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DEPARTMENT OF REAL ESTATE

By *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
BRIAN PAUL FORNESI,
Respondent.

No. H-6843 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On July 21, 1993, in Case No. H-6843 SF, a Decision was rendered revoking the real estate broker license of Respondent effective August 30, 1993, but granting Respondent the right to the issuance of a restricted broker license. A restricted broker license was issued to Respondent on August 30, 1993. On March 19, 1996, in Case No. H-7298 SF, a Decision was rendered revoking the restricted real estate broker license of Respondent effective April 12, 1996, but granting Respondent the right to the issuance of a restricted salesperson license. A restricted salesperson license was issued to Respondent on July 12, 1996. Respondent's restricted salesperson license expired on July 11, 2000 and was not renewed.

On October 5, 2009, 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 the petition.

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

5 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
6 reinstatement is granted and that a real estate broker license be issued to Respondent if
7 Respondent satisfies the following conditions within twelve (12) months from the date of this
8 order:

- 9 1. Respondent shall qualify for, take and pass the real estate broker license
10 examination.
11 2. Submittal of a completed application and payment of the fee for a real
12 estate broker license.

13 This Order shall become effective immediately.

14 DATED: 2/2/2010

15 JEFF DAVI
16 Real Estate Commissioner
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Respondent was initially licensed by the Department as a real estate salesperson from 1977 through 1981. He was licensed thereafter as a real estate broker. His broker license will expire April 22, 1994, unless renewed.

At all times pertinent herein, Respondent was employed by Cal-Bay Mortgage Group as a loan agent, and engaged in the business of, and acted in the capacity of, a mortgage loan broker as defined by section 10131(d) of the Code, on behalf of others and for or in expectation of compensation.

III

On January 18, 1992, Respondent, acting as a loan officer for Cal-Bay Mortgage Group, received the loan application of Iupati and Fia Tasi (Borrowers) for a refinance loan to be secured by real property owned by them and located at 1314 Gilman Avenue, San Francisco, California. Borrowers' first mortgage was through Transamerica Financial Services, and with a decline in mortgage interest rates they were now seeking a more competitive rate through the brokering services of Cal-Bay Mortgage Group.

Respondent referred the loan application to Mortgage Loan Specialists for underwriting, rating and funding. It included a verification of mortgage account information sheet dated February 28, 1992, purportedly completed and signed by Tony Richards, Senior Executive Branch Manager with Transamerica Financial Services (Exhibit 6). This information sheet specified that the Tasi's mortgage account had been satisfactory. In fact, Tony Richards had completed a different verification of mortgage account information sheet also dated February 28, 1992, but indicating that the Tasi's mortgage account had not been satisfactory and that there had been a history of former foreclosure.

Respondent did not submit the verification of mortgage account information sheet provided him by Transamerica Financial Services. Rather, while processing the loan, he created, falsified and altered a new verification of mortgage sheet by removing negative mortgage account and foreclosure information from the sheet, and then falsifying the signature of Tony Richards as a representative of Transamerica Financial Services. Respondent thereafter caused the altered Verification of Mortgage to be submitted to Mortgage Loan Specialists for the purpose of inducing the lender to make the refinance loan to the Tasi's.

IV

Respondent failed to disclose to Mortgage Loan Specialists material information relative to the ability of the Tasi's to meet their potential contractual obligations on the refinance loan, specifically their negative payment history on

the original loan. The Tasi's were seeking to qualify for an 80 percent loan to value ratio; that is to say, a \$152,000 loan on property appraised at \$190,000. The negative credit history of the Tasi's would not have qualified them for such a loan. They would have needed a larger down payment or lower loan to value ratio in order to qualify through Mortgage Loan Specialists.

Respondent's actions were discovered only when an underwriter with Mortgage Loan Specialists noticed the apparent contradiction between the information received through an independent credit history report, and the information supplied on the Verification of Mortgage form.

V

Respondent admits to the above stated matters, and characterizes his actions as something very wrong that will never happen again. When first confronted by his supervisor, Thomas S. Wardrope, he admitted to the wrongdoing and was thereafter terminated. Respondent was subsequently employed with Sunrise Mortgage, Inc. in San Mateo, and most recently has commenced employment with Prudential Financial Mortgage Services in Burlingame.

Respondent explains that at the time of the Tasi's application for loan refinance, he was becoming increasingly frustrated with what he perceived as intentional stalling and delay tactics by Transamerica Financial Services. He felt the Tasi's recent credit history was essentially favorable and that past negative references only worked to the benefit of Transamerica, and to the detriment of the Tasi's. In essence, he avers that his motivation and state of mind was to get the Tasi's the loan, and not to defraud a particular lender.

VI

Respondent submits eleven letter references commenting favorably upon his services as a mortgage loan representative and/or broker. Although Respondent claims that individuals were advised of the pending charges before the Department, on their face none of the letters make any reference to this instant action.

Thomas S. Wardrope expresses doubts over whether Respondent's actions in respect to falsifying documents was an isolated event, and submits March 1992 letters from Pacific Heights Development Company, Inc. in support of his contention that Respondent has falsified signatures in the past. At this time, the hearsay nature of the documents (Exhibit 3 attachments

and Exhibit L) and testimony provided on this point do not support a finding either way of what actually occurred in respect to Pacific Heights Development Company, Inc.

