

FILED

JUL 05 2000

DEPARTMENT OF REAL ESTATE

By Jean A. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

STEVEN CARL ROSASCO,)

Respondent.)

No. H-6775 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 3, 1993, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On September 24, 1999, Respondent petitioned for reinstatement of said real estate salesperson license and the Attorney General of the State of California has been given notice of the filing of said petition.

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

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

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

8 2. Submittal of evidence of having, since the most
9 recent issuance of an original or renewal real estate license,
10 taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
12 for renewal of a real estate license.

13 This Order shall be effective immediately.

14 DATED: June 20, 2000

15 PAULA REDDISH ZINNEMANN
16 Real Estate Commissioner

17 Paula Reddish Zinnemann
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FILED
DEC 28 1995

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
SUSAN YOSS COOK,)
Respondent.)

No. H-6775 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 3, 1993, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on June 2, 1993, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On August 31, 1995, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

///

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

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

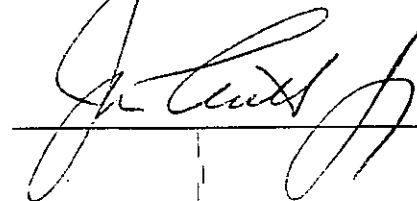
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

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

19 This Order shall be effective immediately.

20 DATED: 12-12-95

21 JIM ANTT, JR.
22 Real Estate Commissioner

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FILED
AUG 25 1995

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
STEVEN CARL ROSASCO,)
Respondent.)

No. H-6775 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 3, 1993, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On August 10, 1994, Respondent petitioned for reinstatement of said real estate salesperson license and the Attorney General of the State of California has been given notice of the filing of said petition.

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

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

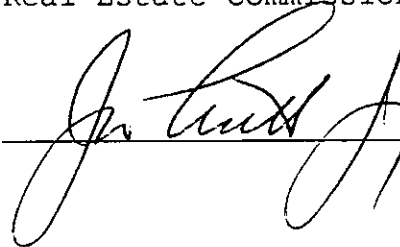
6 1. Submittal of a completed application and payment of
7 the fee for a real estate salesperson license.

8 2. Submittal of evidence of having, since the most
9 recent issuance of an original or renewal real estate license,
10 taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
12 for renewal of a real estate license.

13 This Order shall be effective immediately.

14 DATED: 8/22/95

15 JIM ANTT, JR.
16 Real Estate Commissioner

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FILED
JUN 30 1993
DEPARTMENT OF REAL ESTATE

By Emily Akeda

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LUKE DOMINIC BRUGNARA,) NO. H-6775 SF
STEVEN CARL ROSASCO,)
and SUSAN YOSS COOK,) CAH NO. N-41683
Respondents.)

ORDER DENYING RECONSIDERATION
AS TO STEVEN CARL ROSASCO ONLY

On May 3, 1993, a Decision was rendered in the above-entitled matter. The Decision is to become effective July 2, 1993.

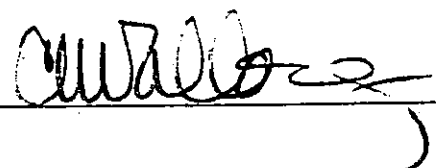
On May 17, 1993, Respondent STEVEN CARL ROSASCO petitioned for reconsideration of the Decision of May 3, 1993.

I have given due consideration to the petition of Respondent STEVEN CARL ROSASCO. Specifically, I have reviewed the letters submitted with Respondent's argument in support of his Petition for Reconsideration and Respondent's declaration. However, Respondent's conduct in knowingly and blatantly submitting false tax returns to the lender to obtain a loan

1 supports the discipline recommended by the Administrative Law
2 Judge whose Proposed Decision I adopted. As a result, I find no
3 good cause to reconsider the Decision of May 3, 1993, and
4 reconsideration is hereby denied.

5 IT IS HEREBY ORDERED 6/29, 1993.

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7 CLARK WALLACE
Real Estate Commissioner

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FILED
MAY 18 1993

DEPARTMENT OF REAL ESTATE

Marie J. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
STEVEN CARL ROSASCO, et al.)	No. H-6775 SF
Respondent.)	OAH N-41683

ORDER STAYING EFFECTIVE DATE

On May 3, 1993, a Decision was rendered in the above-entitled matter to become effective June 2, 1993.

IT IS HEREBY ORDERED that the effective date of the Decision of May 3, 1993, is stayed for a period of (30) thirty days.

The Decision of May 3, 1993, shall become effective at 12 o'clock noon on July 2, 1993.

