

PLG

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

**FILED**

APR 24 2010

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of  
LEE JAY PILLOW,  
Respondent.

No. H-6875 SF

ORDER DENYING REINSTATEMENT OF LICENSE  
BUT GRANTING RIGHT TO A RESTRICTED LICENSE

On November 12, 1993, in Case No. H-6875 SF, a Decision was rendered revoking the real estate salesperson license of Respondent effective December 6, 1993.

On May 28, 2009, 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 failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate salesperson license.

The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the  
2 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

3 The Department has developed criteria in Section 2911 of Title 10, California  
4 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for  
5 reinstatement of a license. Among the criteria relevant in this proceeding are:

6 Regulation 2911(k) Correction of business practices resulting in injury to others or  
7 with the potential to cause such injury.

8 No information has been provided that Respondent has corrected his business  
9 practices which led to the revocation of his license in 1993.

10 Regulation 2911(l) Significant or conscientious involvement in community,  
11 church or privately-sponsored programs designed to provide social benefits or to ameliorate  
12 social problems.

13 No information has been provided that Respondent has had any significant or  
14 conscientious involvement in community, church or privately-sponsored programs designed to  
15 provide social benefits or to ameliorate social problems.

16 Regulation 2911(n) Change in attitude from that which existed at the time of the  
17 conduct in question as evidenced by any or all of the following:

18 (2) Evidence from family members, friends or other persons familiar with  
19 applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

20 Although some information has been provided to demonstrate Respondent's  
21 change in attitude, the revocation of Respondent's real estate license was based on a very serious  
22 violation of the Real Estate Law.

23 I am satisfied, however, that it will not be against the public interest to issue a  
24 restricted real estate salesperson license to Respondent.

25 A restricted real estate salesperson license shall be issued to Respondent pursuant  
26 to Section 10156.5 of the Business and Professions Code, if Respondent satisfies the following

27 ///

1 conditions prior to and as a condition of obtaining a restricted real estate salesperson license  
2 within twelve (12) months from the date of this Order:

3 1. Respondent shall qualify for, take and pass the real estate salesperson  
4 license examination.

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

7 The restricted license issued to Respondent shall be subject to all of the provisions  
8 of Section 10156.7 of the Business and Professions Code and to the following limitations,  
9 conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

14 B. The restricted license issued to Respondent may be suspended prior to  
15 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner  
16 that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands  
17 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted  
18 license.

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

23 D. Respondent shall submit with any application for license under an  
24 employing broker, or any application for transfer to a new employing broker, a statement signed  
25 by the prospective employing real estate broker on a form approved by the Department of Real  
26 Estate which shall certify:

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

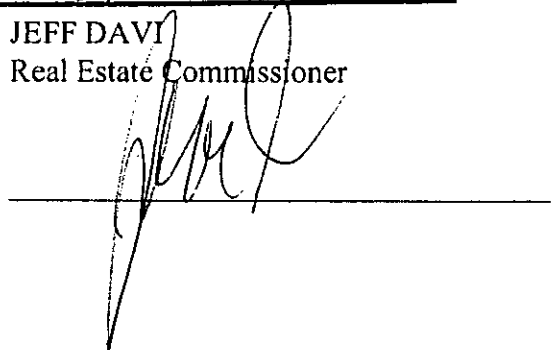
1. That the employing broker has read the Decision of the Commissioner  
which granted the right to a restricted license; and

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.

This Order shall become effective at 12 o'clock noon on MAY 14 2010

IT IS SO ORDERED 5/12/2010

JEFF DAVIS  
Real Estate Commissioner





1 sufficient rehabilitation to warrant the reinstatement of  
2 Respondent's real estate salesperson license in that Respondent  
3 provided false information while applying for an Oregon real  
4 estate license. On January 3, 1995, Respondent filed a real  
5 estate examination application with the Oregon Real Estate Agency.  
6 The application was signed by Respondent under penalty of perjury  
7 and included the following question: "Have you or any partnership  
8 or corporation in which you were a participant ever been  
9 reprimanded, fined, had any license or registration suspended or  
10 revoked, surrendered or resigned the license or registration, or  
11 in any way been sanctioned or penalized by the agency issuing the  
12 license or registration? If so, explain and submit a copy of all  
13 legal documentation describing the charges and sanctions imposed  
14 for any or all offenses." Respondent answered "No" to the  
15 question and failed to disclose the disciplinary action taken in  
16 this matter. Respondent's actions in connection with his Oregon  
17 application coupled with his conviction in 1978 for mail fraud,  
18 and the actions resulting in the disciplinary action taken in this  
19 matter demonstrate a pattern and history of untruthfulness on the  
20 part of Respondent such that additional evidence of rehabilitation  
21 is required for reinstatement of Respondent's real estate  
22 salesperson license.

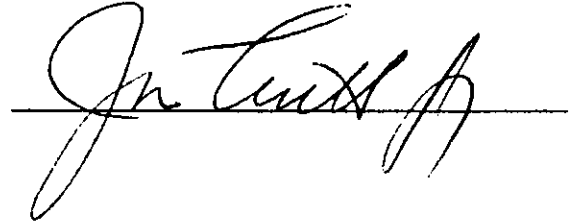
23 NOW, THEREFORE, IT IS ORDERED that Respondent's petition  
24 for reinstatement of his real estate salesperson license is  
25 denied.

26 This Order shall be effective at 12 o'clock noon on  
27 March 20, 1996.

DATED: \_\_\_\_\_

2/26/96

JIM ANTT, JR.  
Real Estate Commissioner

A handwritten signature in cursive script, appearing to read "Jim Antt, Jr.", is written over a horizontal line.

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

COPY

*File*  
*Sack 2*

FILED  
JAN - 3 1994  
DEPARTMENT OF REAL ESTATE

By *Emily Jakeda*

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

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
BABU W. S. MANN, LEE JAY PILLOW, )	No. H-6875 SF
SEALRAY FUNDERBURG, SARWAT SABET )	OAH No. N 42943
FAHMY, JEROME PETER LUTZ and )	
QAL AFFILIATES, INC., )	
Respondents. )	

ORDER DENYING RECONSIDERATION

On November 12, 1993, a Decision was rendered in the above-entitled matter. The Decision is to become effective on January 5, 1994.

On December 14, 1993, Respondent, Babu W. S. Mann only, petitioned for reconsideration of the Decision of November 12, 1993.

I have given due consideration to the petition of

///  
///  
///

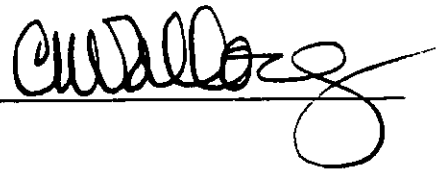


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Respondent. I find no good cause to reconsider the Decision of  
November 12, 1993, and reconsideration is hereby denied.

IT IS SO ORDERED 12/30/1993.

CLARK WALLACE  
Real Estate Commissioner

  
\_\_\_\_\_

COPY

FILED  
DEC 06 1993

DEPARTMENT OF REAL ESTATE

By Victoria Dillon  
Victoria Dillon

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

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	NO. H-6875 SF
	)	
BABU W. S. MANN, LEE JAY PILLOW,	)	OAH N 42943
SEALRAY FUNDERBURG,	)	
SARWAT SABET FAHMY,	)	
JEROME PETER LUTZ and	)	
QAL AFFILIATES, INC.,	)	
	)	
	)	
Respondents.	)	

ORDER STAYING EFFECTIVE DATE

On November 12, 1993, a Decision was rendered in the above-entitled matter to become effective December 6, 1993.

IT IS HEREBY ORDERED that the effective date of the Decision of November 12, 1993, is stayed for a period of thirty (30) days as to Respondent BABU W. S. MANN only.

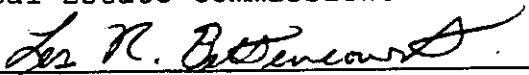
///  
///  
///  
///

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

The Decision of November 12, 1993, shall become effective at 12 o'clock noon on January 5, 1994.

DATED: December 6, 1993.

CLARK WALLACE  
Real Estate Commissioner

  
By: LES R. BETTENCOURT  
Deputy Real Estate Commissioner

COPY

FILED  
NOV 16 1993

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

\* \* \*

By Victoria Dillon  
Victoria Dillon

In the Matter of the Accusation of )  
BABU W. S. MANN, LEE JAY PILLOW, )  
SEALRAY FUNDERBURG, )  
SARWAT SABET FAHMY, )  
JEROME PETER LUTZ and )  
QAL AFFILIATES, INC., )  
Respondent (s). )

No. H-6875 SF  
OAH N 42943

DECISION

The Proposed Decision dated October 20, 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 December 6, 1993.

IT IS SO ORDERED 11/12, 1993.

CLARK WALLACE  
Real Estate Commissioner

Clark Wallace

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	
BABU W. S. MANN,	)	
LEE JAY PILLOW,	)	Case No. H-6875 SF
SEALRAY FUNDERBURG,	)	
SARWAT SABET FAHMY,	)	OAH No. N-42943
JEROME PETER LUTZ, and	)	
QAL AFFILIATES, INC.,	)	
	)	
Respondents.	)	
<hr/>		

PROPOSED DECISION

This matter was heard before Robert R. Coffman, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on September 7 through 9, 1993.

Complainant was represented by John Van Driel, Counsel.

Christopher Appleton appeared for respondent Babu W. S. Mann. There was no appearance by or on behalf of respondent Lee Jay Pillow.

FINDINGS OF FACT

I

Babu W. S. Mann, Lee Jay Pillow, Sealray Funderburg, Sarwat Sabet Fahmy, Jerome Peter Lutz and QAL Affiliates, Inc., are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code).

II

At all times material Mann was licensed by the Department as a real estate salesperson employed by QAL. A restricted real estate salesperson license was issued to Mann on September 19, 1990.

III

At all times material Pillow and Funderburg were licensed by the Department as real estate salespersons employed by QAL.

