Borrower. Should this escrow not close in a reasonable time period of 10 days, please honor this demand for the commission earned."

29. Myers' Email Communications: During the loan transaction, Myers' wrote email communications to various parties, signing her name and "Summit Real Estate." Myers did not copy Johnson on any of these emails.

a. On August 19, 2014 at 12:41 p.m., Myers sent an email to Bishop and Ms. Furr at First American, with a copy to Murillo, about "Loan approval; Terms" for the subject property. After introducing herself to Bishop as "Linda Myers, SUMMIT REAL ESTATE," Myers wrote: "we are preparing to fund the loan for the buyers" on the subject property. She indicated that "these are the agreed-upon terms of the loan and similar papers are out for signature, by the borrowers and the lender." Myers wrote: "I need an estimated closing statement so I can prepare the disclosures on my end." She also alluded to a title issue which needed to be resolved before the loan would fund. Myers provided her name over the following company designation: "Summit Real Estate/Johnson Real Estate." First American prepared an estimated settlement statement for the subject property on August 19, 2014.

b. On September 2, 2014, at 9:45 a.m., Myers/Summit Real Estate, responded to an email from Bishop. Regarding "loan commitment" for the subject property, Myers indicated there were a "couple corrections, on the note." These pertained to the due date on the loan and the monthly due dates, which she itemized.

c. On September 9, 2014 at 12:08 p.m., Myers sent an email to Murillo and her broker Mr. Tejada, with a copy to Bishop about the subject property, under the heading: "talked to my lender this morning, he didn't say 'no.'" The text of Myers' email was as follows: "he asked for more information; I gave it to him. Waiting for his response."

d. On September 9, 2014, at 3:25 p.m., Myers sent a second email to Murillo, Tejada and Bishop, regarding "Answer from lender." The text of this email was as follows:

"the lender said he did not change the terms; the buyers should have known what they needed to do and have, to be able to close; if they are able to accomplish that anytime soon, contact us and we will see if funds are available.*** There was also an electrical cover to be installed prior to funding. Please advise."

30. Testimony of Mark Habib: Mark Habib is an attorney who works for himself and also provides loans as an investment mechanism for his family trust. He first met Myers approximately 20 years ago, when she came to him for a loan on her own property. He has known Johnson professionally through real estate transactions, beginning in the 1980s. In 2014, Habib was the proposed lender for the purchase of the subject property. In his testimony, Habib often did not have a specific recollection given the passage of time; however, he phrased his answers in terms of what would have happened or what he would have done given his standard operating procedure in such loan transactions. He recalled that Myers would often drop off or send him information, with an inquiry about whether he "would do this loan." Habib described the "generic method" he used in these instances: Myers would have said she knew "of someone interested in a loan, here is the amount and terms. Is this something you are in a position of doing?" Regarding the subject property, Habib was certain that he was not initially contacted by Johnson. He believed he told Myers it looked like something he could do, but he needed more information. Myers would give him pictures and comps. He drove by the subject property and found it to be on a "quaint, cute little street" but in need of repairs.

Habib did not know the legal requirements for brokering loans, but he had a sense that Myers may not have been licensed to do this type of work. He may have had a discussion with Myers about whether she was in a position to broker loans, which led him to believe she could not do the loan by herself. Because he believed Johnson was licensed to do so, Habib wanted Johnson to be involved in the loan paperwork for the subject property. He clarified that Johnson's knowledge of this transaction "developed over time." By the time he signed the loan term document regarding the subject property, Johnson would have been involved in the transaction. Because the transaction fell apart and he never funded it, he did not recall any specific conversations with Johnson about the loan, but he may have spoken to her. Habib never had any conversations with the buyers, or with their agent Murillo, and recalled speaking only to Myers.

31. Habib received documents in support of the loan from Myers. Before deciding whether he would go forward with the loan, Habib would likely have received certain documents. These included: a typewritten page about a proposed loan; sheet of loan terms; photographs of the subject property; a contract of sale; loan application documents; the buyers' credit application; and the Purchase Agreement. He would have seen the home inspection and would still need to review title documents. He signed the Lender/Purchaser Disclosure Statement prepared by Johnson, but did not date it. At some point he reviewed the buyers' letter about their anticipated repairs. He was unfamiliar with the Mortgage Loan Disclosure Statement.

32. In discussing the loan terms document, Habib indicated that it would not have been prepared until there was a contractual commitment to buy the subject property. Based on the buyers' acceptance of the counter offer, the loan terms would have been prepared in late July or early August of 2014. Habib was unable to recall whether he prepared the loan term document signed by the parties. Based on his standard practice, he would sometimes receive documents that were not as specific or correct as he wanted them to be. In these cases, he would ask that the document be sent to him and he would redo it with a little more specificity. He did not know whether he had revised this document or not.

Habib testified that the specific terms of loans he funded depend upon the property. While the interest rate charged on the subject property was 10 percent, this was not a standard rate, but could be higher or lower. He testified that anyone can always "negotiate" terms. In this case, the buyers wanted \$65,000 and, after doing his due diligence, he agreed to fund that amount with a first deed of trust on the property. His practice is also to ensure there are no hazardous deficiencies present at close of escrow. Habib would not have come up with the loan term for a brokerage fee to Johnson Real Estate for \$2,500, and believed this term came from Myers. Habib did not object to it because it was not a fee he would pay.

33. Habib has been the lender in six to eight loans brokered by Johnson over the 30 years he has known her. This included loan transactions involving Myers that occurred prior to January 1, 2011. Habib testified that he has found Myers generally to be "very honest" in these loan transactions. He did not believe that she had ever intentionally misled him. Habib understood that Johnson was assisting Myers complete the transaction because of the additional licensing requirements associated with brokering the loan. He believed this because Myers "found the borrowers" and "identified the transaction."

34. Johnson's Testimony Re: Loan Transaction: Johnson has been active in her local Board of Realtors' Association for many years, including serving as its president. She is currently 79 years old. During her 40 years as a real estate licensee, Johnson has engaged in all aspects of real estate. Her loans have been predominantly residential, with a few commercial. She does not do commercial loans, just private hard money loans.¹⁰

In doing loans with Myers for which her MLO endorsement was necessary, Johnson explained that loan information would appear in a manila folder on her desk. It contained the buyers' loan application, credit report, preliminary title report, the name of the escrow company and escrow officer and the California residential purchase agreement. Either in the initial package or subsequently, Myers would provide Johnson with the loan terms for Johnson to put on her letterhead and get to Myers for the borrower and lender to approve.