DATED: 5/18/93

CLARK WALLACE
Real Estate Commissioner

Edward V. Chiolo

By: EDWARD V. CHIOLO
Deputy Real Estate Commissioner

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FILED

MAY 13 1993

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LUKE DOMINIC BRUGNARA,)
STEVEN CARL ROSASCO and)
SUSAN YOSS COOK,)
Respondent(s).)

No. H-6775 SF

OAH N-41683

DECISION

The Proposed Decision dated April 15, 1993
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on June 2, 1993.

IT IS SO ORDERED May 3, 1993.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	
)	No. H-6775 SF
)	
LUKE DOMINIC BRUGNARA,)	OAH No. N 41683
STEVEN CARL ROSASCO and)	
SUSAN YOSS COOK,)	
)	
)	
Respondents.)	
)	

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on December 29, 1992 and March 8, 1993.

David B. Seals, Counsel, represented complainant.

Respondents Luke Dominic Brugnara and Steven Carl Rosasco represented themselves.

Respondent Susan Yoss Cook was present and was represented by William J. Brueggmann, Attorney at Law, 1331 N. California Boulevard, Walnut Creek, California 94596.

The record was held open in order to allow counsel for complainant to submit written closing argument and for respondents to submit written responses to that argument. On March 29, 1993 counsel for complainant orally advised the administrative law judge that he would not be submitting a closing argument. The parties were formally advised of that decision on March 31, 1993. The lack of written argument from complainant rendered written responses from respondents unnecessary and the matter was therefore deemed submitted on April 1, 1993.

FINDINGS OF FACT

I

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

II

Respondents Luke Dominic Brugnara, Steven Carl Rosasco and Susan Yoss Cook are presently licensed and have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

Respondent Brugnara is licensed by the Department of Real Estate ("Department") as a real estate salesperson. His license was issued on February 13, 1991 and is scheduled to expire on February 12, 1995.

At all times relevant, respondent Rosasco was, and now is, licensed by the Department as a real estate salesperson. His license is scheduled to expire on December 5, 1995.

At all times relevant, respondent Cook was licensed by the Department as a real estate broker doing business as The Buchanan Group. That dba was canceled as of July 16, 1991. Respondent Cook's broker license is scheduled to expire on November 8, 1996.

III

Since 1988 George Murry has owned and operated The Buchanan Group, a mortgage brokerage. Murry has been licensed by the Department as a real estate salesperson from 1967 to 1982 and from 1989 to present. He has never been licensed as a real estate broker. When his former partner, who did possess a broker license, left the company, Murry entered into a written agreement with respondent Cook on October 2, 1989 whereby she agreed to act as The Buchanan Group's "Broker of Record." The agreement did not specify what duties Cook was to perform. It did provide that Murry was "designated 'Office Manager' and as such is empowered with all the duties of Broker in regard to all real estate transactions." As the agreement was implemented, Cook's responsibilities were mainly limited to reviewing The Buchanan Group's loan packages to ensure they conformed to the Department's requirements while Murry was responsible for the day-to-day operation of the business, including hiring and supervising employees.

Cook's review of loan packages was quite limited. She met with Murry only two to eight times a month to review these packages and, Cook conceded, because Murry's expertise in the field was far greater than hers--in fact she essentially had no knowledge of her own--she deferred to Murry and relied upon him to tell her what the Department's requirements were.

The evidence is clear that respondent Cook was little more than a figurehead, retained by Murry to meet the requirement that his brokerage business have a broker of record.

IV

On October 25, 1990 respondent Brugnara signed a one-year "Agent Contract" with The Buchanan Group. The contract, which by its terms specified Brugnara's duties to be soliciting and submitting loan applications, was signed by Brugnara and Murry. The contract was initialed as "reviewed" by Cook on October 27, 1990.

Brugnara had been referred to The Buchanan Group by a former associate of Murry's who told Murry he had worked with Brugnara at another mortgage brokerage. Murry therefore assumed Brugnara was licensed. However, Murry testified that at the time of his hiring Brugnara told him his license had been "frozen" because he had been out of the business for a year. Brugnara testified that he told Murry at the time of his hiring that he had taken and passed the licensing examination in August of that year but had not yet obtained his license. Cook never talked to Brugnara but was told by Murry that Brugnara's license had been "frozen."

Regardless of whether Murry or Brugnara more accurately recalled their discussion at the time of Brugnara's hiring, both Murry and Cook were on notice that Brugnara did not have physical possession of a real estate license. To rectify this, Murry testified, a form was sent to the Department in late October in order to get Brugnara's license. Murry further testified he was unaware that a salesperson's license had to be in the physical possession of the broker. Cook testified she was aware of the need for physical possession of the license, but believed that licensure was the critical fact and that actual possession of the certificate could occur later.