#### IV

At all times material Lutz was licensed by the Department as a real estate salesperson and was employed as the sales manager of QAL. As the sales manager he was responsible, pursuant to agreement with Fahmy, for the day to day supervision of QAL's sales agents and for reviewing, initialing and dating appropriate documents in sale files as provided by section 2725(a) of Title 10, California Code of Regulations.

#### V

At all times material Fahmy was licensed by the Department as a real estate broker in his individual capacity and as the designated officer of QAL. As the designated officer of QAL, Fahmy was responsible for the supervision and control of the activities conducted on behalf of QAL by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

#### VI

At all times material QAL was licensed by the Department as a real estate corporation, doing business as Century 21 Quimby Square, through Fahmy as its designated officer.

#### VII

At all times material QAL engaged in the business of, acted in the capacity of, advertised and assumed to act as a real estate broker within the State of California.

#### VIII

QAL, Fahmy and Lutz have entered into stipulated settlements with the Department regarding the accusations against them, therefore no disciplinary order will be entered in this matter as to such respondents.

Respondent Funderburg and the Department have submitted to the administrative law judge a stipulated settlement they have entered into, the terms of which are set forth in the Determinations and Order herein.

Respondent Pillow did not request a hearing, file a notice of defense, or appear in this matter. The hearing proceeded against Pillow as a default hearing under section 11520 of the Government Code.

Respondent Mann appeared in person and through his counsel. While the evidence received at the hearing and the Findings based on such evidence refer primarily to Mann, such evidence and Findings were also considered as to the other respondents to the extent material to the charges against such respondents.

## MUIRFIELD DRIVE PROPERTY

### IX

Approximately February 1990, Leonard Cravens listed his property at 60 Muirfield Drive, San Jose, California, with Pillow, as an agent of QAL, for an asking price of \$99,500.

### X

In April 1990 Pillow, through Mann as his agent, made an offer to buy Cravens' property for \$99,000. Pillow acted as both the listing agent and the buyer in this transaction. Pillow's offer was accepted and the purchase contract presented by Mann to Cravens stated that Pillow would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

### XI

At or about the time that Mann presented Pillow's offer to Cravens, Mann and Pillow also presented an alternate financing plan which consisted of (1) a written addendum to the purchase contract which stated that the purchase price of Cravens' property was \$87,360 and that Pillow would put \$8,160 cash down toward the purchase price and (2) an oral agreement whereby Cravens would credit approximately \$11,500 to Pillow in escrow and take back a second loan of approximately \$2,000. The parties agreed to this alternate financing proposal.

### XII

In furtherance of the plan and scheme to purchase Cravens' property, Pillow, with the assistance of Mann, applied to American Savings for a purchase money loan based on a \$99,000 purchase price with a 20% down payment without disclosing the alternate financing agreement described in Finding XI.

### XIII

In connection with Pillow's loan application and in furtherance of the plan and scheme described herein, Pillow and Mann falsely represented to American Savings that the purchase contract submitted to American contained the true and complete terms of the transaction. Mann and Pillow failed to provide American with the written addendum or to disclose it and the above oral agreement to American. The loan applied for was one that required a 20% cash down payment. Mann and Pillow were well aware of the 20% requirement imposed by American but intentionally conspired to apply for and obtain a loan with a cash down payment considerably less than 20%.

XIV

Prior to the close of escrow Mann made a cash deposit of \$8,000 of his own funds into escrow on behalf of Pillow, which was also undisclosed to American.

XV

In reliance on the above false representations, American made a loan to Pillow in the amount of \$79,200 on or about May 4, 1990.

MONTICELLO AVENUE PROPERTY

XVI

Approximately March 1990, Julie Villapando listed her property at 295 Monticello, San Jose, California, with Mann, as an agent for QAL, for an asking price of \$233,500.

XVII

In April 1990, Mann brought an offer from Patricia French to buy Villapando's property for \$235,000. French's offer was accepted and the purchase contract prepared by Mann stated that French would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

XVIII

At the same time that Mann prepared French's offer to Villapando, Mann also prepared an addendum to the purchase contract stating that Villapando would give French a cash credit in escrow of \$7,000 and would carry back a second loan of \$23,500. The parties signed the addendum.

XIX

In furtherance of the plan and scheme to purchase Villapando's property, French, with the assistance of Mann, applied to Home Savings for a purchase money loan based on a \$235,000 purchase price and a cash down payment of 20% without disclosing to Home the existence or terms of the addendum.

XX

In connection with French's loan application and in furtherance of the plan and scheme described above, Mann falsely represented to Home Savings that the purchase contract submitted to Home contained the true and complete terms of the transaction.

XXI

After applying for a purchase money loan on the property, it was determined by Home that French would not qualify for



the loan under its guidelines (because of French's credit rating). Mann then caused one of his associate agents, Funderburg, to substitute into the transaction as the buyer and apply for a loan from Home based on the \$235,000 sale price shown on the purchase contract. A new purchase contract was prepared by Mann or under his direction showing Funderburg as the buyer with the purchase price and financing terms identical with the earlier French purchase contract.

XXII

In connection with Funderburg's loan application and in furtherance of the plan and scheme described herein, Funderburg and Mann also falsely represented to Home Savings that the Funderburg purchase contract submitted to Home contained the true and complete terms of the transaction.

XXIII

The representations of Mann and Funderburg that Funderburg was the buyer, and of the financing of the purchase price as set forth in the purchase contract, were false and were intended to induce Home to make a purchase money loan to Funderburg in excess of the amount that would have been required for the actual purchase price of the property. The terms of the addendum were not disclosed to Home. Home was not aware that Funderburg was purchasing the property for French, that the seller was carrying back a second in the amount of \$23,500, that the down payment was actually \$18,000 rather than the \$47,000 provided for in the purchase contract, and that Mann, French and Funderburg were misrepresenting the financing to circumvent Home's requirement of a 20% cash down payment.

XXIV

In reliance on the above false representations by Mann and Funderburg, Home made a loan to Funderburg in the amount of \$188,000.

XXV

After close of escrow for the purchase of Villapando's property, French, with the knowledge and consent of Mann and Funderburg, took possession of the property and made payments on both the first and second loans and the taxes and insurance on the property.

DAVIDWOOD WAY PROPERTY

XXVI

Approximately April 1990, Rose Gonzales listed her property at 2991 Davidwood Way, San Jose, California, with Mann, as an agent of QAL, for an asking price of \$299,000.

XXVII

In May 1990, Mann presented an offer from Dan Briones to buy Gonzales' property for \$325,000. Briones' offer was accepted by Gonzales and the purchase contract prepared by Mann stated that Briones would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

XXVIII

At or about the time that Mann prepared Briones' offer to Gonzales, Mann also proposed to Gonzales and Briones an alternate financing plan for Briones' purchase which provided for an actual purchase price of \$265,000 and a \$65,000 credit in escrow to a "miscellaneous account", which credit would be paid to or for the benefit of Briones and /or Mann. The parties agreed to the alternate plan.

XXIX

In furtherance of the plan and scheme to purchase Gonzales' property, Briones, with the assistance of Mann, applied to American Savings for a purchase money loan based on a \$325,000 purchase price and a 20% down payment without disclosing to American the alternate financing plan described above.

XXX

In connection with Briones' loan application and in furtherance of the above described plan and scheme, Mann falsely represented to American that the purchase contract submitted to American contained the true and complete terms of the transaction.

XXXI

In reliance on the above false representation by Mann, American made a loan to Briones in the amount of \$260,000 on or about June 8, 1990. American's loan requirement under the loan applied for required a 20% cash down payment, which fact was well known to Mann. Briones' actual down payment was not only not 20% of the purchase price (\$65,000 on a \$325,000 purchase price or \$53,000 on a \$265,000 purchase price), it was no more than \$5,000 (evidence established that the actual down payment was somewhere between zero and \$5,000).

SQUIRECREEK CIRCLE PROPERTY

XXXII

In approximately February 1990, Maurice Hyder's property at 3529 Squirecreek, San Jose, California, was listed with Taroub Rusnak, as an agent of QAL, for an asking price of \$185,000.

XXXIII

In July 1990, Santanu Roy, through Mann as his agent, made an offer to buy Hyder's property for \$175,000. Roys's offer was accepted and the purchase contract prepared by Mann stated that Roy would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

XXXIV

At the same time that Mann prepared Roy's offer to Hyder, Mann also prepared an addendum to the purchase contract stating that Hyder would carry back a second loan of \$35,000. The parties signed the addendum.

XXXV

In furtherance of the plan and scheme to purchase Hyder's property, Roy, with the assistance of Mann, applied to American Savings for a purchase money loan based on a \$175,000 purchase price and a cash down payment of 20% without disclosing the existence or terms of the addendum to American.

XXXVI

In connection with Roy's loan application and in furtherance of the plan and scheme to purchase the property and obtain a loan from American without complying with American's 20% down payment requirement, Mann falsely represented to American Savings that the purchase contract submitted to American contained the complete and true terms of the transaction.

XXXVII

In reliance on the false representations made by Mann, American made a loan to Roy in the amount of \$140,000 on or about August 1990. The loan to Roy was pursuant to American's loan program that required a 20% cash down payment. In fact Roy made no cash down payment, but borrowed the entire purchase price of \$175,000.

ARDEN WAY PROPERTY

XXXVIII

In approximately May 1990, Thomas Novak listed his property at 2446 Arden Way, San Jose, California, with Kyong Kim, an agent of Qal, for an asking price of \$199,000.

XXXIX

In August 1990, Prem Kaur, through Mann as her agent, made an offer to buy Novak's property for \$215,000. Kaur's offer was accepted and the purchase contract prepared by Mann stated

that Kaur would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property. Kaur is Mann's sister.