¹⁰ In her April 22, 2016 interview, Johnson told Mr. Maples that she had been doing loans for 40 years and always tried to do things carefully and correctly. Johnson agreed that, given her experience, it was unlikely she would need this type of assistance on something at which she was proficient.

Regarding the subject property, Johnson testified that she never met with, spoke to or otherwise communicated with the buyers/borrowers or their agents Murillo or Tejada. Myers secured Habib and provided Johnson with information about the proposed loan. Johnson never discussed the loan terms with Habib. When Johnson received the loan letter, both the buyers/borrowers and Habib had already signed the loan agreement. She would have contacted Habib by email to see if there is any other information that he needed; however, this would have been the extent of conversation with him, if she had one.

As the broker in this transaction, Johnson prepared and signed the Mortgage Loan Disclosure Statement on September 3, 2014. She signed the Lender Purchaser Disclosure Statement on September 4, 2014, but believed Myers completed portions of that document and sent it to her for signature. She did not recognize the handwriting on certain other portions of the form, including the handwriting used to insert her MLS number. With the exception of these two forms, Johnson did not prepare any of the documents incident to the loan on the subject property. She also approved note and deed of trust, and asked Habib whether he had everything he needed to go ahead and make the loan.

35. Johnson denied giving Myers permission to send emails regarding the loan for the subject property and she did not receive copies of emails Myers sent to third parties. Johnson did not authorize Myers to use Summit Real Estate or Summit Real Estate/Johnson Real Estate in connection with this loan transaction on the subject property and Myers did not provide her copies of emails she sent out with this signature. Johnson's concern was focused on "the legality of getting the loan closed in a legal way for everyone concerned, that it was properly done and the title company had done their work and the lender was satisfied." In reviewing the loan documents on the subject transaction, Johnson did not find anything wrong and there was nothing in the disclosures that was false.

36. Johnson testified that Myers later told her the buyers could not pay their down payment, and that escrow did not close and was canceled.¹¹ After this loan canceled, Johnson contacted the escrow company and requested a commission. She testified that she did that because: "Linda asked me to do it. . . she was angry with them for spending their money and not being able to close, so she asked me to demand the commission." Although Johnson requested it, the commission was never paid and she did not pursue it further. Johnson understood "negotiation" as a back-and-forth discussion between the buyer and the lender on acceptable loan terms. She was not aware of any back-and-forth negotiations for the loan in the subject property. She considered this as Myers' "effort to try to make a living."

37. Johnson is still running her real estate business. She testified that she is very sorry about the situation, which she should not have gotten involved with in the first place, and she regrets it.

¹¹ In her March 25, 2016 declaration for Investigator Maples, Johnson declared that she learned this from the title company and that she had falsely declared this information was from the title company, "to protect Linda [Myers]."

38. Myers' Testimony Re: Loan Transaction: Myers was contacted by Murillo on behalf of the buyers to see if she could help obtain a hard money loan to purchase a house. Myers denied she had any direct conversations or contact with the buyers, or that she advised them how to fill out the loan application. After Moller ran the buyers' credit, Myers did not see anything that would prevent them from getting a private money loan. She then waited until the buyers found a property they wished to buy. After she received their purchase agreement for the subject property, Myers gathered all the information and gave Johnson and Habib a package that same day. Myers later met Murillo for a walk-through on the subject property, where she took some photographs. She later ran comps/market analysis on the property.

39. Myers' next step was to write a letter in which she basically introduced the idea of the loan transaction for Johnson and Habib (e.g., "this is a loan request for X amount of dollars"). Myers did not keep a copy of this letter. She did not discuss the loan with Johnson before providing this request and information to Habib. Once Habib received the package, he would have called "and basically told me what he was willing to do." Myers would then have generated the loan terms document based upon Habib's dictates and emailed it back to him. Myers confirmed that after her disciplinary action, Johnson was involved in every loan that she did and, particularly, with Habib.¹² Myers communicated with Murillo about Habib's desire that the electrical box wires should be repaired before closure and for proof of funds (\$15,000) to make repairs. After this, Murillo provided her a letter the buyers volunteered, which explained their anticipated repairs to the property.

40. Although Myers typed up the loan terms document, its terms were dictated by Habib. Myers agreed Habib did not dictate the brokerage fee term and that this fee is paid by the borrowers. She denied that her interactions with Habib constituted "negotiation." Myers explained that, in real estate transactions, she frequently engaged in back-and-forth discussion between the parties in order to come to an understanding. This was her interpretation of the word "negotiate." By contrast, Habib "does not negotiate" and would only accept a "yes" or a "no" to the terms he dictates. After she received the loan terms from Habib, Myers provided a copy to Murillo for buyers "to agree to or not." She did not negotiate back and forth with the buyers and denied she had engaged in loan negotiation or solicitation with any party on this loan transaction. On cross-examination, Myers argued with complainant's understanding of what constituted negotiation or solicitation, but ultimately conceded understanding the Department believed she had engaged in negotiation and solicitation regarding this loan. She had never read anything about soliciting or negotiating loans at that time. She agreed Johnson would not have gotten a copy of the loan terms until it was fully executed by the parties.

¹² Myers denied she intended to lie to Investigator Maples in her May 10, 2016 interview, when she said that "Habib only dealt with Johnson" on this loan transaction. She explained this was a reference to Habib's practice of only working on loans with her in which Johnson was also involved.

41. After the loan terms were agreed upon, Myers was involved in obtaining an estimated closing statement from Bishop/First American that Johnson needed to prepare disclosures. Johnson then created or generated all the legal documents for the transaction (the lender disclosure statement and the borrowers' mortgage disclosure).¹³ Myers used Summit/Johnson Real Estate in one email to the title company because it was out of their usual area and she did not know the escrow agent. Myers viewed this as an introductory email telling Bishop they were associated with funding the loan and she did not want any confusion when the title company later received documents from Johnson or when Johnson requested a commission. When Myers wrote, "I need an estimate," she used the personal pronoun as a figure of speech.

42. Myers communicated with Murillo and the title company after Murillo told her the borrowers were having trouble coming up with their down payment. Myers was trying to find out why. She copied Johnson on one email in which she explained she was "doing a three way call with the borrowers;" however, this conversation never occurred. Myers did not feel it was necessary to receive Johnson's permission to talk to escrow. She believed she kept Johnson in the loop on everything material to the loan Johnson would have expected to receive.