V

Between November 1990 and January 10, 1991, Brugnara was employed by The Buchanan Group performing activities for which a real estate license is required. Because these activities were performed for or in expectation of compensation, Brugnara was a "real estate salesman" within the meaning of Business and Professions Code section 10132. Since Brugnara was unlicensed during this period, his license certificate was obviously not in the possession of The Buchanan Group or respondent Cook. Brugnara and Cook were aware of this fact.

Among those solicited by Brugnara to obtain loans in or about October through December 1990 were Francisco Delmendo, Jr. and Robert Sbranti. Brugnara subsequently took a loan application from Sbranti. When that loan closed in December 1990 Brugnara received a commission of \$1,300 from The Buchanan Group.

When Murry learned from the Department on January 10, 1991 that Brugnara was not yet licensed, Brugnara was "suspended" by The Buchanan Group. Although he continued to work for the company, he performed no further activities requiring a real estate license.

VI

In late 1990 Brugnara also solicited respondent Rosasco to obtain a real estate loan. Working with Brugnara and The Buchanan Group, Rosasco and his wife obtained first and second mortgages from Headlands Mortgage Company which were funded in January 1991. During the loan process, sometime in late 1990, Rosasco introduced Brugnara to his mother-in-law, Sydna Konstin, who was interested in obtaining real estate loans. Konstin owned eleven income producing properties and a restaurant in San Francisco. Brugnara came to Konstin's home, explained loan rates and completed loan applications for Konstin to sign. Konstin applied for seven real estate loans through The Buchanan Group.

VII

When Murry, who performed underwriting functions for The Buchanan Group, received all Konstin's loan documents he reviewed them to determine if she qualified for the loans. The 1988 and 1989 income tax returns which had been submitted in support of the loan applications showed total gross income from various sources, including Konstin's restaurant and rental properties, to be more than \$2.8 million in 1988 and more than \$3.4 million in 1989. The returns also showed income tax liabilities of \$149,382 in 1988 and \$173,502 in 1989. Murry became concerned because the returns had been prepared without the assistance of an accountant. When he called Konstin to ask about this, she told him it was her right to prepare her own returns and that she had done so for twenty years.

VIII

Konstin's loan packages were submitted to Headlands Mortgage Company. Headlands' underwriter called Murry expressing the same concern about the lack of an accountant on the tax returns. He asked Murry to submit a copy of the check used to pay the tax liability shown on one of the returns. Murry asked Brugnara to obtain that check. Brugnara returned with photocopies of the front and back of a check supposedly written to the IRS in an amount of either \$149,382 or \$173,502 and endorsed by that agency. This information was faxed to the Headlands underwriter who, still not satisfied, asked for the original check.

Murry sent Brugnara back to Konstin to obtain the original check. When Brugnara brought the check back in early February 1991, Murry was suspicious of its "texture." He asked his secretary, who had prior banking experience, to look at it. The secretary held the check to the light, revealing that two checks had been pasted together--one for about \$5,000 and the other in the amount of the purported tax liability shown on the return.

IX

Murry saw the doctored checks as a fraud perpetrated by Konstin and "hit the roof." He called Headlands and cancelled all Konstin's loan applications. When Brugnara asked if he was going to be paid for his work on the Konstin applications, Murry angrily told him no. Murry wanted to sue Konstin for the time his company had spent on her applications and for the damage to The Buchanan Group's credibility caused by the submission of fraudulent loan packages. However, on advice of counsel, Murry instead sent Konstin a letter advising her the loan applications would be canceled because she had submitted false documentation and demanding she pay a "processing fee" of \$5000 (100 hours at a rate of \$50/hour) for the time The Buchanan Group had invested in her applications. Murry then left on vacation for a week.

X

On the same day, Brugnara, upset because Murry had refused to pay him for his work on the Konstin applications, "quit" his job at The Buchanan Group. Brugnara cleared out his personal belongings and also took from the office the Konstin loan files. On the following working day, Brugnara brought the Konstin files to the Department's office in San Francisco, complaining both of fraud in loan applications and of Murry's refusal to pay. No written complaint was made that day.

After speaking with his attorney about the matter, Brugnara met with Konstin, told her not to pay the \$5000 to The Buchanan Group, and demanded she pay him \$8000 for the time he had spent on the applications. Konstin put Brugnara off, contacted the police, and then arranged to meet Brugnara again. At that meeting, both Konstin and Rosasco were "wired" by the police. Brugnara was detained by the police, apparently for extortion, but no charges were ever filed.