XL

At the same time Mann prepared Kaur's offer to Novak, Mann also proposed an alternate plan to finance Kaur's purchase of the property, consisting of a written addendum stating that Novak would carry back a second loan of \$35,000. Mann, Kaur and Novak also orally agreed that the actual sale price would be \$195,00 and that Novak would credit Kaur \$5,000 for closing costs. When Novak discovered that Kaur was obtaining a loan from American Savings in the amount of \$155,000, and that Kaur was actually putting up no cash at all, he complained to Mann because he was worried about the security of his loan which was secured by a second deed of trust (with the buyer putting no money down she could walk away from the transaction without any loss). As a result the alternate financing plan was amended so that Novak carried back a second loan of \$29,000 and Mann paid Novak \$11,000 outside of escrow.

XLI

In furtherance of the plan and scheme to purchase Novak's property, Kaur, with the assistance of Mann, applied to American Savings for a purchase money loan based on a \$215,000 purchase price without disclosing the existence or terms of the addendum or the above oral agreement to American. The purchase price, on which American based its loan to Kaur, was later reduced to \$195,000 based on American's appraisal of the property.

XLII

In connection with Kaur's loan application and in furtherance of the above plan and scheme, Kaur and Mann falsely represented to American Savings that the purchase contract submitted to American contained the true and complete terms of the transaction, except that the purchase price had been reduced from \$215,000 to \$195,000.

XLIII

In reliance on Mann's false representations, American Savings made a loan to Kaur in the amount of \$155,000 in August 1990. American made such loan under its loan program that requires a minimum 20% cash down payment, in this case \$39,000. Mann falsely represented to American that Kaur had made a cash down payment of \$43,000. In fact Kaur made no cash down payment at all.

XLIV

In connection with the Arden Way transaction, Mann made a cash payment to Novak outside of escrow of \$11,000 of his own funds.

AMERICUS DRIVE PROPERTY

XLV

In approximately July 1990 Christopher Heavens listed his property at 3321 Americus Drive, San Jose, California, with Mann, as an agent of Qal, for the asking price of \$344,876.

XLVI

On approximately August 15, 1990, Harpaul Nagra, through Mann as his agent, made an offer to buy Heavens' property for \$415,000. Nagra's offer was accepted and the purchase contract prepared by Mann stated that Nagra would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

XLVII

On approximately August 22, 1990, Mann also prepared an addendum to the purchase contract stating that the purchase price was \$318,000 and that all additional costs and fees beyond \$318,000 would be credited to Nagra for remodeling. The parties signed the addendum.

XLVIII

In furtherance of the plan and scheme to purchase Heavens' property, Nagra, with the assistance of Mann, applied to World Savings for a purchase money loan based on a \$415,000 purchase price without disclosing the existence or terms of the addendum to World, and without disclosing to World that the actual purchase price was \$318,000.

XLIX

In connection with Nagra's loan application and in furtherance of the above plan and scheme, Mann falsely represented to World Savings that the purchase contract submitted to World contained the true and complete terms of the transaction. Mann falsely represented to World that the purchase price was \$415,000 and that Nagra's cash down payment was \$83,000.

L

In reliance on the false representations by Mann, World Savings made a loan to Nagra in the amount of \$332,000 on or

about August 30, 1990. The loan program under which World made the loan requires a 20% cash down payment. World made the loan believing that Nagra had made a 20% cash down payment. In fact Nagra did not make a 20% cash down payment and the loan was far in excess of an 80% loan in that the loan was in an amount \$14,000 more than the purchase price.

The above transaction was arranged by Mann, using Nagra, who is Mann's cousin, as the buyer to obtain the \$332,000 loan. In this transaction \$107,000 was paid out of escrow to Mann's mother.

#### FLINT AVENUE PROPERTY

##### LI

In May 1990 Yvonne Chappell listed her property at 2166 Flint Avenue, San Jose, California, with Larry Bishop, as an agent of QAL, for an asking price of \$295,000.

##### LII

On June 27, 1990, Armando Terrazas, through Mann as his agent, made an offer to buy Chappell's property for \$260,000. After a counter-offer by Chappell the parties on June 29, 1990 agreed on a purchase price of \$270,000. The purchase contract prepared by Mann stated that Terrazas would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

##### LIII

On June 29, 1990, Mann prepared an addendum to the purchase contract stating that Chappell would carry back a second loan of \$27,000. The parties signed the addendum.

##### LIV

In furtherance of the plan and scheme to purchase Chappell's property, Terrazas, with the assistance of Mann, applied to American Savings for a purchase money loan based on a \$270,000 purchase price without disclosing the existence or terms of the addendum to American.

##### LV

In connection with Terrazas' loan application and in furtherance of the plan and scheme described herein, Mann falsely represented to American that the purchase contract, with the increased purchase price of \$270,000, submitted to American contained the true and complete terms of the transaction.

LVI

In reliance on Mann's false representations, American made a loan to Terrazas in the amount of \$216,000 on or about July 20, 1990. The loan was made under American's loan program that required a 20% cash down payment. Based on Mann's false representations, American believed that the buyer had made a 20% cash down payment of approximately \$54,000, when in fact the buyer made a cash down payment of approximately \$27,000.

LVII

Respondent Mann has suffered prior discipline by the Real Estate Commissioner as follows:

Effective September 9, 1990, in the Department's Accusation proceeding No. H-6239 SF, following a hearing on the merits, Mann's real estate salesperson license was revoked and Mann was granted the right to apply for a restricted salesperson license.

The above discipline was based on two prior matters before the Director of the California Department of Motor Vehicles, one in which Mann's vehicle dealer's license was revoked for cause and one in which Mann's application for a vehicle salesperson license was denied for cause.

LVIII

(a) Mann began working as a real estate salesperson for QAL in December 1988. Approximately August or September 1990 he was terminated from employment with QAL by Fahmy. He was thereafter employed by another real estate broker until March 1993, when his restricted real estate license was suspended by the Department under the terms of the order granting the restricted license. He has not been employed since that suspension.

(b) Mann contends that the normal practice of the office (QAL Affiliates), was not to place the terms and conditions of the financing of the sale of the property on the real estate purchase agreements, but to set forth the financing on an addendum to the purchase agreement, with the addendum being executed at the same time as the purchase agreement.

Evidence did not establish such contention. Evidence established the opposite, that the practice within the office was to place such information on the contract, not on an addendum, unless the addendum came subsequent to the contract and was being used to modify the terms of the contract pursuant to a change dictated by subsequent events. In addition, it is contrary to common sense that an addendum would be executed at the same time

as the contract when the terms could easily be stated in the contract. In fact, in the contracts involving the above properties, the financing was stated in the contracts. However, the financing stated in the contracts did not set forth the true agreement of the parties, but set forth terms of financing that were not agreed to by the parties. Obviously, setting forth specific financing terms and conditions in the purchase contract that were contrary to the actual terms the parties had agreed to, even including fictitious purchase prices rather than actual purchase amounts, at a time when the true and correct financing was known and could easily have been included in the contract, must have been done for a specific purpose. The evidence overwhelming established that in this case the purpose for such subterfuge and dishonesty was to defraud lenders.

Even if such practice existed, or did not exist but was Mann's method of structuring real estate purchase contracts, it was Mann's duty to provide the addendums or reveal the terms of such addendums to the lenders. Evidence clearly established that Mann did not give the lenders the addendums that reflected different financing than the purchase contracts, including sellers making second loans to purchasers, and did not disclose such information to the lenders. In each case the lender's loan program under which Mann submitted the real estate purchase contracts provided for a 20% cash down payment. In each case Mann was aware of such requirement. In each case the purchase contract prepared by Mann expressly provided for a 20% cash down payment. In each case Mann gave the lenders the purchase contract but withheld the addendums that provided for alternate methods of financing.

Even if Mann employed addendums to set forth the details of the financing, why did each of the purchase contracts include a 20% cash down payment? Mann offered no reasonable explanation why each purchase contract specifically provided for a 20% cash down payment. The purchase contracts contain a space for notation of addendums to the contract. In none of the contracts are the addendums referred to or mentioned. Mann offered no reasonable explanation for such omissions.

(c) Although Mann asserts that he provided all of the above addendums to the lenders involved in each transaction, which assertion is clearly contrary to the evidence herein, he also contends that it was the lender's duty to request and obtain any missing documents. He does not explain why the lenders would request documents that they did not know existed, that were being concealed from them. The contention is without any merit.

(d) Mann further contends that Lutz was responsible for noticing that his transactions were highly unusual and that Lutz should have inquired into the circumstances. The contention is well taken. Lutz was clearly negligent. However, evidence



failed to establish that Lutz was aware, or even suspected, that Mann was withholding pertinent information, including addendums, from lenders. But even if Lutz was aware of or was participating in Mann's fraudulent conduct, it does not relieve Mann of his duty and obligation to refrain from the commission of acts of dishonesty and fraud.

(e) Mann also blames the title company for not following lenders' instructions. Evidence established that Fidelity National Title's settlement statements indicated an intentional disregard of lenders' instructions and an attempt to conceal some of the terms of the transactions. There is no question but that one or more employee of Fidelity participated in Mann's fraudulent scheme. However, the scheme was Mann's and any Fidelity employee's involvement was in furtherance of Mann's scheme. Mann was responsible for using artificially inflated prices as the purchase price, for arranging for cash credits from seller to buyer and seller carry-back financing in addendums, and for failing to disclose the terms of the addendums to the lenders. After Mann had engaged in such conduct someone from Fidelity assisted him in concealing some of these facts from lenders. Mann does not explain how this is helpful to him in this proceeding.

#### LIX

(a) Lutz was Mann's office manager. It was not established that Lutz was aware that Mann was withholding from lenders the true agreement of the parties, including the financing. While Lutz may not have been aware of the fraud perpetrated by Mann, he was grossly negligent in reviewing Mann's real estate transactions. In September 1990 Lutz was removed from his supervisory position of reviewing and initialing documents prepared by agents.

(b) Evidence did not establish that any employee of the three lending institutions was aware of or participated in the fraudulent practices that Mann engaged in. However, even if one or more employee of the three lending institutions was aware of such practices or was a knowing participant in fraudulent acts, it would not absolve Mann from the improper conduct, described herein, in which he actively participated. Employees of the lending institutions could not have on their own, without Mann's knowing participation, authorized fraudulent loans. The real estate transactions were all the creations of Mann.