43. Myers explained that she began using the fictitious business name Summit Real Estate (Summit) in 2002; there is a website associated with Summit which was discontinued before 2006. While working with Moller, Myers identified herself as RGM, but outside of real estate, she used Summit. Myers was not certain that she used Summit while working with Moller. When asked about its use in email correspondence regarding the loan for the subject property, Myers indicated that she did not see that as a real estate licensed activity. She agreed that she "probably" should not have used Summit for anything except for dealing with her own properties.¹⁴

44. In Myers' mind, she did not require an MLO endorsement because Johnson "was doing the loan." Johnson had a license to do so, conducted all the legal matters and there was "nothing illegal" about Myers' own activities in gathering documents and providing them to Johnson.

After she retained her attorney in April 2018, Myers' understanding changed about when she needed to have an MLO endorsement. She learned it was not required for all loans. Prior to that, she generally believed that such an endorsement was required to do every single type of loan transaction; however, she did not believe she needed one for the

¹³ Myers opined that Johnson's assistant Christine may have completed some documents for Johnson's signature.

¹⁴ Myers had an old Summit business card from 2002 which she attached to the flyer about the four Flounoy, California properties she listed in approximately March 2017. (Finding 50, *infra*.) At the time she did this, she had her broker's license and had added Summit as a DBA to her license effective November 18, 2014.

subject property because she was working under Johnson's endorsement. She never did any research about these laws. She denied being engaged in any type of loan activity since the Accusation was filed.

Alleged Violations of Preliminary Bar Order

45. It is undisputed that Myers received the Preliminary Bar Order and Notice of Intention to Issue Bar Order (Preliminary Bar Order), which was served on her on July 14, 2017, and as to which she requested a hearing by letter dated July 20, 2017. The Preliminary Bar Order instructed Myers that she was: "IMMEDIATELY PROHIBITED FROM ENGAGING IN ANY BUSINESS ACTIVITY INVOLVING REAL ESTATE THAT IS SUBJECT TO REGULATIONS UNDER THE REAL ESTATE LAW."

46. On October 27, 2017, Peggy Mead, Association Executive, Sierra North Valley Realtors sent a letter to the Department about Myers. Specifically, Mead indicated her awareness of the Preliminary Bar Order from the public records, and advised the Department that, as of this morning, "Myers has five active listings for sale in our MLS."

47. In the First Amended Accusation, complainant alleged that Myers violated the Preliminary Bar Order after July 2017, by continuing "to solicit prospective sellers and purchasers of, solicit and obtain listings of, and/or negotiated the purchase and sale of real property" for three properties. Complainant asserted that Myers' violation of the Preliminary Bar Order constituted a separate cause for discipline based on her violation of Business and Professions Code section 10176, subdivision (i) (fraud or dishonest dealing); and 10177, subdivisions (d) (willful violation of Real Estate Law), (g) (negligence/ incompetence), and/or (j) (fraud or dishonest dealing). The subject properties were:

Address	Represent Seller or Buyer	MYERS' Commission	Escrow Close Date
11576 Dairy Road, Chico, CA 95973	Seller	\$7,029.43	January 8, 2018
0 Poppy Ridge Rd. Corning, CA 96029	Seller	N/A	N/A
2 Poppy Ridge Rd. Corning, CA 96029	Seller	N/A	N/A

48. Myers testified that she received the Preliminary Bar Order on July 20, 2017, approximately a week after it was issued. She was "afraid to open it" for several days, was "devastated" and could not read it at once. Once she read it, she focused on its use of the term "preliminary." She decided there must be a process, and began researching all the

elements by googling sections and writing them all down. At approximately the same time, Myers had received the Desist and Refrain order; she had already received the original Accusation. She knew the Department could not take her license without a hearing. She found instructions which said to request a hearing and she did so.

In her July 20, 2017 request for hearing, Myers wrote that the Preliminary Bar Order precluded her from further engaging in a substantial portion of her business. In continuing to engage in real estate activities after that, Myers relied on the language in Business and Professions Code section 10086, subdivision (b), pertaining to the Desist and Refrain Order, which indicated if she did not have a hearing date with in 30 days, she could continue to conduct business until there was a hearing.¹⁵ Based on her review of this section, Myers thought it applied to the Preliminary Bar Order. Her understanding from these instructions was that, if there was no response to her request within 30 days, the order would not take effect and "all that it meant was that I could continue to do business until the hearing. . . ." She believed she never received a response to her request for hearing on the Preliminary Bar Order.

Myers acknowledged she never called an attorney or any friends to help her interpret the Preliminary Bar Order. She did not heed the advice of the bolded underlined text prohibiting her from engaging in licensed business because she "knew there had to be a procedure." There was a hearing on the Accusation scheduled for December 2017. Myers understood she could lose her license at that hearing, but believed the Preliminary Bar Order would also be addressed at the hearing. At the same time, Myers expected there would be an "informal hearing that would release me from the bar order pending this."

49. Myers first understood that she was in violation of the Preliminary Bar Order on April 10, 2018, when she received the First Amended Accusation charging her with violation of that order. Myers acknowledged that she should have gone online and canceled these listings as soon as she received the First Amended Accusation. It was an oversight that she did not. She did upload several price changes in MLS in June 2018, but there were never

¹⁵ Business and Professions Code section 10086 relates to a Desist and Refrain order. Subdivision (b) provides that a respondent may file a request for a hearing, within 30 days after service of the order to desist and refrain. "If, with the request for hearing, the respondent also files a written verification that the order of the commissioner precludes him or her from further engaging in a substantial proportion of his or her business, the commissioner shall, within 10 days thereafter, file an action in superior court to restrain the respondent from continuing the activity or doing any act in furtherance thereof pending the completion of a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code." Subdivision (c) provides that, "if the commissioner fails to bring the action in superior court within the time prescribed by this section, or if the court refuses to restrain the respondent pending the decision of the commissioner following the administrative hearing, the respondent may resume the activities in question pending the rendering of the decision of the commissioner following the administrative hearing." (Bus. & Prof. Code, § 10086, subd. (b).)

any offers on these properties or even any phone calls. She did not dispute she engaged in licensed activity as to the three properties after the preliminary bar order as alleged in the First Amended Accusation. She provided the following detail.

a. 11576 Dairy Road in Chico: Myers acknowledged that she was engaged in a transaction as a real estate licensee regarding the property at 11576 Dairy Road in Chico, the escrow for which closed on January 8, 2018. At the time she was involved in that transaction, however, Myers did not believe she was barred from doing real estate activities. She explained that she had owned this property for 10 years and sold it in January of 2017, as the seller, not the agent. It was a short sale. Myers assisted in arranging a loan with Habib for Mr. Atkin who purchased the property; however, she did not receive any compensation on that loan. Johnson received a \$24,000 commission in connection with that sale.