XI

When Murry returned from his vacation on February 19 or 20, 1991, he received a call from a police inspector who advised

him Brugnara had been "arrested" for extortion. When Murry then discovered the Konstin files were missing he assumed Brugnara had stolen them and for the first time suspected he had been involved in the fraud.

On the same day, Konstin called Murry. She was apologetic and admitted she had knowingly submitted false tax returns to support her loan applications. Konstin took full blame for the returns and did not implicate Brugnara. Konstin paid The Buchanan Group the \$5000 demanded.

XII

On February 22 Murry notified Headlands Mortgage Company that there may have been "serious discrepancies" in the tax returns submitted on behalf of the Rosasco loan application.

On February 26 Murry notified the Department in writing of his suspicion Brugnara had been involved in submitting fraudulent documentation for loans. A month later, on March 25, 1991, Murry filed a formal written complaint with the Department against Brugnara alleging, in part, he may have been involved in submitting fraudulent tax returns on behalf of Konstin. On the next day, Brugnara filed with the Department a written complaint against Rosasco, alleging he had committed fraud in applying for his real estate loans. As part of that complaint, Brugnara turned over to the Department the Konstin loan files.

XIII

Rosasco has admitted he knowingly signed false tax returns to be submitted in support of his loan application. The evidence established that had Rosasco's actual tax returns been submitted to Headlands, the lender would not have approved the loan since there was insufficient income to support Rosasco's debt service.

XIV

Konstin testified as follows: When she applied for the loans through The Buchanan Group she provided Brugnara her actual 1988 and 1989 tax returns. She "did not get" the loans and Brugnara told her the only way she would qualify was if they did "an amendment" to the returns. Brugnara then prepared the false returns which were eventually submitted to the lender. Konstin signed the returns but did not read them because she was too busy at the time.

As to the doctored check, Konstin testified at the hearing on December 29, 1992 that Brugnara had asked her for the original check to the IRS and a signed, blank check, both of which she provided him. It was Brugnara, Konstin maintains she was told by Murry, who pasted the two checks together.

At the March 8, 1993 hearing, however, Konstin provided differing testimony. After being shown copies of the checks for \$149,382 and \$173,502, Konstin acknowledged her handwriting and testified she had filled out the checks on instructions from Brugnara. When it was pointed out by counsel for complainant that her previous testimony was that she had provided Brugnara with a blank, signed check, Konstin asserted she had "misunderstood" the question at the prior hearing. Under subsequent questioning from Brugnara, Konstin changed her testimony again, asserting she had originally given Brugnara a blank, signed check but that she filled in the check after he had returned and asked her to do so.

Konstin denied Murry ever called her to ask about the preparation of her tax returns, maintaining the first contact she had with him was when she received his written demand for \$5,000. Konstin further testified: Brugnara told her to disregard Murry's demand letter, that he would provide her another letter accusing Murry of wrongdoing, and that he would be her witness against Murry. Brugnara threatened to send her daughter and son-in-law (Rosasco) to prison for fraud if she did not pay the \$8000 he demanded. She agreed to pay Murry the \$5000 he had demanded because she was afraid her daughter and son-in-law would get in trouble for filing a fraudulent application. When talking to Murry, she took full responsibility for her fraudulent filing, not implicating Brugnara, because she feared Brugnara would reveal Rosasco's actions.

XV

Rosasco testified as follows: He gave Brugnara his actual 1988 and 1989 tax returns but was later told by Brugnara that these would have to be altered in order to qualify Rosasco for the fixed rate loan he was seeking. Brugnara prepared the false returns and Rosasco, "against my better judgment," knowingly signed them. Brugnara told him he would do the same for his mother-in-law's loan packages. Rosasco did not tell his mother-in-law not to get involved in fraudulent documentation, in part because "that was their business." His mother-in-law got the police involved because Brugnara had threatened her.

Rosasco testified, in mitigation of his obtaining loans through submission of falsified documents, that he never missed a payment on the loans and that the property was sold nine months later with Headlands Mortgage suffering no loss. Evidence was presented to show the loans were satisfied in December 1991.

XVI

Brugnara denies any knowing involvement in the preparation and submission of false documentation to support the Rosasco and Konstin loans. He maintains the tax returns submitted with those loans were the returns provided him by Rosasco and Konstin, that he never had any reason to doubt the validity of those tax returns, and that until the hearing he had never seen their true returns. As to the doctored check, he contends it is "ludicrous" to believe that Konstin would give him a signed, blank check. When he brought the tax payment check to Murry he felt it looked "a little thick" but he did not question it. Brugnara denies that he threatened to turn in Konstin's daughter and son-in-law for fraud.