#### LX

Mann maintains that he has always attempted to conduct himself with honesty and integrity in his activities as a real estate licensee, that he used poor judgment in some of the above mentioned transactions, that he received inadequate training

while at QAL, and that he is willing to undergo additional training by way of continuing education courses or programs that are in addition to those required by law.

The evidence clearly and convincingly established that Mann was a very successful real estate agent, but that while performing functions for which a real estate license was required, he knowingly and with apparent impunity engaged in a scheme and plan to defraud others, and that he did so in at least 7 real estate transactions during the period April-August 1990. He engaged in a continued and flagrant course of misrepresentation. Mann testified at length in this proceeding. His credibility, measured by the factors set forth in Evidence Code section 780, was extremely poor.

#### DETERMINATION OF ISSUES

##### I

Cause was established for discipline against respondent Mann under sections 10176(a), (c), and (i) of the Code under the facts on each of the 7 causes for discipline (the 7 properties) set forth in the Findings.

##### II

Cause was established for discipline against respondent Pillow under sections 10176(a), (c), and (i) of the Code under the facts set forth in the Findings related to the Muirfield Drive Property transaction.

##### III

*See pg. 11 of  
accusation  
for  
violations* Respondent Funderburg and the Department have stipulated as follows: Funderburg admits the allegations in the Accusation as pertain to her, that cause exists for discipline against her real estate license, that her license shall be revoked, but that she will be accorded the privilege of applying for a restricted license with usual terms and conditions, and with conditions related to completion of continuing education requirements and the successful passage of a professional responsibility examination.

#### ORDER

1. The real estate licenses and license rights of respondent Mann are revoked for each cause for discipline, singly and severally.
2. The real estate licenses and license rights of respondent Pillow are revoked.

3. The license and licensing rights of respondent Sealray Funderburg 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:
  - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
  - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
- d. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of

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

- 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.

DATED: \_\_\_\_\_

October 20, 1993.



\_\_\_\_\_  
ROBERT R. COFFMAN  
Administrative Law Judge

1 Department of Real Estate  
2 185 Berry Street, Room 3400  
3 San Francisco, CA 94107-1770

4 Telephone: (415) 904-5917

FILED  
OCT 05 1993

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*  
Victoria Dillon

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of )	No. H- 6875 SF
12	BABU W. S. MANN, )	
13	LEE JAY PILLOW, )	STIPULATION AND
14	SEALRAY FUNDERBURG, )	AGREEMENT IN
15	SARWAT SABET FAHMY, )	SETTLEMENT AND
16	JEROME PETER LUTZ, and )	ORDER
	QAL AFFILIATES, INC., )	
	Respondents. )	

17 It is hereby stipulated by and between JEROME PETER  
18 LUTZ (Respondent) only, and the Complainant, acting by and  
19 through John Van Driel, Counsel for the Department of Real  
20 Estate, as follows for the purpose of settling and disposing  
21 the Accusation filed on February 16, 1993 in this matter:

22 1. All issues which were to be contested and all  
23 evidence which was to be presented by Complainant and  
24 Respondent at a formal hearing on the Accusation, which hearing  
25 was to be held in accordance with the provisions of  
26 the Administrative Procedures Act (APA), shall instead and  
27

1 in place thereof be submitted solely on the basis of the  
2 provisions of this Stipulation and Agreement in Settlement.

3           2. Respondent has received, read and understands the  
4 Statement to Respondent, the Discovery Provisions of the APA  
5 and the Accusation filed by the Department of Real Estate in  
6 this proceeding.

7           3. On March 18, 1993, Respondent filed a Notice of  
8 Defense pursuant to Section 11505 of the Government Code for  
9 the purpose of requesting a hearing on the allegations in the  
10 Accusation. Respondent hereby freely and voluntarily withdraws  
11 said Notice of Defense. Respondent acknowledges that he  
12 understands that by withdrawing said Notice of Defense he will  
13 thereby waive his right to require the Commissioner to prove  
14 the allegations in the Accusation at a contested hearing held  
15 in accordance with the provisions of the APA.

16           4. Respondent has read the Discovery Provisions of  
17 the APA and is aware of his right to conduct discovery in the  
18 proceeding, and by entering into this stipulation, freely and  
19 voluntarily waives his right to conduct further discovery.

20           5. Except as set out below, Respondent hereby admits  
21 that the factual allegations of the Accusation are true and  
22 correct. Respondent denies the allegations of the Third Cause  
23 of Accusation as they relate to him. The Real Estate  
24 Commissioner shall not be required to provide further evidence  
25 of such allegations. The admissions of fact made herein are  
26 made solely for the purposes of establishing jurisdiction for  
27

1 the Commissioner to take disciplinary action against the  
2 license and license rights of Respondent and are made solely in  
3 reference to this proceeding and any subsequent proceeding  
4 before the Commissioner and may not be used in or as a part of  
5 any other civil action or criminal action now pending or which  
6 may be filed against Respondent pursuant to the provisions of  
7 Section 1152 of the California Evidence Code. A true copy of  
8 the Accusation is attached hereto as Annex A and incorporated  
9 herein by reference.

10           6. It is understood by the parties that the Real  
11 Estate Commissioner may adopt the Stipulation and Agreement in  
12 Settlement as his decision in this matter thereby imposing the  
13 penalty and sanctions on Respondent's real estate license and  
14 license rights as set forth in the below "Order". In the event  
15 that the Commissioner in his discretion does not adopt the  
16 Stipulation and Agreement in Settlement, it shall be void and  
17 of no effect, and Respondent shall retain the right to a  
18 hearing and proceeding on the Accusation under all the  
19 provisions of the APA and shall not be bound by any admission  
20 or waiver made herein.

21           7. The Order or any subsequent Order of the Real  
22 Estate Commissioner made pursuant to this Stipulation and  
23 Agreement in Settlement shall not constitute an estoppel,  
24 merger or bar to any further administrative or civil  
25  
26  
27

1 proceedings by the Department of Real Estate with respect to  
2 any matters which were not specifically alleged to be causes  
3 for accusation in this proceeding.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions  
6 and waivers and for the purpose of settlement of the pending  
7 Accusation without a hearing, it is stipulated and agreed that  
8 the following determination of issues shall be made:

9 I

10 The acts and/or omissions of JEROME PETER LUTZ as  
11 alleged in the Accusation and as modified in paragraph 5 above,  
12 constitute grounds for discipline under Section 10177(g) of the  
13 Code.

14 ORDER

15 1. All licenses and licensing rights of Respondent  
16 JEROME PETER LUTZ under the Real Estate Law are revoked;  
17 provided, however, a restricted real estate salesperson license  
18 shall be issued to Respondent pursuant to Section 10156.5 of  
19 the Business and Professions Code if Respondent makes  
20 application therefor and pays to the Department of Real Estate  
21 the appropriate fee for the restricted license within 90 days  
22 from the effective date of this Decision. The restricted  
23 license issued to Respondent shall be subject to all of the  
24 provisions of Section 10156.7 of the Business and  
25  
26  
27



1 Professions Code and to the following limitations, conditions  
2 and restrictions imposed under authority of Section 10156.6 of  
3 that Code:

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

10 b. The restricted license issued to  
11 Respondent may be suspended prior to hearing by Order of the  
12 Real Estate Commissioner on evidence satisfactory to the  
13 Commissioner that Respondent has violated provisions of the  
14 California Real Estate Law, the Subdivided Lands Law,  
15 Regulations of the Real Estate Commissioner or conditions  
16 attaching to the restricted license.

17 c. Respondent shall not be eligible to apply for the  
18 issuance of an unrestricted real estate license nor for the  
19 removal of any of the conditions, limitations or restrictions  
20 of a restricted license until one (1) year has elapsed from the  
21 effective date of this Decision.

22 d. Respondent shall submit with any application for  
23 license under an employing broker, or any application for  
24 transfer to a new employing broker, a statement signed by the  
25 prospective employing real estate broker on a form approved by  
26 the Department of Real Estate which shall certify:

27

1 (1) That the employing broker has read the Decision of  
2 the Commissioner which granted the right to a restricted  
3 license; and

4 (2) That the employing broker will exercise close  
5 supervision over the performance by the restricted licensee  
6 relating to activities for which a real estate license is  
7 required.

8 e. Respondent shall, within nine months from the  
9 effective date of this Decision, present evidence satisfactory  
10 to the Real Estate Commissioner that Respondent has, since the  
11 most recent issuance of an original or renewal real estate  
12 license, taken and successfully completed the continuing  
13 education requirements of Article 2.5 of Chapter 3 of the Real  
14 Estate Law for renewal of a real estate license. If Respondent  
15 fails to satisfy this condition, the Commissioner may order the  
16 suspension of the restricted license until the Respondent  
17 presents such evidence. The Commissioner shall afford  
18 Respondent the opportunity for a hearing pursuant to the  
19 Administrative Procedure Act to present such evidence.

20 f. Respondent shall, within six months from the  
21 effective date of this Decision, take and pass the  
22 Professional Responsibility Examination administered by the  
23 Department including the payment of the appropriate  
24 examination fee. If Respondent fails to satisfy this  
25 condition, the Commissioner may order suspension of  
26 Respondent's license until Respondent passes the examination.  
27

1 g. The restricted real estate license license issued  
2 to Respondent pursuant to this Decision shall be suspended for  
3 ten (10) days from the date of issuance of said restricted  
4 license.

5 h. If Respondent petitions, ten (10) days of said  
6 suspension shall be stayed upon the following terms and  
7 conditions:

8 (1) Respondent pays a monetary penalty  
9 pursuant to Section 10175.2 of the Business and Professions Code  
10 at the rate of \$100.00 for each day of said suspension stayed,  
11 for a total monetary penalty of \$1,000.00.

12 (2) Said payment shall be in the form of a  
13 cashier's check or certified check made payable to the Recovery  
14 Account of the Real Estate Fund. Said check must be delivered  
15 to the Department prior to the effective date of the Order in  
16 this matter.