Myers clarified that there was a second sale of the same property in 2018 in which she represented the seller and the buyer. The escrow close date was January 8, 2018, and she received a commission of \$7,029.43. Johnson was not involved in that sale. At the time of the sale, Myers believed the Preliminary Bar Order was not in effect.¹⁶

b. 0 Poppy Ridge Road and 2 Poppy Ridge Road, Corning: Myers listed the properties at 0 Poppy Ridge Road and 2 Poppy Ridge Road in Corning as seller on April 9, 2017, before she received the First Amended Accusation. The listing expired on June 6, 2018. Myers acknowledged that she did not cancel these listings after she received the First Amended Accusation. At the time she was "about four days away from going to trial by [herself]."¹⁷ There was no activity on this property and Myers knew her listing was expiring soon. Although she did not cancel the listing, Myers sent a letter to the seller explaining the situation and he subsequently listed both properties with Moller.

50. Moller testified that Myers had listings in Flournoy, California where he also had listings in 2017. At one point, Myers came into his office and gave him a flyer about four vacant lots she had listed in Flournoy. The flyer had a Myers/Summit Real Estate business card attached to it. Her listings on these properties were active April 13, 2017. Moller believed Myers had the listings three or four months before she gave him the flyer, and estimated that he received the flyer in either August or September 2017. Moller had no idea whether Myers conducted real estate business after the Preliminary Bar Order was issued. After June 6, 2018, Myers was no longer involved with these properties and Moller listed them for sale at their owner's request.

¹⁶ Habib was the lender in the 11576 Dairy Road, Chico transaction in January 2017, in favor of borrower Kevin Atkins, for which he was later paid off in full. This was evidenced by the Substitution of Trustee and Deed of Full Reconveyance, dated December 27, 2017, and pertained to the Deed of Trust executed by Kevin Atkin on January 9, 2017.

¹⁷ Prior to the April 19, 2018 continuance order, the hearing on the Accusation was set for April 23 through 25, 2018.

Johnson's Evidence

51. Johnson did not offer any documents or letters on her behalf. She relied on her previously unblemished history as a licensee and her testimony acknowledging wrongdoing and expressing remorse.

Myers' Additional Evidence

52. Myers provided documents and letters of recommendations on her behalf that were admitted and considered to the extent permitted under Government Code section 11513, subdivision (d).¹⁸ They included the following:

a. Continuing Education: Myers provided Certificates of Completion of online continuing education (CE) courses in July 2018 in the following areas: the Duty to Disclose (12 hours); Environmental Issues in Residential Real Estate (12 hours); Eight Hour Survey (8 hours); Buyer Agency (5 hours); and Advanced Contract Law (4 hours). She testified that she had completed all CE units except one hour required for the renewal of her license and that she decided to postpone renewing her license pending a determination on these matters.

b. Expunged Conviction: As reflected in the September 20, 2012 Order Denying Reinstatement of License in Case Number H-4937 SAC, "as a result of the violations which resulted in her 2009 revocation, respondent [Myers] was also convicted of diversion of construction funds in the Butte County Superior Court in June 2010." Myers provided a March 1, 2011 Order for Dismissal in the *People of the State of California vs. Myers*, Butte County Superior Court Case number CM029508, under Penal Code section 1203.4.

c. Dismissed Civil Action: On September 2, 2010, in the matter of *Douglas Wisler, et al., v. Myers et al.*, Butte County Superior Court Case number 140121, Myers filed a Request for Dismissal with prejudice of a complaint for breach of contract/money damages. On September 29, 2010, dismissal was entered as requested.

d. Character Letters: Myers provided various letters of recommendation, the majority of which were written between 2008 and 2012, to support the termination of her criminal probation and the reinstatement of her broker license. The authors of these letters characterized Myers as "dedicated to her clients and [putting] their best interests ahead of her own" (Moller); ethical, informative and professional (Hunt, Nelson); "persevering through extreme hardship" (McIntyre); "fair, creative and diligent" (Lee); "honest and trustworthy" (Sherburn); "forthright in our business transactions" (Davenport), and demonstrating integrity (Bell). They also referenced her involvement in charitable activities (Stevenson, Hunt, Bell). These letters provide some insight into Myers' character. However, because

¹⁸ Government Code section 11513, subdivision (d), provides in pertinent part that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. . ."

none of them were written with knowledge of the events that are the subject of this proceeding, they are of limited value.

Myers also provided a March 5, 2018 declaration from Peggy Mead who has been the Association Executive at the Sierra North Valley Realtors (formerly Chico Association of Realtors) for the past 13.5 years. Ms. Mead declared that, "in those years, there has never been a Grievance Disciplinary Complaint or Professional Standards Arbitration Request filed against Linda Myers."

53. Myers testified that, if she had "crossed the line somewhere and violated something" regarding her conduct on the loan for subject property, she definitely regretted it. She noted that she was seven days away from getting her broker's license when the subject transaction began and she would never have put either herself or Johnson in the situation if she had known that their actions were illegal. She worked for five years to get her broker's license reinstated. She would never have knowingly asked Johnson to do anything illegal and would not have knowingly jeopardized her restricted license.

54. Myers filed an Application for a MLO Endorsement, with documentation of passage of the National SAFE MLO Test on March 1, 2016. Prior to taking that test, Myers had not taken any specific classes regarding mortgage loan activities for an MLO endorsement. This application remains pending before the Department, which acknowledged its receipt on June 16, 2016. Knowing what she now knows, Myers believes she would not violate the MLO laws again. She explained that she has spent a lot of years under discipline and that this has been "financially devastating, personally devastating, so there's no way I would want to be in trouble." She now understands that the Department believes the activity she was engaged in for the loan on the subject property was a negotiation. She has learned her lesson on what is required to stay in compliance with the real estate law pertaining to mortgage loan origination and does not intend to engage in that activity again. Myers testified she has been active in community activities through her church, where she volunteers as a nursery teacher, primary teacher and a youth teacher.

55. Myers is single and has one adult son who is currently living with her and receiving financial support from her. She has no other source of income. Myers used most of her savings in the past year to live on and she borrowed money to come to hearing. She could not pay the costs of enforcement if she is not allowed to continue as a licensee or if she is barred. However, if she is able to retain a license in some form, she would be able to pay the costs over time, hopefully within 90 days.