VII

Respondent understands the serious nature and full consequences of his actions. He is not likely to engage in similar activities again. However, the recent nature of the incident suggests the need for even more time for rehabilitation. Rehabilitation would include a continuing education and professional responsibility component. It would also include full disclosure of Respondent's actions to any employing company or broker with whom he is associated or becomes associated in the future. And although it would not be contrary to the public interest to issue a restricted license to Respondent, said license should be suspended for nine (9) months, in addition to other standard terms and conditions for a restricted broker's license to issue.

DETERMINATION OF ISSUES

I

Cause for disciplinary action under Business and Professions Code section 10177(d) and Title 10 California Code of Regulations section 2785(b)(2) exists, by reason of the matters set forth in Findings III and IV. Respondent knowingly made a false and misleading representation to a prospective lender secured directly or collaterally by real property about a borrower's ability to repay the loan in accordance with its terms and conditions.

II

Cause for disciplinary action under Business and Professions Code sections 10176(a) and (i) exists, by reason of the matters set forth in Findings III and IV. Respondent made substantial misrepresentations and conducted himself in a manner which constituted fraud and dishonest dealing.

III

The matters set forth in Finding VII were considered in making the following order,

ORDER

All licenses and licensing rights of Respondent 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:

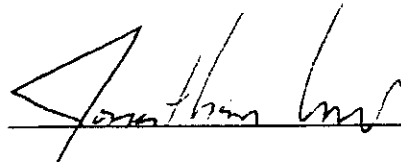
1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for nine (9) months from the date of issuance of said restricted license.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in 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.
3. 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.
4. 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.
5. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real

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

6. Respondent shall, within six 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.
7. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or 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.

Such reports may include, but shall not be limited to period summaries of salient information concerning each real estate transaction in which Respondent engaged during the period covered by the report; and statements signed by employing companies certifying that management has read the Decision of the Commissioner which granted the right to a restricted license.

DATED: June 25, 1993



JONATHAN LEW
Administrative Law Judge

JL:jt

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

BRIAN FORNESI,

Case No. H-6843 SF

OAH No. N 42608

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

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

OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,

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

on June 10, 1993 (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: April 21, 1993

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

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DEC 15 1992

1 DEIDRE L. JOHNSON, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770

DEPARTMENT OF REAL ESTATE

by Maria J. ...

5 Telephone: (415) 904-5917

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-6843 SF
12 BRIAN PAUL FORNESI,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Edward V. Chiolo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against BRIAN PAUL FORNESI (Respondent) is informed and alleges as
18 follows:

19 I

20 The Complainant, Edward V. Chiolo, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 against Respondent in his official capacity and not otherwise.

23 II

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law (Part 1 of Division 4 of the
26 Business and Professions Code, hereafter the Code).

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III

1
2 At all times herein mentioned, Respondent was licensed
3 by the State of California, Department of Real Estate as a real
4 estate broker. At all times herein mentioned, Respondent was
5 employed by Cal-Bay Mortgage Group as a loan agent, and engaged in
6 the business of and acted in the capacity of a mortgage loan
7 broker as defined by Section 10131(d) of the Code, on behalf of
8 others and for or in expectation of compensation.

9 IV

10 On or about January 18, 1992, Respondent, acting as a
11 loan officer as alleged above, took the loan application of
12 borrowers Iupati and Fia Tasi (Borrowers) for a refinance loan to
13 be secured by real property owned by them and located at 1314
14 Gilman Avenue, San Francisco, California.

15 V

16 While processing the above loan, Respondent altered,
17 forged and falsified a Verification of Mortgage by removing
18 negative account and foreclosure information from the Verification
19 and falsifying the signature of the representative of the
20 financial institution. Respondent thereafter caused the altered
21 Verification of Mortgage to be submitted to Mortgage Loan
22 Specialist Group, Inc. (Lender) for the purpose of inducing Lender
23 to make the refinance loan to Borrowers.

24 VI

25 Respondent failed to disclose to Lender material
26 information relative to the ability of Borrowers to meet their
27 potential contractual obligations on the refinance loan, including

1 but not limited to the negative payment history on the original
2 loan.

3 VII

4 The acts and/or omissions of Respondent as alleged above
5 violate Section 2785(b)(2) of Title 10 of the California Code of
6 Regulations, and constitute grounds for disciplinary action under
7 the provisions of Section 10177(d). The above acts and/or
8 omissions also constitute grounds for disciplinary action under
9 Sections 10176(a) and 10176(i) of the Code.

10 WHEREFORE, Complainant prays that a hearing be conducted
11 on the allegations of this Accusation and that upon proof thereof,
12 a decision be rendered imposing disciplinary action against all
13 licenses and license rights of Respondent under the Real Estate
14 Law (Part 1 of Division 4 of the Business and Professions Code),
15 and for such other and further relief as may be proper under other
16 provisions of law.

Edward V. Chio

17 _____
18 EDWARD V. CHIOLO
19 Deputy Real Estate Commissioner

20 Dated at San Francisco, California,
21 this 19th day of NOVEMBER, 1992.