17 (3) If Respondent fails to pay the monetary  
18 penalty in accordance with the terms of this paragraph or this  
19 Order, the Commissioner may, without a hearing, order the  
20 immediate execution of all or any part of the ten (10) days  
21 stayed suspension, in which event the Respondent shall not be  
22 entitled to any repayment nor credit, prorated or otherwise, for  
23

24  
25  
26  
27

1 money paid to the Department under the terms of this Order.


2  
3 DATED:

9-17-93

  
JOHN VAN DRIEL  
Counsel for the Complainant

4  
5  
6  
7 DATED:

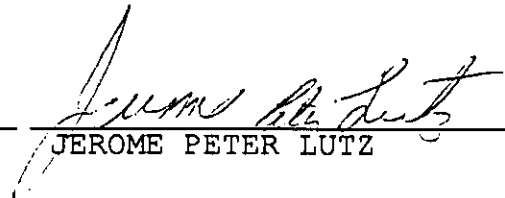
9/15/93

LICCARDO, ROSSI, STURGES &  
MCNEIL  
by   
MAXINE MONAGHAN  
Counsel for Respondent Lutz

8  
9  
10  
11 I have read the Stipulation in Settlement and  
12 Agreement and its terms are understood by me and are  
13 agreeable and acceptable to me. I understand that I am  
14 waiving rights given to me by the California  
15 Administrative Procedure Act, and I willingly and  
16 voluntarily waive those rights, including the right of  
17 requiring the Commissioner to prove the allegations in  
18 the Accusation at a hearing at which I would have the  
19 right to cross-examine witnesses against me and to  
20 present evidence in defense and mitigation of the  
21 charges.

22  
23 DATED:

9-13-93

  
JEROME PETER LUTZ



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

Department of Real Estate  
185 Berry Street, Room 3400  
San Francisco, CA 94107-1770

FILED  
SEP 29 1993

DEPARTMENT OF REAL ESTATE

Telephone: (415) 904-5917

By Victoria Dillon  
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H- 6875 SF
BABU W. S. MANN, )	
LEE JAY PILLOW, )	STIPULATION AND
SEALRAY FUNDERBURG, )	AGREEMENT IN
SARWAT SABET FAHMY, )	SETTLEMENT AND
JEROME PETER LUTZ, and )	ORDER
QAL AFFILIATES, INC., )	
Respondents. )	

It is hereby stipulated by and between SARWAT SABET FAHMY and QAL AFFILIATES, INC. (Respondents) only, and the Complainant, acting by and through John Van Driel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on February 16, 1993 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of

1 the Administrative Procedures Act (APA), shall instead and  
2 in place thereof be submitted solely on the basis of the  
3 provisions of this Stipulation and Agreement in Settlement.

4           2. Respondents have received, read and understand the  
5 Statement to Respondent, the Discovery Provisions of the APA  
6 and the Accusation filed by the Department of Real Estate in  
7 this proceeding.

8           3. On March 23, 1993, Respondents jointly filed a  
9 Notice of Defense pursuant to Section 11505 of the Government  
10 Code for the purpose of requesting a hearing on the allegations  
11 in the Accusation. Respondents hereby freely and voluntarily  
12 withdraw said Notice of Defense. Respondents acknowledge that  
13 they understand that by withdrawing said Notice of Defense they  
14 will thereby waive their right to require the Commissioner to  
15 prove the allegations in the Accusation at a contested hearing  
16 held in accordance with the provisions of the APA.

17           4. Respondents have read the Discovery Provisions of  
18 the APA and are aware of their right to conduct discovery in  
19 the proceeding, and by entering into this stipulation, freely  
20 and voluntarily waive their right to conduct further discovery.

21           5. For purposes of this settlement, Respondents admit  
22 and agree that the Real Estate Commissioner has jurisdiction by  
23 virtue of the allegations contained in the Accusation, and for  
24 purposes of establishing such jurisdiction, Respondents do not  
25 dispute the allegations; however, Respondents do not admit that  
26 they were aware of the acts and/or omissions of the other  
27

1 respondents or that they aided or abetted those respondents'  
2 violations of the law in any way. The Real Estate Commissioner  
3 shall not be required to provide further evidence of such  
4 allegations. Respondents' agreement that the factual  
5 allegations are undisputed is made solely for the purposes of  
6 establishing jurisdiction for the Commissioner to take  
7 disciplinary action against the license and license rights of  
8 Respondents and are made solely in reference to this proceeding  
9 and any subsequent proceeding before the Commissioner and may  
10 not be used in or as a part of any other civil action or  
11 criminal action now pending or which may be filed against  
12 Respondents pursuant to the provisions of Section 1152 of the  
13 California Evidence Code. A true copy of the Accusation is  
14 attached hereto as Annex A and incorporated herein by  
15 reference.

16           6. It is understood by the parties that the Real  
17 Estate Commissioner may adopt the Stipulation and Agreement in  
18 Settlement as his decision in this matter thereby imposing the  
19 penalty and sanctions on Respondents' real estate license and  
20 license rights as set forth in the below "Order". In the event  
21 that the Commissioner in his discretion does not adopt the  
22 Stipulation and Agreement in Settlement, it shall be void and  
23 of no effect, and Respondents shall retain the right to a  
24 hearing and proceeding on the Accusation under all the  
25 provisions of the APA and shall not be bound by any admission  
26 or waiver made herein.

27



1  
2 7. The Order or any subsequent Order of the Real  
3 Estate Commissioner made pursuant to this Stipulation and  
4 Agreement in Settlement shall not constitute an estoppel,  
5 merger or bar to any further administrative or civil  
6 proceedings by the Department of Real Estate with respect to  
7 any matters which were not specifically alleged to be causes  
8 for accusation in this proceeding.

9 DETERMINATION OF ISSUES

10 By reason of the foregoing stipulations, admissions  
11 and waivers and for the purpose of settlement of the pending  
12 Accusation without a hearing, it is stipulated and agreed that  
13 the following determination of issues shall be made:

14 I

15 The acts and/or omissions of SARWAT SABET FAHMY as  
16 alleged in the Ninth Cause of Accusation of the Accusation,  
17 constitute grounds for discipline under Section 10177(h) of the  
18 Code.

19 II

20 The acts and/or omissions of QAL AFFILIATES, INC. as  
21 alleged in the Accusation, constitute grounds for discipline  
22 under Section 10177(g) of the Code.

23 ORDER

24 A. 1. All licenses and licensing rights of Respondent FAHMY  
25 under the Real Estate Law are suspended for a period twenty  
26 (20) days from the effective date of this Decision; provided,  
27 however, that ten (10) days of said suspension shall be stayed

1 for one (1) year upon the following terms and conditions:

2 a. Respondent shall obey all laws, rules and  
3 regulations governing the rights, duties and responsibilities  
4 of a real estate licensee in the State of California; and

5 b. That no final subsequent determination be made,  
6 after hearing or upon stipulation, that cause for disciplinary  
7 action occurred within one (1) year of the effective date of  
8 this Decision. Should such a determination be made, the  
9 Commissioner may, in his discretion, vacate and set aside the  
10 stay order and reimpose all or a portion of the stayed  
11 suspension. Should no such determination be made, the  
12 stay imposed herein shall become permanent.

13 2. If Respondent petitions, ten (10) additional days of  
14 said suspension shall be stayed upon the following conditions:

15 a. Respondent pays a monetary penalty pursuant to  
16 Section 10175.2 of the Business and Professions Code at the  
17 rate of \$250 for each day of the suspension for a total  
18 monetary penalty of \$2,500.

19 b. Said payment shall be in the form of a cashier's  
20 check or certified check made payable to the Recovery Account  
21 of the Real Estate Fund. Said check must be delivered to the  
22 Department prior to the effective date of the Decision in this  
23 matter.

24 c. No further cause for disciplinary action against  
25 the real estate license of Respondent occurs within one year  
26 from the effective date of the Decision in this matter.  
27

1  
2 d. If Respondent fails to pay the monetary penalty in  
3 accordance with the terms and conditions of the Decision, the  
4 Commissioner may, without a hearing, order the immediate  
5 execution of all or any part of the ten day stayed suspension  
6 in which event the Respondent shall not be entitled to any  
7 repayment nor credit, prorated or otherwise, for money paid to  
8 the Department under the terms of this Decision.

9 e. If Respondent pays the monetary penalty and if no  
10 further cause for disciplinary action against the real  
11 estate license of Respondent occurs within one year from the  
12 effective date of the Decision, the stay hereby granted shall  
13 become permanent.

14 B. 1. All licenses and licensing rights of Respondent QAL  
15 AFFILIATES, INC. under the Real Estate Law are suspended for a  
16 period twenty (20) days from the effective date of this  
17 Decision; provided, however, that twenty (20) days of said  
18 suspension shall be stayed for one (1) year upon the following  
19 terms and conditions:

20 a. Respondent shall obey all laws, rules and  
21 regulations governing the rights, duties and responsibilities  
22 of a real estate licensee in the State of California; and

23 b. That no final subsequent determination be made,  
24 after hearing or upon stipulation, that cause for disciplinary  
25 action occurred within one (1) year of the effective date of  
26 this Decision. Should such a determination be made, the  
27

1 Commissioner may, in his discretion, vacate and set aside the  
2 stay order and reimpose all or a portion of the stayed  
3 suspension. Should no such determination be made, the  
4 stay imposed herein shall become permanent.  
5

6 DATED:

9-7-93

John Van Driel  
JOHN VAN DRIEL  
Counsel for the Complainant

9 TONE & TONE

10 DATED:

9-3-93

by Francine R. Adkins Tone  
FRANCINE R. ADKINS TONE  
Counsel for Respondents FAHMY  
AND QAL AFFILIATES, INC.