Myers' Prior Discipline

56. Myers' real estate licenses have been disciplined on two previous occasions.

a. Myers' most recent license discipline occurred following a hearing on the First Amended Accusation in Case Number H-4937 SAC, which sought to discipline her broker license. On July 27, 2009 the Commissioner adopted the Proposed Decision in OAH Case

Number N-2008030860, effective August 17, 2009. The factual basis for this discipline occurred between April 2005 and January 2006.

As reflected in that decision, the proceeding related to a "real estate construction loan gone bad."¹⁹ The Decision determined Myers had violated the following Business and Professions Code sections: 10145 (trust fund violations); 10159.5, 10176, subdivision (a) and (b) (making false promises); 10176, subdivision (i), 10177, subdivision (d), and 10233 (failing to obtain written authorization before servicing a promissory note, in conjunction with the following sections of Title 10 of the California Code of Regulations: 2831 (failure to maintain written control records), 2831.1 (failure to keep separate records for each beneficiary), 2831.2 (failure to maintain monthly trust account reconciliations), 2832.1 (trust fund shortage), and 2731 (operating under a fictitious name [as Summit Real Estate] for which she has not obtained a real estate license).

Myers' broker license was revoked; however, revocation was stayed and a restricted salesperson license was to be issued to her on application, subject to various terms and conditions. Analyzing appropriate penalty, the Decision concluded it was not established Myers had any intent to defraud the lender Wisler. At the same time, however, Myers was "nevertheless guilty of a constructive fraud that caused him significant losses," and she "failed almost completely to meet her fiduciary obligations" to him. Because it did not "appear that respondent is capable of acting independently in conducting's real estate transactions," public protection required revocation of her broker license and required supervision of her activities as a real estate salesperson. The conditions of this restricted license included requirements that the employing broker: "has read the decision of the commissioner which granted the right to a restricted license;" and "will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required." Myers petitioned twice for reinstatement of her broker license and disclosed that she had a previous misdemeanor conviction for petty theft which was then expunged.

On June 24, 2014, the Commissioner granted Myers' second petition for reinstatement of her broker license, after concluding she had demonstrated it would not be against the public interest to issue of an unrestricted broker license to her. This license was issued June 30, 2014.

b. In Case No. H-3333 SAC, an Accusation was filed against Myers' salesperson license on January 23, 1998, regarding the offer she and her broker (respondents) prepared for the buyer to purchase a mobile home and lot. Myers and her broker received a \$1,000 check from the buyer to be deposited with the title company upon acceptance the offer, but they failed to do so and returned it to the buyer without knowledge or consent of the sellers. The sale of the property was never consummated. The factual basis for this discipline occurred in July 1996.

¹⁹ Myers had arranged the loan and eventually became a co-defendant in a civil suit. She was also criminally charged with violating Penal Code section 484b (theft).

On June 15, 1998, Myers signed a Stipulation and Agreement, by which she admitted the factual allegations and agreed to discipline under Business and Professions Code sections 10145 and 10177, subdivision (g), for negligence or incompetence in failing to place a buyer's deposit check into escrow or a trust account. Myers' salesperson license was suspended for 30 days; however, the suspension was stayed for two years on condition that she obey all laws and rules governing real estate licensees, at which time the stay of the suspension would become permanent.

57. Moller testified that he supervised each of Myers' real estate transactions while she worked with a restricted salesperson license under his license. Moller never received any complaints about Myers on her real estate activities and he received some kudos that she treated clients well. He spoke highly of her work on real estate transactions, the vast majority of which involved sales of single-family residences and vacant unimproved land parcels. He estimated she did nine or 10 transactions a year. Moller ensured Myers' files and all required forms were complete before she was paid. Moller clarified that Myers accepted the Department's discipline in the sense that she complied with everything he required of her. If something was missing or wrong she would ensure it was corrected. This was necessary for her to be paid in a timely fashion.

Costs

58. Business and Professions Code section 10106, subdivision (a), provides that "in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, constitutes prima facie evidence of reasonable costs of investigation and prosecution of the case. (Bus. & Prof. Code, § 10106, subd. (c).)

59. In support of this request, complainant submitted a Certified Statement of Investigation Costs, prepared by Supervising Special Investigator Heather Nishimura, listing the investigation cost total as \$4,465.05. These costs consisted of work performed by Special Investigators Devon Maple (\$4,008.30) and Mark Tuteria (\$93); Supervising Special Investigators Carillo (\$136), Nishimura (\$60) and Parkhurst (\$140); and an office technician (\$27.75). The Certified Statement was supported by "Good Faith Estimates of Reasonable Costs for 4-15-0224-002," in which each of these individuals listed the hours expended in addressing this case, the status of which was described as "combined."

In further support of this request, complainant submitted the Declaration Regarding Enforcement Costs signed by Mr. Lazark on August 5, 2018, and incorporating a "Good Faith Estimate of Reasonable Costs for 4-15-0224-002." This estimate indicated 39.40 hours were spent on the legal enforcement of these consolidated cases, for a total cost to the Department of \$3,506.60.

60. Based on these documents, the prima facie costs of investigation and enforcement in these consolidated matters are \$7,971.65. These costs are reasonable. The documents filed in support of investigative costs do not provide any breakdown of the relative time spent in investigating Johnson as opposed to Myers. There is some breakdown between two different case numbers in Mr. Lazark's good faith estimate of legal costs; however, 33.10 hours are listed under Case Number 6577 SAC (Johnson).

61. Johnson does not oppose paying some of these costs, but asks that they be apportioned appropriately between respondents commensurate with their relative liability. Specifically, Johnson references the time complainant spent addressing Myers' previous discipline, Myers' Preliminary Bar Order and violations of that order, as well as the pending request that a Bar Order be issued against Myers, none of which involved Johnson. As discussed at Finding 55, Myers is willing to pay costs pursuant to a payment plan if she is allowed to continue practicing.

Discussion

62. Although respondents were involved in mortgage loan origination transactions they believed required an MLO endorsement prior to the loan on the subject property, complainant only alleged a single transaction in furtherance of that agreement. As to that transaction, the Accusation was filed within the three year limitations period set forth in Business and Professions Code section 10101. Testimony about respondents' arrangement for developing and consummating these loans before that time demonstrates their common plan and establishes that their conduct on the subject transaction was not an isolated or accidental event. Respondents' conduct in this transaction was directly and substantially related to the qualifications, functions or duties of real estate licensees.