As to his demand for \$8000 from Konstin, Brugnara testified he felt he was entitled to this amount for the two months' worth of work he had put in on her loan applications. He contends he provided Konstin a breakdown of the number of hours he worked to justify this amount.

XVII

It is undisputed that respondent Rosasco engaged in fraud and dishonest dealing by knowingly signing a falsified tax return in order to obtain a real estate loan.

XVIII

It was not established by clear and convincing evidence that respondent Brugnara knowingly participated in the preparation or submission of falsified tax returns to Headlands Mortgage Company. The only direct evidence of Brugnara's complicity in that fraud comes from Rosasco and Konstin. While Brugnara was not an entirely credible witness--his testimony contained a number of inconsistencies--neither were his two accusers. Both Rosasco and Konstin admitted to having knowingly participated in attempts to defraud a lender through the submission of fabricated tax returns. This fact alone places their credibility in question.

In several other respects as well, Konstin's credibility is highly suspect. First, she undertook at least one overt act in furtherance of the fraud when she lied to Murry when questioned about the preparation of her tax return, telling him she had prepared her own returns for twenty years. Second, her testimony that she had never spoken to Murry before she received his demand letter cannot be believed. Credible testimony from both Murry and Brugnara demonstrated that such conversations did take place. Finally, Konstin's diverse explanations concerning the doctored check were wholly inconsistent and unworthy of belief.

Although all three parties had a motive to commit fraud, Rosasco's and Konstin's stakes were greater. Rosasco stood to obtain a loan for which he otherwise would not have qualified. Konstin stood to obtain seven loans. While it was not established that she would not have qualified for those loans based upon her actual income, the clear implication is that she would not. Konstin's actual total gross income in 1988 was only one-fourth that claimed on the falsified return. Her actual total gross income in 1989 was only one-third of that claimed. Brugnara's stake, the expected commission from eight loans, was not insubstantial but was nevertheless less significant than Rosasco's and Konstin's.

Another fact which tends to support Brugnara's claim of innocence was his bringing the Konstin loan files to the Department on the day after the doctored check was discovered by Murry. If Brugnara had participated in the fraud, why would he supply the Department with potentially incriminating evidence against him, especially when he had not yet been implicated in the fraud? Although it could be posited that Brugnara turned the files over to the Department in a "preemptive strike" designed to divert suspicion from himself, that explanation seems less likely than the explanation that he was actually innocent and did not yet know that Konstin and Rosasco would blame him for the fraud.

As to Brugnara's own credibility, while there were inconsistencies in his testimony, these generally related to the less important details of his story rather than to his description of his actions relating to Rosasco and Konstin.

In sum, although there is some evidence tending to show Brugnara may have had a hand in the preparation or submission of fraudulent tax returns, sufficient doubt has been raised about his involvement to preclude the Department from establishing by clear and convincing evidence that Brugnara did, in fact, participate in the scheme to defraud a lender.

XIX

Brugnara's action in trying to collect \$8000 from Konstin constituted dishonest dealing. When Brugnara performed work on Konstin's loan packages he was in the employ of The Buchanan Group. Although he may well have had a claim against his employer for refusing to pay him any portion of the "processing fee" it was attempting to collect from Konstin, Brugnara's attempts to collect an even larger sum directly from the loan applicant, while discouraging her from paying his employer, was dishonest, regardless of whether or not it could be characterized as extortion.

XX

Because it could not be found that Brugnara participated in the preparation and submission of falsified tax returns in relation to the Rosasco and Konstin applications, Cook cannot be found guilty, through the principle of respondeat superior, of fraud or dishonest conduct in relation to the preparation and submission of those documents. And, because Brugnara's dishonest dealing as set forth in Finding XIX occurred after he had left the employ of The Buchanan Group, Cook may not be held accountable for Brugnara's actions.

As to The Buchanan Group's demand for and collection of a \$5000 payment from Konstin, the evidence failed to demonstrate that this constituted a fraudulent or dishonest act. It is true no evidence was offered to show The Buchanan Group and Konstin had any written agreement regarding payment for services. It was not shown, however, that this lack of agreement precluded The Buchanan Group from collecting anything from Konstin. It is clear that The Buchanan Group had invested a great deal of time in processing Konstin's seven loan applications. Murry's view of the demand, after discussions with counsel, was that the payment would, in effect, act as a settlement in lieu of a lawsuit to compensate The Buchanan Group for its time and for the possible damage to its credibility with Headlands Mortgage. Viewed in this fashion, and there is no reason not to so view it, The Buchanan Group's demand cannot properly be characterized as extortion and there was no showing it was illegal. Therefore, Cook cannot be found guilty, either directly or through the principle of respondeat superior, for fraud or dishonest dealing relating to this demand.