11  
12  
13  
14 I have read the Stipulation in Settlement and  
15 Agreement and its terms are understood by me and are agreeable  
16 and acceptable to me. I understand that I am waiving rights  
17 given to me by the California Administrative Procedure Act, and  
18 I willingly and voluntarily waive those rights, including the  
19 right of requiring the Commissioner to prove the allegations in  
20 the Accusation at a hearing at which I would have the  
21 right to cross-examine witnesses against me and to present  
22 evidence in defense and mitigation of the charges.

23 DATED:

Sept 3 1993

Sarwat Sabet Fahmy  
SARWAT SABET FAHMY  
QAL AFFILIATES, INC.

24  
25  
26 DATED:

Sept 3, 1993

by Robert Standen  
as the authorized officer of  
QAL AFFILIATES, INC.

President

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

DECISION AND ORDER

The foregoing Stipulation and Agreement in Settlement is  
hereby adopted as my Decision and Order and shall become effective  
at 12 o'clock noon on October 19, 1993.

IT IS SO ORDERED September 23, 1993.

CLARK WALLACE  
Real Estate Commissioner



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

**COPY**

**FILED** *Flag*  
MAY 25 1993

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

*In the Matter of the Accusation of*  
BABU W. S. MANN, LEE JAY PILLOW,  
SEALRAY FUNDERBURG, SARWAT SABET  
FAHMY, JEROME PETER LUTZ and  
QAL AFFILIATES, INC.,

}

By *Victoria Dillon*  
Victoria Dillon

Case No. H-6875 SF

OAH No. N 42943

*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

455 Golden Gate Ave., Room 2248, San Francisco, CA 94102

on September 7, 8 and 9, 1993 (3 Days Hearing), at the hour of 9:00 a.m.,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. 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: May 25, 1993

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

COPY

*Blog  
Sac  
k2*

FILED  
MAR 08 1993

DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*  
Victoria Dillon

1

2

3

4

5

6

7

8

BEFORE THE DEPARTMENT OF REAL ESTATE

9

STATE OF CALIFORNIA

10

\* \* \*

11 In the Matter of the Accusation of )

12 BABU W. S. MANN, )

No. H- 6875 SF

13 LEE JAY PILLOW, )

14 SEALRAY FUNDERBURG, )

15 SARWAT SABET FAHMY, )

16 JEROME PETER LUTZ, and )

17 QAL AFFILIATES, INC., )

18 Respondents. )

19 \_\_\_\_\_ )

20 \_\_\_\_\_ )

21 ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

22 TO: BABU W. S. MANN:

23 On December 5, 1988, a real estate salesperson license  
24 was issued to Respondent by the Department of Real Estate.

25 Effective September 9, 1990, Respondent's salesperson license was  
26 revoked with the right to a restricted salesperson license in  
27 Department case number H-6239 SF for violations of Sections 480  
28 and 10177(a), (d), (f), and (k) of the California Business and  
29 Professions Code (Code). On September 19, 1990 Respondent applied

30 ///

31 ///

1 license, as set out in paragraph 3.B. of the Commissioner's Order  
2 granting the right to the restricted license, states that:

3 "The restricted license issued to Respondent may be  
4 suspended prior to hearing by Order of the Real Estate  
5 Commissioner on evidence satisfactory to the  
6 Commissioner that Respondent has violated provisions of  
7 the California Real Estate Law, the Subdivided Lands  
8 Law, Regulations of the Real Estate Commissioner or  
9 conditions attaching to the restricted license."

10 On February 16, 1993, an Accusation was filed against  
11 Respondent for violations of Sections 10176(a), (c), and (i) of  
12 the Code in Case Number H-6875 SF.

13 NOW, THEREFORE, IT IS ORDERED under authority of Section  
14 10156.7 of the Business and Professions Code of the State of  
15 California that the restricted real estate salesperson license  
16 heretofore issued to Respondent and the exercise of any privileges  
17 thereunder is hereby suspended pending final determination made  
18 after the hearing on the aforesaid Accusation.

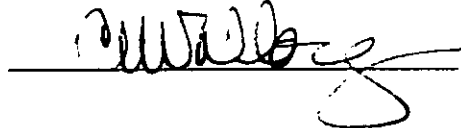
19 IT IS FURTHER ORDERED that all license certificates and  
20 identification cards issued by the Department of Real Estate which  
21 are in the possession of Respondent be immediately surrendered by  
22 personal delivery or by mailing in the enclosed self-addressed  
23 envelope to:

24 DEPARTMENT OF REAL ESTATE  
25 ATTN: Flag Section  
26 P. O. Box 187000  
27 Sacramento, CA 95818-7000

This Order shall be effective immediately.

DATED: \_\_\_\_\_ 3/4 \_\_\_\_\_, 1993.

24 CLARK WALLACE  
25 Real Estate Commissioner

26   
27



JOHN VAN DRIEL, Counsel  
Department of Real Estate  
185 Berry Street, Room 3400  
San Francisco, CA 94107-1770

Telephone: (415) 904-5917

FILED  
FEB 16 1993

DEPARTMENT OF REAL ESTATE

By Victoria Dillon  
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-6875 SF
)	)
BABU W. S. MANN, )	<u>ACCUSATION</u>
LEE JAY PILLOW, )	)
SEALRAY FUNDERBURG, )	)
SARWAT SABET FAHMY, )	)
JEROME PETER LUTZ, and )	)
QAL AFFILIATES, INC., )	)
)	)
Respondents. )	)

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BABU W. S. MANN, LEE JAY PILLOW, SEALRAY FUNDERBURG, SARWAT SABET FAHMY, JEROME PETER LUTZ and QAL AFFILIATES, INC., Respondents, is informed and alleges as follows:

INTRODUCTORY PARAGRAPHS

1

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

///

1 BABU W. S. MANN (MANN), LEE JAY PILLOW (PILLOW), SEALRAY  
2 FUNDERBURG (FUNDERBURG), SARWAT SABET FAHMY (FAHMY), JEROME PETER  
3 LUTZ (LUTZ), and QAL AFFILIATES, INC. (QAL) are presently licensed  
4 and/or have license rights under the Real Estate Law (Part 1 of  
5 Division 4 of the Business and Professions Code) (Code).

7 At all times mentioned herein MANN was licensed by the  
8 Department of Real Estate of the State of California (Department)  
9 as a real estate salesperson employed by QAL. A restricted real  
10 estate salesperson license was issued to MANN on September 19,  
11 1990.

13 At all times mentioned herein PILLOW and FUNDERBURG were  
14 licensed by the Department as real estate salespersons employed by  
15 QAL.

17 At all times mentioned herein LUTZ was licensed by the  
18 Department as a real estate salesperson and was employed as the  
19 sales manager of QAL. As the sales manager, he was responsible,  
20 pursuant to agreement with FAHMY, for the day to day supervision  
21 of QAL's sales agents and for reviewing, initialing and dating  
22 appropriate documents in sale files as provided by Section 2725(a)  
23 of Title 10, California Code of Regulations.

24 ///

25 ///

26 ///

27

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

At all times mentioned herein FAHMY was licensed by the Department as a real estate broker in his individual capacity and as the designated officer of QAL. As the designated officer of QAL, FAHMY was responsible for the supervision and control of the activities conducted on behalf of QAL by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

7

At all times mentioned herein QAL was licensed by the Department as a real estate corporation, doing business as Century 21 Quimby Square, through FAHMY as its designated officer.

8

At all times mentioned herein, QAL engaged in the business of, acted in the capacity of, advertised and assumed to act as a real estate broker within the State of California.

9

Each of the respondents at various times (as alleged herein) participated in and contributed to the unlawful acts and scheme complained of herein, and, except as otherwise set forth, whenever reference is made to any act of a particular respondent with reference to a specific cause of Accusation, such reference shall be deemed to mean the acts of each respondent named in the cause of Accusation acting individually, jointly and severally.

///  
///  
///  
///

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

Described below are certain transactions involving the purchase and sale of various parcels of real property and the obtaining of loans secured by liens on those properties. Beginning in approximately February 1990, respondents and/or respondents' confederates entered into a plan and scheme with reference to said transactions, as fully set forth below, with the intent to substantially benefit themselves or others without regard to the injury their acts would cause to various lenders named hereunder and without disclosing to those lenders the true facts and their true intentions with respect to the transactions described in the causes of Accusation which follow.

11

As a part of said plan and scheme, respondent MANN, as an employee of QAL, acted as the listing or selling agent in real property sale transactions for or in expectation of compensation.

12

In furtherance of the plan and scheme described above, MANN advised or otherwise caused sellers and/or buyers to do one or more of the following:

a) to agree to and sign a purchase contract using an artificially inflated price as the purchase price;

///  
///  
///  
///  
///

1 b) to agree to cash credits from seller to buyer and/or  
2 seller carry-back financing as described in an addendum to the  
3 purchase contract; and

4 c) to apply for a purchase money loan from the lender  
5 based on the inflated price without disclosing the terms of the  
6 addendum to the lender.

7 13

8 MANN did the above mentioned acts and/or omissions with  
9 the intent to induce each lender to fund the loan applied for; and  
10 he did so with the knowledge or belief that the lender would not  
11 have approved or funded the loan if it had known of the true  
12 financing terms of the transaction as set out in the addendum.

13 14

14 In connection with the transactions set out below, LUTZ  
15 aided and abetted the acts and/or omissions of MANN by either  
16 failing to review the files or by reviewing the files on those  
17 transactions and failing to warn either FAHMY or the various  
18 lenders in those transactions of the existence and possible  
19 purpose of the addenda to the original purchase contracts.

20 15

21 In connection with the transactions set out below, FAHMY  
22 aided and abetted the acts and/or omissions of MANN by failing to  
23 review the files or by reviewing the files on those transactions  
24 and failing to warn the various lenders in those transactions of  
25 the existence and possible purpose of the addenda to the original  
26 purchase contracts.

27 ///

///

FIRST CAUSE OF ACCUSATION

(60 Muirfield Drive)

16

The allegations of paragraphs 1 through 15 are incorporated herein.