63. When all the evidence is considered, it cannot be concluded that respondents engaged in this transaction out of mere negligence or incompetence. Rather, the evidence established that respondents acted in a manner that was designed to circumvent the Real Estate Law pertaining to mortgage loan origination activities and did so for compensation. To obtain her MLO endorsement, Johnson was required to complete training and pass an examination about federal and state SAFE Act laws and the purpose of these laws. While Johnson may not have expressed her doubts about the legality of their arrangement to Myers, her testimony that she harbored such doubts at the time was credible. While Myers did not have such training, she was a licensee with many years' experience and a history of prior discipline. She needed money and failed to conduct any research into the appropriateness of her plan. Myers' testimony that she did not believe she needed an MLO endorsement while working with Johnson was not credible. Similarly, Myers' testimony that she was only acting as Johnson's assistant in gathering materials was not credible and also wholly failed to explain why an assistant would receive 80 percent of the commission for helping the main actor, who received only 20 percent of the commission. Myers was the driving force and primary actor in this transaction with the buyers and the lenders.

64. Complainant established by clear and convincing evidence that Johnson performed the following acts with respect to the loan to purchase the subject property: (1) Johnson authorized, allowed and/or permitted Myers to perform acts under her mortgage loan originator license endorsement; (2) Johnson executed the mortgage loan disclosure statement and the lender/purchaser disclosure statement; and (3) Johnson submitted a letter to First American demanding a commission of \$2,500 for originating the loan to purchase the subject property.

65. Complainant established by clear and convincing evidence that Myers solicited and or performed mortgage loan brokerage services for compensation or gain regarding the subject property between July and September of 2014: by offering and/or negotiating terms with the buyers and by soliciting, offering and/or negotiating terms with lender Habib to obtain a loan of \$65,000 to finance the purchase of the subject property; by communicating and coordinating with escrow officers at First American Title Company (requesting documentation necessary to close the loan); by directing escrow officers with First American to incorporate particular terms in the promissory note regarding the loan; and by communicating and coordinating with the buyers' real estate salesperson and broker regarding purchase of the subject property with the loan.

66. Complainant established by clear and convincing evidence that Myers violated the mortgage loan origination laws by knowingly failing to obtain a mortgage loan originator endorsement prior to engaging in mortgage loan brokerage activities; and that she engaged in the unauthorized use of a fictitious business name, for which she had previously been disciplined.

67. Complainant also established, by clear and convincing evidence, that Myers violated the Preliminary Bar Order by continuing to engage in licensed activities in a manner that demonstrated a willful violation of the Real Estate Laws, in violation of Business and Professions Code sections 10177, subdivision (d). As set forth in Factual Findings 4 through 6, in issuing the Preliminary Bar Order against Myers, the Department properly followed the notice requirements of Business and Professions Code section 10087, subdivision (a). This triggered Myers' right to request a hearing within 15 days, which she did. Thereafter, Myers failed to comply with the order to refrain from all real estate related activity. Myers' relied on the hearing procedure set forth in a different statute, Business and Professions Code section 10086, which pertained to Desist and Refrain Orders, which had been served on her at the same time. This D&R process comported with Myers' desire to keep working and she took no further action to determine whether her analysis was correct.

68. Based on the Factual Findings as a whole, complainant presented clear and convincing evidence to establish cause to discipline the licenses and licensing rights of respondents Johnson and Myers as further detailed in the Legal Conclusions.

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Appropriate Discipline

69. Respondent Johnson: For nearly 40 years, respondent Johnson has held a broker license without any history of discipline. Johnson's testimony at hearing demonstrated a sincere remorse and regret for her conduct of allowing Myers to use her MLO endorsement. Specifically, Johnson's testimony that she agreed to participate in mortgage loan origination with Myers based on their established friendship due to Myers' financial need was persuasive, and supported by the fact that Johnson's commission was relatively minor. While somewhat of a mitigating factor, Johnson's willingness to engage in an arrangement she knew was not consistent with her MLO endorsement underscores the need to revoke this endorsement. Revocation of her broker license with a right to a restricted broker license for two years is sufficient to protect the public.

70. Respondent Myers: Myers also has a lengthy history as a licensee that has been punctuated by two years on stayed suspension while a salesperson and revocation of her broker license with five years on a restricted salesperson license. Under these circumstances, it would be anticipated that Myers would exercise utmost diligence to ensure she is in compliance with the Real Estate Law. Myers acknowledged this by testifying that she worked diligently for five years to regain her broker license. She was successful in doing so as reflected by the Commissioner's June 24, 2014 decision reinstating her broker license.

The question is whether Myers' broker license and licensing rights should be revoked or whether the public can be sufficiently protected by allowing her to continue to practice under a restricted salesperson license. In analyzing the appropriate penalty, the following comment from the 2009 Decision is noteworthy: "Although she has been a real estate licensee for many years, respondent showed herself to be *strikingly unknowledgeable* about a number of the legal requirements with which a real estate broker must comply." (Italics supplied.) Examples included operating under a fictitious business name for which she had not obtained a license, while "seemingly unaware of the need for such a license," and being unaware that she needed to obtain independent appraisals of the secured property when she brokered loans or obtain waivers of the appraisal, and of the need for written loan servicing agreements. Against this backdrop, the Decision concluded that "it does not appear that respondent is capable of acting independently in conducting real estate transactions. That is not to say, however, that respondent could not safely act under supervision as a real estate salesperson . . ."

It is significant that, during her restricted salesperson licensure, Myers completely removed herself from Moller's supervision as to her loan activities. Myers' testimony that she believed this was appropriate because she was working under Johnson's MLO was not credible. She made no efforts to research the real estate law pertaining to mortgage loan origination or to seek legal advice. Myers' conduct was similar to her decision to continue working despite the express language of the Preliminary Bar Order. Her ability to google statutes did not extend to googling the relevant statute under the Real Estate Law and she elected not to seek legal advice or clarification from the Department. Myers' pattern of believing what she wants to do is correct without engaging in reasonable due diligence

underscores its willfulness, and was consistent with her conduct in the loan transaction on the subject property. When all the evidence is considered, this characteristic demonstrates that it not in the public interest to allow Myers to retain her broker license or work even a restricted salesperson licence.

Bar Order

71. The bar order complainant seeks against Myers is designed to protect the public from the risk of exposure to bad actors, not only in licensed areas, but in fields that extend beyond real estate (e.g., "in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company" and from "participating in examinations for licensure").