It should be noted that Cook's direct involvement in the demand on Konstin was not entirely clear. Murry could not recall whether Cook participated in the decision to make the demand, although he is certain they discussed it at some point. Cook testified Murry talked to her about coming to a settlement with Konstin sometime after he had spoken to his attorney about it. Considering the timing of the demand, made the same day Murry learned of the doctored check, and Cook's infrequent contact with The Buchanan Group, it is found Cook was unaware of the demand upon Konstin at the time it was made. Whether she was aware of it before Konstin made payment cannot be determined.

XXI

Cook failed to exercise reasonable supervision over the activities of The Buchanan Group and the salespersons employed by that company. As set forth in Finding III, Cook was merely a figurehead, retained to meet licensing requirements for the

company. Her "supervision" was essentially nonexistent. While she nominally reviewed loan files to insure compliance with the Department's requirements, it is clear that the ultimate responsibility in that regard was exercised by Murry, to whom Cook had contractually delegated all her duties as a real estate broker. (While delegation of some duties is permitted by Title 10, California Code of Regulations section 2725(b), Cook utterly failed to meet the requirements of that section.) Cook had virtually no knowledge of the mortgage brokerage business and deferred to Murry in all respects. Clearly, it was Murry, and not Cook, who acted as the broker for The Buchanan Group.

XXII

Cook's actions demonstrated both negligence and incompetence in performing acts for which she is required to hold a license. Cook was negligent in delegating her responsibilities as a broker to Murry, in allowing herself to be used as a figure-head broker, in permitting an unlicensed person to act as a real estate salesperson, and by failing to exercise reasonable supervision as set forth in Finding XXI. Cook's delegation of her responsibilities as a broker, at least in part because she lacked sufficient knowledge of the mortgage brokerage field, also demonstrated incompetence in performing acts for which she is required to hold a license.

DETERMINATION OF ISSUES

I

Findings IV and V: Cause for disciplinary action against respondent Brugnara exists pursuant to Business and Professions Code sections 10130 and 10177(d) in that he acted as a real estate salesperson without having a license.

II

The allegation that cause for disciplinary action against respondent Brugnara existed pursuant to Business and Professions Code section 10137 was dismissed on motion of complainant at the hearing.

III

Finding XVIII: No cause for disciplinary action against respondent Brugnara was established pursuant to Business

and Professions Code section 10177(j) in that it was not shown he participated in the preparation or submission of fraudulent documents to obtain real estate loans.

IV

Finding XIX: Cause for disciplinary action against respondent Brugnara exists pursuant to Business and Professions Code section 10177(j) in that his attempt to collect \$8000 from Sydna Konstin constituted dishonest dealing.

V

Findings XIII and XVII: Cause for disciplinary action against respondent Rosasco exists pursuant to Business and Professions Code section 10177(j) in that his actions constituted fraud and dishonest dealing.

VI

Findings IV and V: Cause for disciplinary action against respondent Cook exists pursuant to Business and Professions Code section 10137 in that Cook, as broker of record of The Buchanan Group, employed and compensated an unlicensed salesperson.

VII

Finding XX: No cause for disciplinary action against respondent Cook was established pursuant to Business and Professions Code section 10176(i) in that it was not shown she engaged in fraud or dishonest dealing.

VIII

Finding XXII: Cause for disciplinary action against respondent Cook exists pursuant to Business and Professions Code section 10177(g) in that her actions demonstrated negligence and incompetence.

IX

Findings III and XXI: Cause for disciplinary action against respondent Cook exists pursuant to Business and Professions Code section 10177(h) in that she failed to exercise reasonable supervision over The Buchanan Group and its salespersons.

X

Finding V: Cause for disciplinary action against respondent Cook exists pursuant to Business and Professions Code sections 10160 and 10177(d) in that respondent Brugnara's license certificate was not in the possession of the Buchanan Group or respondent Cook.

XI

Respondent Rosasco has admitted knowingly participating in the filing of fraudulent tax returns in order to obtain real estate loans. This impacts so greatly upon Rosasco's honesty and integrity that protection of the public interest demands revocation of his license.

Respondent Brugnara also engaged in a dishonest act, demanding \$8,000 from Konstin. However, considering all the circumstances, the nature of that act does not rise to the level of an attempt to defraud a lender. That act, whether considered by itself or coupled with Brugnara's acting as a real estate salesperson for a brief period after he had passed the licensing exam but before he received a license, does not demand outright revocation of the license. Protection of the public interest does require, however, that certain restrictions be placed upon his salesperson license.

Protection of the public interest demands that Cook's real estate broker license be suspended for a period of time and that certain restrictions be placed upon her license thereafter. In particular, Cook's negligent and incompetent acts demonstrate that she should be required to undergo retraining and that she should be precluded from acting as the responsible broker for a mortgage brokerage.

ORDER

1. All licenses and licensing rights of respondent Luke Dominic Brugnara under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent 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 shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

- A. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
- B. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
- C. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
1. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 2. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
- D. Respondent shall, within twelve (12) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has taken and successfully completed the courses specified in subdivisions (a) and (b) of Section 10170.5 of the Real Estate Law for renewal of a real estate license. The restricted license issued pursuant to this Decision shall be deemed to be the first renewal of respondent's real estate salesperson license for the purposes of applying the provisions of Section 10153.4. Upon renewal of the license issued pursuant to this Decision, or upon reinstatement of respondent's real estate salesperson license, respondent shall submit evidence of having taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

- E. Respondent shall, within six (6) 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 fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
- F. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

* * * * *

2. All licenses and licensing rights of respondent Steven Carl Rosasco under the Real Estate Law are revoked.

* * * * *

3. All licenses and licensing rights of respondent Susan Yoss Cook under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent 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 shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

- A. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for ninety (90) days from the date of issuance of that license.
- B. Respondent shall be prohibited from serving as the responsible broker or the broker of record for a mortgage brokerage.
- C. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

- D. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
- E. Respondent shall, within twelve (12) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- F. Respondent shall, within six (6) 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 fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
- G. Respondent shall take and successfully complete such real estate courses relating to the violations found herein as the Real Estate Commissioner shall direct by separate written order while the restricted license is in effect. Any courses undertaken in compliance with this condition shall be in addition to courses taken to comply with the continuing education requirement set forth in Condition E, above.
- H. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by separate written order issued while the restricted license is in effect, such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

- I. Respondent shall not be eligible to apply for the
issuance of an unrestricted real estate license nor for
the removal of any of the conditions, limitations or
restrictions of a restricted license until two (2)
years have elapsed from the effective date of this
Decision.

Dated:

April 15, 1993

Michael C. Cohn

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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FILED
FEB 05 1993

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

Marina Tuleale

In the Matter of the Accusation of

LUKE DOMINIC BRUGNARA,
STEVEN CARL ROSASCO, and
SUSAN YOSS COOK,

Case No. H-6775 SF

OAH No. N-41683

Respondent s

Continued

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,

455 Golden Gate Avenue, Room 2248, S.F., CA 94102

on March 8, 1993, at the hour of 10:00 am,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 5, 1993

By

David B. Seals
DAVID B. SEALS Counsel

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OCT 29 1992

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

DEPARTMENT OF REAL ESTATE

By Maria Zula

In the Matter of the Accusation of

LUKE DOMINIC BRUGNARA,
STEVEN CARL ROSASCO, &
SUSAN YOSS COOK,

Case No. H-6775 SF

OAH No. N-41683

Respondent (s)

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,
455 Golden Gate Avenue, Room 2248, S.F., CA 94102.

on December 29, 1992 (1/2 day), at the hour of 9:00 am,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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

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

DEPARTMENT OF REAL ESTATE

Dated: October 29, 1992

By David B. Seals
DAVID B. SEALS, mq Counsel

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SEP 03 1992

DAVID B. SEALS, Counsel
Department of Real Estate
185 Berry Street, Room 3400
San Francisco, CA 94107-1770

DEPARTMENT OF REAL ESTATE

Telephone: (415) 904-5917

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
LUKE DOMINIC BRUGNARA,)
STEVEN CARL ROSASCO,)
and SUSAN YOSS COOK,)
Respondents.)

NO. H-6775 SF
ACCUSATION

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against LUKE DOMINIC BRUGNARA, STEVEN CARL ROSASCO, and SUSAN YOSS
COOK (hereinafter Respondents), is informed and alleges as
follows:

I

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
against Respondents in his official capacity and not otherwise.

II

BRUGNARA, ROSASCO, and COOK are presently licensed
and/or have license rights under the Real Estate Law (Part 1 of

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

3 III

4 At all times mentioned herein COOK was licensed by the
5 Department as a real estate broker doing business as The Buchanan
6 Group.

7 IV

8 BRUGNARA is presently licensed by the Department as a
9 real estate salesperson. However, BRUGNARA was not licensed by
10 the Department prior to February 13, 1991.

11 V

12 On or about October 25, 1990 Brugnara entered into a
13 Broker-Salesman Agreement with The Buchanan Group. Susan Cook
14 knew of the agreement and initialed it. Brugnara began performing
15 activities for which a real estate license is required in November
16 of 1990. However, Brugnara was not licensed by the Department at
17 that time and therefore his license certificate was not in the
18 possession of The Buchanan Group.

19 VI

20 In November of 1990 Brugnara contacted Robert Sbranti
21 (Sbranti) regarding any interest Sbranti might have in obtaining a
22 loan. Sbranti contacted Brugnara and confirmed his interest in
23 obtaining a loan. Brugnara then quoted Sbranti loan rates and set
24 up a meeting at Sbranti's home. At Sbranti's home Brugnara
25 obtained information from Sbranti necessary to complete a loan
26 application. Brugnara also answered questions from Sbranti
27 regarding fees and points and quoted total loan costs. Sbranti

1 continued to interact with Brugnara as the loan process proceeded
2 and finally, met Sbranti at the title company when his loan
3 closed. Brugnara received \$1,350 for this transaction.

4 VII

5 In November of 1990 Brugnara met with Francisco
6 Delmendo, Jr. (Delmendo) regarding Mr. Delmendo's interest in
7 obtaining a loan to refinance his home. In assisting Delmendo in
8 obtaining a loan Brugnara completed a loan application with
9 information dictated to him by Delmendo. Brugnara on or about
10 November 20, 1990 faxed Delmendo information on loan rates and
11 wrote Delmendo a letter quoting rates.

12 VIII

13 In December of 1990 Steven Rosasco (Rosasco) contacted
14 Brugnara regarding the refinancing of Rosasco's home. Brugnara
15 advised Rosasco of options in obtaining loans including quick
16 qualifiers and obtained information from Rosasco to complete the
17 application process including tax returns for 1988 and 1989.
18 However, false tax returns were submitted to the lender. Both
19 Rosasco and Brugnara knew the information on the tax returns
20 submitted to the lender was false. The lender, Headlands
21 Mortgage, relied on that false information in approving and
22 funding the refinance for Rosasco. If Headlands had known the
23 true income from the tax returns they would not have made the
24 loan.

25 IX

26 In or about December 1990 or January 1991 Brugnara came
27 to the home of Sydna Konstin to obtain information to complete a

1 loan application. Brugnara asked Konstin for certain tax
2 documents for the purpose of obtaining loans on a number of her
3 properties. After receiving the submissions for Konstin's loans
4 from The Buchanan Group, Headlands Mortgage questioned the
5 authenticity of Konstin's tax returns. Brugnara in response to
6 Headland's request gave George Murry, the office manager, a
7 "doctored" check for \$173,502 representing it as the check given
8 to the Internal Revenue Service by Konstin for payment of taxes.
9 Murry notified Headlands to cancel Konstin's loans.

10 X

11 On or about February 19, 1991 Murry met with Konstin to
12 obtain \$5,000 demanded by him for processing Konstin's loans with
13 Headlands which had been cancelled. Konstin paid the money
14 demanded by Murry but there was no evidence of a prior agreement
15 between the two regarding payment for services. That same day it
16 was discovered that Brugnara had removed Konstin's file as well as
17 his own from The Buchanan Group office. Brugnara also requested
18 \$8,000 from Konstin for his involvement with her loan package but
19 she refused and contacted the police.

20 XI

21 That by reason of the facts as alleged in Paragraphs
22 III, IV, and V through IX above, Respondent Brugnara violated
23 Sections 10130 and 10137 of the Code and said acts and/or
24 omissions constitute grounds for disciplinary action under the
25 provisions of Sections 10177(d) and 10137 of the Code,
26 respectively.

27 / / / / /

XII

By reason of the facts as alleged in Paragraphs II through X above, Respondent Cook violated Sections 10137, 10176(i), 10177(g) and 10177(h) of the Code and as such is subject to disciplinary action under the above referenced provisions of the Code, respectively.

XIII

By reason of the facts as alleged in Paragraph V above, Respondent Cook violated Section 10160 of the Code and said acts and/or omissions constitute grounds for disciplinary action under Section 10177(d) of the Code.

XIV

By reason of the acts and/or omissions as alleged in Paragraphs VIII through X Respondent BRUGNARA was in violation of Section 10177(j) of the Code and said acts and/or omissions constitute grounds for disciplinary action thereunder.

XV

By reason of the acts and/or omissions as alleged in Paragraph VIII above, Respondent ROSASCO was in violation of Section 10177(j) of the Code and said acts and/or omissions constitute grounds for disciplinary action thereunder.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code),
/ / / / /

1 and for such other and further relief as may be proper under other
2 provisions of law.

Edward V. Chio

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

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5 Dated at San Francisco, California

6 this 2nd day of SEPTEMBER, 19 92.

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