17

In approximately February 1990 Leonard Cravens listed his property at 60 Muirfield Drive, San Jose, CA with PILLOW, as an agent of QAL, for an asking price of \$99,500.

18

In April 1990 PILLOW, through MANN as his agent, made an offer to buy Cravens' property for \$99,000. PILLOW acted as both the listing agent and the buyer in this transaction. PILLOW's offer was accepted and the purchase contract prepared by MANN stated that PILLOW would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

19

At or about the time that MANN prepared PILLOW's offer to Cravens, MANN also proposed an alternate financing plan which consisted of a written addendum to the purchase contract which stated that the purchase price of Cravens' property was \$87,360 and that PILLOW would put \$8,160 cash down toward the purchase price and an additional oral agreement that Cravens would credit approximately \$11,500 to PILLOW in escrow and take back a second

///  
///  
///

1 loan of approximately \$2,000. The parties agreed to the alternate  
2 financing proposal as set out above.

3 20

4 In furtherance of the plan and scheme to purchase  
5 Cravens' property, PILLOW, with the assistance of MANN, applied to  
6 American Savings for a purchase money loan based on a \$99,000  
7 purchase price without disclosing the alternate financing  
8 agreement described above.

9 21

10 In connection with PILLOW's loan application and in  
11 furtherance of the plan and scheme described above, PILLOW and  
12 MANN falsely represented to American Savings that the purchase  
13 contract submitted to American contained the true and complete  
14 terms of the transaction.

15 22

16 Prior to the close of escrow for the 60 Muirfield Drive  
17 transaction, MANN made a cash deposit of \$8,000 of his own funds  
18 into escrow on behalf of PILLOW, which was also undisclosed to  
19 American.

20 23

21 In reliance on the representations set out in paragraph  
22 21, American Savings made a loan to PILLOW in the amount of  
23 \$79,200 on or about May 4, 1990.

24 24

25 The acts and/or omissions of MANN and PILLOW, as set out  
26 above, are grounds for discipline under the provisions of Section  
27 10176(a), (c) and (i) of the Code.

///  
///

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

The acts and/or omissions of LUTZ, FAHMY and QAL, as set out above, are grounds for discipline under the provisions of Section 10176(a), (c) and (i) of the Code or, in the alternative, Section 10177(g) of the Code.

SECOND CAUSE OF ACCUSATION

(295 Monticello)

The allegations of paragraphs 1 through 15 are incorporated herein.

In approximately March 1990 Julie Villapando listed her property at 295 Monticello, San Jose, CA with MANN, as an agent of QAL, for an asking price of \$233,500.

In April 1990 MANN brought an offer from Patricia French to buy Villapando's property for \$235,000. French's offer was accepted and the purchase contract prepared by MANN stated that French would finance the purchase with a 20% cash down payment and an 80% new loan to be secured by the property.

At or about the time that MANN prepared French's offer to Villapando, MANN also prepared an addendum to the purchase contract stating that Villapando would give French a cash credit

///  
///



1 in escrow of \$7,000 and would carry back a second loan of \$23,500.  
2 The parties signed the addendum.

3 30

4 In furtherance of the plan and scheme to purchase  
5 Villapando's property, French, with the assistance of MANN,  
6 applied to Home Savings for a purchase money loan based on a  
7 \$235,000 purchase price without disclosing the existence or terms  
8 of the addendum.

9 31

10 In connection with French's loan application and in  
11 furtherance of the plan and scheme described above, French and  
12 MANN falsely represented to Home Savings that the purchase  
13 contract submitted to Home contained the true and complete terms  
14 of the transaction.

15 32

16 After applying for a purchase money loan on the  
17 property, it was determined that French could not qualify for the  
18 loan under the guidelines established by Home Savings. MANN  
19 caused one of his associate agents, FUNDERBURG, to substitute into  
20 the transaction as the buyer and apply for a loan from Home  
21 Savings based on the \$235,000 sale price shown on the purchase  
22 contract. A new purchase contract was prepared by MANN showing  
23 FUNDERBURG as the buyer with the purchase price and financing  
24 terms identical with the earlier French purchase contract.

25  
26 ///

27 ///

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

In connection with FUNDERBURG's loan application and in furtherance of the plan and scheme described above, FUNDERBURG and MANN also falsely represented to Home Savings that the FUNDERBURG purchase contract submitted to Home contained the true and complete terms of the transaction.

The representation of FUNDERBURG as the buyer, of the purchase price, and of the financing of the purchase price as set forth in the purchase contract was false and was intended to induce Home Savings to make a purchase money loan to French or FUNDERBURG in excess of the amount that would have been required for the actual purchase price of the property. The terms of the addendum were not disclosed to Home Savings.

In reliance on the representations set out in paragraph 33, Home Savings made a loan to FUNDERBURG in the amount of \$188,000.

After close of escrow for the purchase of Villapando's property, French, with the knowledge and consent of FUNDERBURG, took possession of the property and made payments on both the first and second loans and the taxes and insurance on the property.

///  
///  
///

1 The acts and/or omissions of MANN and FUNDERBURG, as set  
2 out above, are grounds for discipline under the provisions of  
3 Section 10176(a), (c) and (i) of the Code.

5 The acts and/or omissions of LUTZ, FAHMY and QAL, as set  
6 out above, are grounds for discipline under the provisions of  
7 Section 10176(a), (c) and (i) of the Code or, in the alternative,  
8 Section 10177(g) of the Code.

9 THIRD CAUSE OF ACCUSATION

10 (2991 Davidwood Way)

12 The allegations of paragraphs 1 through 15 are  
13 incorporated herein.

15 In approximately April 1990 Rose Gonzales listed her  
16 property at 2991 Davidwood Way, San Jose, CA with MANN, as an  
17 agent of QAL, for an asking price of \$299,000.

19 In May 1990 MANN brought an offer from Dan Briones to  
20 buy Gonzales' property for \$325,000. Briones' offer was accepted  
21 and the purchase contract prepared by MANN stated that Briones  
22 would finance the purchase with a 20% cash down payment and an 80%  
23 new loan to be secured by the property.

24 ///

25 ///

26 ///

27

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

At or about the time that MANN prepared Briones' offer to Gonzales, MANN also proposed to Gonzales and Briones an alternate financing plan for Briones' purchase which contemplated an actual purchase price of \$265,000 and a \$65,000 credit in escrow to a "miscellaneous account", which credit would be paid to or for the benefit of MANN and/or Briones. The parties agreed to the alternate plan.

In furtherance of the plan and scheme to purchase Gonzales' property, Briones, with the assistance of MANN, applied to American Savings for a purchase money loan based on a \$325,000 purchase price without disclosing to American the alternate financing plan described above.

In connection with Briones' loan application and in furtherance of the plan and scheme described above, Briones and MANN falsely represented to American Savings that the purchase contract submitted to American contained the true and complete terms of the transaction.

In reliance on the representations set out in paragraph 44, American Savings made a loan to Briones in the amount of \$260,000 on or about June 8, 1990.

///  
///  
///  
///

1 The acts and/or omissions of MANN, as set out above, are  
2 grounds for discipline under the provisions of Section 10176(a),  
3 (c) and (i) of the Code.

5 The acts and/or omissions of LUTZ, FAHMY and QAL, as set  
6 out above, are grounds for discipline under the provisions of  
7 Section 10176(a), (c) and (i) of the Code or, in the alternative,  
8 Section 10177(g) of the Code.

9 FOURTH CAUSE OF ACCUSATION

10 (3529 Squirecreek)

12 The allegations of paragraphs 1 through 15 are  
13 incorporated herein.

15 In approximately February 1990 Maurice Hyder's property  
16 at 3529 Squirecreek, San Jose, CA was listed with Taroub Rusnak,  
17 as an agent of QAL, for an asking price of \$185,000.

19 In July 1990 Santanu Roy, through MANN as his agent,  
20 made an offer to buy Hyder's property for \$175,000. Roy's offer  
21 was accepted and the purchase contract prepared by MANN stated  
22 that Roy would finance the purchase with a 20% cash down payment  
23 and an 80% new loan to be secured by the property.

24 ///

25 ///

26 ///

27 ///

1 At or about the time that MANN prepared Roy's offer to  
2 Hyder, MANN also prepared an addendum to the purchase contract  
3 stating that Hyder would carry back a second loan of \$35,000. The  
4 parties signed the addendum.

6 In furtherance of the plan and scheme to purchase  
7 Hyder's property, Roy, with the assistance of MANN, applied to  
8 American Savings for a purchase money loan based on a \$175,000  
9 purchase price without disclosing the existence or terms of the  
10 addendum to American.

11 In connection with Roy's loan application and in  
12 furtherance of the plan and scheme described above, Roy and MANN  
13 falsely represented to American Savings that the purchase contract  
14 submitted to American contained the complete and true terms of the  
15 transaction.  
16

17 In reliance on the representations set out in paragraph  
18 53, American Savings made a loan to Roy in the amount of \$140,000  
19 on or about August 10, 1990.  
20

21 The acts and/or omissions of MANN, as set out above, are  
22 grounds for discipline under the provisions of Section 10176(a),  
23 (c) and (i) of the Code.  
24

25 ///

26 ///

27 ///

1 The acts and/or omissions of LUTZ, FAHMY and QAL, as set  
2 out above, are grounds for discipline under the provisions of  
3 Section 10176(a), (c) and (i) of the Code or, in the alternative,  
4 Section 10177(g) of the Code.

5 FIFTH CAUSE OF ACCUSATION

6 (2446 Arden Way)

8 The allegations of paragraphs 1 through 15 are  
9 incorporated herein.

11 In approximately May 1990 Thomas Novak listed his  
12 property at 2446 Arden Way, San Jose, CA with Kyong Kim, an agent  
13 of QAL, for an asking price of \$199,000.

15 In approximately August 1990 Prem Kaur, through MANN as  
16 her agent, made an offer to buy Novak's property for \$215,000.  
17 Kaur's offer was accepted and the purchase contract prepared by  
18 MANN stated that Kaur would finance the purchase with a 20% cash  
19 down payment and an 80% new loan to be secured by the property.