72. Myers persuasively argues that a bar order under Business and Professions Code section 10087 cannot be retroactively based on her 1998 and 2009 license discipline. Complainant argues that it is appropriate to consider Myers' prior discipline to demonstrate that she poses a threat to the public. The question is whether it is "in the public interest" to issue a Bar Order against Myers, based on violation of the Real Estate Law, "which violation was either known or should have been known" to her.

73. The regulations define "in the public interest" as "for the common or general welfare of the public." (Cal. Code Regs., tit. 10, § 2960, subd. (f).) In determining whether it is in the public interest to issue a bar order, consideration of a licensee's history or pattern of violations is appropriate because it may indicate the likelihood that such violations will continue in the future. Myers' prior disciplinary actions do not in themselves demonstrate she poses such a threat.

74. As set forth in Finding 62 through 68 and 70, Myers' conduct regarding the subject property constituted violations of the Real Estate Laws which she either knew or should have known she was committing. Myers' conduct in this transaction, considered in the context of her 2009 disciplinary action, demonstrates a pattern of wilfull ignorance of laws designed to protect the public that do not comport with her desired course of action. This pattern of behavior demonstrates that it is in the public interest to issue the bar order. Based on the Factual Findings as a whole, grounds exist to issue such an order under Business and Professions Code section 10087, subdivision (a)(1), because it is in the public interest and based on her multiple violations of the Real Estate Laws, which violations were either known or should have been known to her.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In this action to revoke, suspend, or otherwise discipline respondents' professional licenses, the burden of proof is on the Department, which must establish the

allegations in the First Amended Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) If the Department proves these allegations, the burden of demonstrating rehabilitation shifts to respondents. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.)

2. MLO Endorsements: The Department applies "parallel standards and process to mortgage loan originator license endorsements as the Real Estate Law and Regulations of the Real Estate Commissioner apply to real estate licenses with regard to disciplinary procedure, voluntary surrender of license, statute of limitations, and jurisdiction over lapsed and suspended licenses." (Cal. Code Regs., tit. 10, § 2945.4.) Real estate license "discipline, including a revocation, a suspension . . . may be cause for the revocation and/or suspension of the real estate licensee's mortgage loan originator license endorsement. The disciplinary action on an existing license endorsement may be imposed via the same process and within the same order as the license discipline." (Cal. Code Regs., tit. 10, § 2945.1.)

Grounds for Discipline Against Respondents Johnson and Myers

3. The real estate commissioner is authorized to suspend or revoke a real estate license at any time where the licensee, acting as such, has been guilty of any of the following:

(a) Making any substantial misrepresentation.

[¶] . . . [¶]

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(Bus. & Prof. Code, § 10176.)

4. As set forth in the Factual Findings and Legal Conclusions as a whole and, in particular Factual Findings 62 through 64 and 68 through 69, complainant established by clear and convincing evidence that respondent Johnson engaged in conduct which constitutes fraud or dishonest dealing which subjects her broker license and mortgage loan originator endorsement to discipline under Business and Professions Code section 10176, subdivision (i).

5. As set forth in the Factual Findings and Legal Conclusions as a whole and, in particular Factual Findings 62, 63 and 65 through 69, complainant established by clear and convincing evidence that respondent Myers engaged in conduct which constitutes fraud or dishonest dealing which subjects her broker license to discipline under Business and Professions Code section 10176, subdivision (i).

6. As set forth in the Factual Findings and Legal Conclusions as a whole, complainant did not establish by clear and convincing evidence that either respondent Johnson or respondent Myers made substantial misrepresentations during the loan transaction on the subject property sufficient to subject their licenses to discipline under Business and Professions Code section 10176, subdivision (a).

7. The real estate commissioner is authorized to suspend or revoke a real estate license of a licensee who has done any of the following:

[¶] ... [¶]

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

[¶] ... [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

[¶] ... [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

(Bus. & Prof. Code, § 10177.)

8. As set forth in the Factual Findings and Legal Conclusions as a whole and, in particular, Factual Findings 62 through 64 and 68 through 69, complainant established by clear and convincing evidence that respondent Johnson willfully disregarded or violated the Real Estate Law and engaged in conduct which constitutes fraud or dishonest dealing and which subjects her broker license and mortgage loan originator endorsement to discipline under Business and Professions Code section 10177, subdivisions (d) and (j).

9. As set forth in the Factual Findings and Legal Conclusions as a whole and, in particular, Factual Findings 62, 63 and 65 through 69, complainant established by clear and convincing evidence that respondent Myers willfully disregarded or violated the Real Estate Law and engaged in conduct which constitutes fraud or dishonest dealing and which subjects her broker license to discipline under Business and Professions Code section 10177, subdivisions (d) and (j).

Grounds for Discipline Against Respondent Myers Only

10. MLO license violations: As set forth in the Factual Findings and Legal Conclusions as a whole and, in particular Factual Findings 13 and 65, complainant established by clear and convincing evidence that respondent Myers engaged in business as a mortgage loan originator, as that term is defined by Business and Professions Code section 10166.01, subdivision (b)(1), without obtaining a real estate license endorsement identifying her as a licensed mortgage loan originator, as required by Business and Professions Code section 10166.02, subdivision (b). Respondent Myers' failure to obtain such an endorsement while conducting business as a mortgage loan originator constitutes grounds for discipline of her license under Business and Professions Code sections 10177, subdivision (d), in conjunction with section 10166.02, subdivision (b).

11. Complainant did not establish by clear and convincing evidence that respondent Myers' acts and omissions described in Legal Conclusion 10 constitute a cause for discipline under Business and Professions Code section 10166.051, as alleged in the First Amended Accusation for "violation of license endorsement and notice requirements." Business and Professions Code section 10166.051 authorizes the Commissioner to impose additional penalties for violations of the Real Estate Law, Article 2.1 (Secure and Fair Enforcement for Mortgage Licensees) by individuals who are applying for, who hold, or who seek to renew an MLO endorsement. While respondent Myers filed an application for a mortgage loan originator endorsement which remains before the Department, she did so two years after the conduct at issue in this matter.

12. Unauthorized Use of Fictitious Business Name: Licensees who wish to have their license issued under a fictitious business name must file an application with the Department and receive its approval to do so. (Bus. & Prof. Code, § 10159.5). A salesperson using a Department-authorized fictitious business name "shall use that name only as permitted by his or her responsible broker." (*Ibid.*) This requirement is reiterated in California Code of Regulations, title 10, section 2731, subdivision (a). ("A licensee shall not use a fictitious name in the conduct of any activity for which a license is required under the real estate law unless the licensee is the holder of a license bearing the fictitious name.")