21 At or about the time that MANN prepared Kaur's offer to  
22 Novak, MANN also proposed an alternate plan to finance Kaur's  
23 purchase of the property, consisting of a written addendum stating

24 ///  
25 ///  
26 ///  
27 ///

1 that Novak would carry back a second loan of \$29,000 and an oral  
2 agreement that Novak would credit Kaur with \$5,000 in escrow and  
3 that MANN would pay Novak \$11,000 outside of escrow. The parties  
4 agreed to the alternate financing proposal.

5 61

6 In furtherance of the plan and scheme to purchase  
7 Novak's property, Kaur, with the assistance of MANN, applied to  
8 American Savings for a purchase money loan based on a \$215,000  
9 purchase price without disclosing the existence or terms of the  
10 addendum or the oral agreement to American.

11 62

12 In connection with Kaur's loan application and in  
13 furtherance of the plan and scheme described above, Kaur and MANN  
14 falsely represented to American Savings that the purchase contract  
15 submitted to American contained the true and complete terms of the  
16 transaction.

17 63

18 In reliance on the representations set out in paragraph  
19 62, American Savings made a loan to Kaur in the amount of \$155,000  
20 on or about August 29, 1990.

21 64

22 In connection with the 2446 Arden Way transaction, MANN  
23 made a cash payment to Novak outside of escrow of \$11,000 of his  
24 own funds.

25 ///

26 ///

27 ///

///



1           The acts and/or omissions of MANN, as set out above, are  
2 grounds for discipline under the provisions of Section 10176(a),  
3 (c) and (i) of the Code.

4           The acts and/or omissions of LUTZ, FAHMY and QAL, as set  
5 out above, are grounds for discipline under the provisions of  
6 Section 10176(a), (c) and (i) of the Code or, in the alternative,  
7 Section 10177(g) of the Code.  
8

9                           SIXTH CAUSE OF ACCUSATION

10                           (3321 Americus Drive)

11           The allegations of paragraphs 1 through 15 are  
12 incorporated herein.  
13

14           In approximately July 1990 Christopher Heavens listed  
15 his property at 3321 Americus Drive, San Jose, CA with MANN, as an  
16 agent of QAL, for the asking price of \$344,876.  
17

18           In approximately August 1990 Harpaul Nagra, through MANN  
19 as his agent, made an offer to buy Heavens' property for \$415,000.  
20 Nagra's offer was accepted and the purchase contract prepared by  
21 MANN stated that Nagra would finance the purchase with a 20% cash  
22 down payment and an 80% new loan to be secured by the property.  
23

24    ///

25    ///

26    ///

27    ///

1           At or about the time that MANN prepared Nagra's offer to  
2 Heavens, MANN also prepared an addendum to the purchase contract  
3 stating that the purchase price was \$318,000 and that all  
4 additional costs and fees beyond \$318,000 would be credited to  
5 Nagra for remodeling. The parties signed the addendum.

7           In furtherance of the plan and scheme to purchase  
8 Heavens' property, Nagra, with the assistance of MANN, applied to  
9 World Savings for a purchase money loan based on a \$415,000  
10 purchase price without disclosing the existence or terms of the  
11 addendum to World.

13           In connection with Nagra's loan application and in  
14 furtherance of the plan and scheme described above, Nagra and MANN  
15 falsely represented to World Savings that the purchase contract  
16 submitted to World contained the true and complete terms of the  
17 transaction.

19           In reliance on the representations set out in paragraph  
20 72, World Savings made a loan to Nagra in the amount of \$332,000  
21 on or about August 30, 1990.

23           The acts and/or omissions of MANN, as set out above, are  
24 grounds for discipline under the provisions of Section 10176(a),  
25 (c) and (i) of the Code.

26 ///

27 ///

1 The acts and/or omissions of LUTZ, FAHMY and QAL, as set  
2 out above, are grounds for discipline under the provisions of  
3 Section 10176(a), (c) and (i) of the Code or, in the alternative,  
4 Section 10177(g) of the Code.

5 SEVENTH CAUSE OF ACCUSATION

6 (2166 Flint Avenue)

7 76

8 The allegations of paragraphs 1 through 15 are  
9 incorporated herein.

10 77

11 In approximately May 1990 Yvonne Chappell listed her  
12 property at 3529 Squirecreek, San Jose, CA with Larry Bishop, as  
13 an agent of QAL, for an asking price of \$295,000.

14 78

15 In June 1990 Armando Terrazas, through MANN as his  
16 agent, made an offer to buy Chappell's property for \$260,000.  
17 After a counter-offer by Chappell, the parties agreed on a  
18 purchase price of \$270,000. The purchase contract prepared by  
19 MANN stated that Terrazas would finance the purchase with a 20%  
20 cash down payment and an 80% new loan to be secured by the  
21 property.

22 79

23 At or about the time that MANN prepared Terrazas' offer  
24 to Chappell, MANN also prepared an addendum to the purchase

25 ///

26 ///

27 ///

1 contract stating that Chappell would carry back a second loan of  
2 \$27,000. The parties signed the addendum.

3 80

4 In furtherance of the plan and scheme to purchase  
5 Chappell's property, Terrazas, with the assistance of MANN,  
6 applied to American Savings for a purchase money loan based on a  
7 \$270,000 purchase price without disclosing the existence or terms  
8 of the addendum to American.

9 81

10 In connection with Terrazas' loan application and in  
11 furtherance of the plan and scheme described above, Terrazas and  
12 MANN falsely represented to American Savings that the purchase  
13 contract submitted to American contained the true and complete  
14 terms of the transaction.

15 82

16 In reliance on the representations set out in paragraph  
17 81, American Savings made a loan to Roy in the amount of \$216,000  
18 on or about July 20, 1990.

19 83

20 The acts and/or omissions of MANN, as set out above, are  
21 grounds for discipline under the provisions of Section 10176(a),  
22 (c) and (i) of the Code.

23 84

24 The acts and/or omissions of LUTZ, FAHMY and QAL, as set  
25 out above, are grounds for discipline under the provisions of

26 ///

27 ///

///

1 Section 10176(a), (c) and (i) of the Code or, in the alternative,  
2 Section 10177(g) of the Code.

3 EIGHTH CAUSE OF ACCUSATION

4 (3130 Allenwood)

5 85

6 The allegations of paragraphs 1 through 15 are  
7 incorporated herein.

8 86

9 In July 1990 Dinker Bir was the owner of the property  
10 known as 3130 Allenwood, San Jose, CA.

11 87

12 In July 1990 Dan Briones, through MANN as his agent,  
13 made an offer to buy Bir's property for \$385,000. Briones' offer  
14 was accepted and the purchase contract prepared by MANN stated  
15 that Briones would finance the purchase with a 20% cash down  
16 payment and an 80% new loan to be secured by the property.

17 88

18 At or about the time that MANN prepared Briones' offer  
19 to Bir, MANN also proposed an alternate financing plan for  
20 Briones' purchase of the property, consisting of an \$84,000 credit  
21 to be given from Bir to Briones in escrow, \$17,000 of which was  
22 carry back financing by Bir. The parties agreed to the alternate  
23 financing plan.

24 89

25 In furtherance of the plan and scheme to purchase  
26 Bir's property, Briones, with the assistance of MANN, applied to  
27

///  
///

///

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

World Savings for a purchase money loan based on a \$385,000 purchase price without disclosing the existence or terms of the alternate financing agreement to World.

90

In connection with Briones' loan application and in furtherance of the plan and scheme described above, Briones and MANN falsely represented to World Savings that the purchase contract submitted to World contained the true and complete terms of the transaction.

91

In reliance on the representations set out in paragraph 90, World Savings made a loan to Briones in the amount of \$308,000 in August 1990.

92

Prior to the close of escrow in the 3130 Allenwood transaction, MANN, without the knowledge or consent of FAHMY, instructed Fidelity National Title Insurance Company to pay his share of the commission or his fees earned in the transaction directly to him and not to his broker QAL. MANN was not authorized to request or receive direct payment of a commission in this transaction. MANN received his fees or commission for this transaction directly from Fidelity rather than through QAL.

93

The acts and/or omissions of MANN, as set out above, are

///  
///  
///

1 grounds for discipline under the provisions of Sections 10137 and  
2 10176(a), (c) and (i) of the Code.

3 NINTH CAUSE OF ACCUSATION

4 94

5 The allegations of paragraphs 1 through 84 are  
6 incorporated herein.

7 95

8 FAHMY was the designated officer of QAL Affiliates, Inc.  
9 during the time of the transactions set out above and was  
10 responsible under Section 10159.2 of the Code for the supervision  
11 and control of the activities conducted by the corporation, its  
12 officers and employees to secure full compliance with the Real  
13 Estate Law during that period. As an alternative to the specific  
14 allegations against FAHMY in the First through Seventh causes of  
15 Accusation, FAHMY was negligent or incompetent in the performance  
16 of the above responsibilities, and/or failed to exercise  
17 reasonable supervision and control of the activities of the  
18 company and it's employees, in that he knew or should have known  
19 all of the facts alleged above (with the exception of the 3130  
20 Allenwood transaction) and could and should have taken steps to  
21 assure the corporation's employee's compliance with the Real  
22 Estate Law.

23 96

24 The acts and/or omissions of FAHMY, as set out in  
25 Paragraph 94 and 95 are grounds for discipline under Section  
26 10177(g) and/or (h) of the Code.

27 ///

///

PRIOR DISCIPLINE

97

1  
2 Effective September 9, 1990, in Accusation No. H-6239  
3 SF, the Real Estate Commissioner ordered MANN's real estate  
4 salesperson license revoked and granted him the right to apply for  
5 a restricted salesperson license for a violation of Code Section  
6 10177(f).

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

14  
15 *Edward V. Chio*

16 EDWARD V. CHIOLO  
17 Deputy Real Estate Commissioner

18 Dated at San Francisco, California

19 this 16<sup>th</sup> day of FEBRUARY, 19 93.