As set forth in the Factual Findings and Legal Conclusions as a whole and, particularly in Factual Findings 66 and 70, complainant established by clear and convincing evidence that that respondent Myers' license should be disciplined as alleged in paragraphs 14 through 16 of the First Amended Accusation. Respondent Myers' use of Summit Real Estate as a DBA prior to the Department's November 2014 approval of its use, and while she was engaged in unauthorized mortgage loan originator activities, violated these sections and constituted a willful violation of the Real Estate Law. The fact that respondent Myers was previously disciplined for the identical violation underscores the willfulness of her conduct.

13. Violation of Preliminary Bar Order: Business and Professions Code section 10087, in pertinent part, provides:

(a) In addition to acting pursuant to the authority provided under Sections 10086, 10176, and 10177, the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, bar from any position of employment, management, or control, or bar from participation in an examination for licensure, for a period not exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either of the following:

(1) That the suspension or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code). If no hearing is requested within 15 days after the mailing or service of that notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any business activity involving real estate that is subject to regulation under this division.

(Bus. & Prof. Code, 10087, subds. (a) -(c).)

14. The effect of a Preliminary Bar Order issued under Business and Professions Code section 10087, subdivision (c), is underscored in the regulations as follows:

A person who is the subject of a notice of intention to issue an order of suspension or debarment under Section 10087 of the Business and Professions Code is, immediately upon receipt of the notice, prohibited from engaging in any business activity involving real estate, within the State of California, that is subject to regulation under Division 4 (Sections 10000 through 11288) of the Code. This prohibition is subject to no exceptions. The prohibition will remain in place until lifted via due process or until the expiration of the period of time set out in the subsequent suspension or bar order.

(Cal. Code Regs., tit. 10, § 2962.)

15. As set forth in the Factual Findings and Legal as set forth in the Factual Findings and Legal Conclusions as a whole and, particularly in Factual Findings 67 and 68, complainant established by clear and convincing evidence that Myers' license should be disciplined for her violations of the Preliminary Bar Order, a willful violation of the Real Estate Laws, in violation of Business and Professions Code sections 10177, subdivision (d).

16. Bar Order: The regulation pertaining to the issuance of an order of debarment under Business and Professions Code section 10087 provides:

An order of debarment is not a form of discipline that substitutes for another type of discipline under the Real Estate Law. Rather, the order of debarment is an additional level of consumer protection," which is imposed against a licensee where the Department "has identified a higher risk to the public and to the real estate industry, necessitating the separation of the debarred individual from all practice and practitioners of real estate . . ." (Cal. Code Regs., tit. 10, § 2963.)

17. As set forth in the Factual Findings and Legal Conclusions as a whole and, particularly in Factual Findings 71 through 73, grounds exist to issue to issue a debarment order against respondent Myers under Business and Professions Code section 10087, subdivision (a)(1), because it is in the public interest, based on her multiple violations of the Real Estate Laws, which violations were either known or should have been known to her.

Costs

18. Various factors must be considered in determining the amount of costs to be assessed. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) The Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the licensee's subjective good faith belief in

the merits of his or her position, as well as whether the licensee has raised a colorable challenge to the proposed discipline. The Board must determine that the licensee will be financially able to make later payments. Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. These factors have been considered.

19. As set forth in Factual Finding 57 through 60, complainant's total costs of \$7,4971.65 for the investigation and enforcement of these consolidated matters is reasonable. As indicated in Finding 60, complainant did not break down its cost accounting between efforts expended to investigate Johnson and Myers. Given the additional legal and investigation issues related to the Preliminary Bar Order, Myers' violation of the Preliminary Bar Order and the issuance of the Bar Order, which did not involve Johnson, respondents shall not be held jointly and severally liable for the entire cost amount. Respondent Johnson shall be ordered to pay \$3,000 to the Department and Respondent Myers shall be ordered to pay \$4,971.65, for the costs of its investigation and enforcement in this matter pursuant to section 10106. Respondents may pay these costs pursuant to a reasonable payment plan.

ORDER

I. RESPONDENT MAURINE JOHNSON

1. The Mortgage Loan Originator License Endorsement NMLS #303771 issued respondent Maurine Ruth Johnson is REVOKED.

2. Real Estate Broker License Number B/00709207, issued to respondent Maurine Ruth Johnson (Respondent Johnson), is REVOKED; provided, however, a restricted real estate broker license shall be issued to respondent Johnson pursuant to Section 10156.5 of the Business and Professions Code if respondent Johnson makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent Johnson shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code subject to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

a. The restricted license issued to respondent Johnson may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent Johnson's conviction or plea of nolo contendere to a crime which is substantially related to respondent Johnson's fitness or capacity as a real estate licensee.

b. The restricted license issued to respondent Johnson may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence

satisfactory to the Commissioner that respondent Johnson 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.

c. Respondent Johnson 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 two (2) years have elapsed from the effective date of this Decision.

d. Respondent Johnson shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent Johnson fails to satisfy this condition, the Commissioner may order suspension of respondent Johnson's license until she passes the examination.

e. Respondent Johnson shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent Johnson 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 Johnson fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent Johnson presents such evidence. The Commissioner shall afford respondent Johnson the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

3. Respondent Johnson shall pay \$3,000 to the Department within 90 days of the effective date of this decision, or begin payment of this amount as otherwise agreed, pursuant to a reasonable payment plan.

II. **RESPONDENT LINDA E. MYERS**

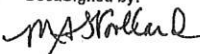
1. Real Estate Broker License Number B/00665865 and all licenses and licensing rights of respondent Linda E. Myers (respondent Myers) under the Real Estate Law are REVOKED.

2. For a period not to exceed 36 months, respondent Linda E. Myers is suspended or barred under Business and Professions Code section 10087. Pursuant to this Bar Order, Linda E. Myers is prohibited from: (a) participating in any business activity of a real estate salesperson or a real estate broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business; (b) participating in any real estate-related business activity of a finance lender,

residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company; and (c) participating in examinations for licensure.

3. Respondent Myers shall pay \$4,971.65 to the Department for the costs of its investigation and enforcement within 120 days of the effective date of this decision, or shall begin payment of this amount as otherwise agreed, pursuant to a reasonable payment plan.

DATED: December 21, 2018

DocuSigned by:

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MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings