

FILED
DEC 20 1996
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
GIANFRANCO AMADEO MARCHESIELLO,	)	No. H-7048 SF
BRIAN MAXWELL FABIAN, et al.	)	OAH No. N-9404125
Respondents.	)	

ORDER DENYING RECONSIDERATION

On October 29, 1996, a Decision was rendered in the above-entitled matter. The Decision as to Respondents GIANFRANCO AMADEO MARCHESIELLO and BRIAN MAXWELL FABIAN only is to become effective December 26, 1996.

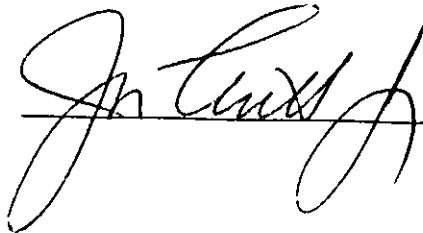
On or about November 18, 1996, Respondent BRIAN MAXWELL FABIAN petitioned for reconsideration of the Decision of October 29, 1996. On or about November 25, 1996, Respondent GIANFRANCO AMADEO MARCHESIELLO petitioned for reconsideration of the Decision of October 29, 1996.

I have given due consideration to the petition of Respondents. I find no good cause to reconsider the Order of October 29, 1996 and reconsideration is hereby denied.

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IT IS HEREBY ORDERED 12/19, 1996.

JIM ANTT, JR.
Real Estate Commissioner



FILED
NOV 25 1996

DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

10 In the Matter of the Accusation of)
11 GIANFRANCO AMEDEO MARCHESIELLO,) NO. H-7048 SF
12 BRIAN MAXWELL FABIAN, et al.) OAH NO. N-9404125
13 Respondents.)

14 ORDER STAYING EFFECTIVE DATE

15 On October 29, 1996, a Decision was rendered in the
16 above-entitled matter to become effective November 26, 1996.

17 IT IS HEREBY ORDERED that the effective date of the
18 Decision of October 29, 1996 as to Respondents GIANFRANCO AMEDEO
19 MARCHESIELLO and BRIAN MAXWELL FABIAN only is stayed for a period
20 of thirty (30) days.

21 The Decision of October 29, 1996 as to Respondents
22 GIANFRANCO AMEDEO MARCHESIELLO and BRIAN MAXWELL FABIAN only shall
23 become effective at 12 o'clock noon on December 26, 1996.

24 DATED: Nov. 25, 1996

25 JIM ANTT, JR.
26 Real Estate Commissioner

27 Jim R. Liberator

COPY

FILED
OCT 30 1996

DEPARTMENT OF REAL ESTATE

By *Lauriel Zain*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
GIANFRANCO AMEDEO MARCHESIELLO,)
JACQUIN MC ILVAINE,)
BRIAN MAXWELL FABIAN, and)
JOHN CONRAD DOHN,)
)
Respondents.)

No. H-7048 SF

OAH No. N 9404125

DECISION

The Proposed Decision dated September 19, 1996,
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 November 26th, 1996.

IT IS SO ORDERED 10/29, 1996.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of	)	Case No. H-7048 SF
	)	
GIANFRANCO AMEDEO MARCHESIELLO,	)	OAH No. N9404125
JACQUIN MC ILVAINE,	)	
BRIAN MAXWELL FABIAN, and	)	
JOHN CONRAD DOHN,	)	
	)	
Respondents.	)	

PROPOSED DECISION

This matter was heard at Oakland, California, on March 7 and 8, and October 31, 1995, by Jerry Mitchell, Administrative Law Judge of the Office of Administrative Hearings. The Department of Real Estate was represented by John Van Driel, Counsel. Respondents represented themselves. At Mr. Van Driel's request, the record was held open indefinitely for the preparation of transcripts and submission by him of a written closing argument. His written closing argument was received on July 1, 1996, at which time respondents were given until August 28, 1996 to submit theirs. Written closing arguments by respondents Marchesiello and Fabian were received by August 28, 1996, at which time the record was closed and the matter deemed submitted.

FINDINGS OF FACT

1. The accusation was made by Les R. Bettancourt in his official capacity as a Deputy Real Estate Commissioner of the State of California, and filed on March 14, 1994.

2. Respondents Gianfranco Amedeo Marchesiello, Jacquin McIlvaine, Brian Maxwell Fabian and John Conrad Dohn (hereafter respondents Marchesiello, McIlvaine, Fabian and Dohn, respectively) are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code).

3. At all times mentioned herein, respondent Marchesiello was licensed by the Department of Real Estate (hereafter the Department) as a real estate broker.

4. At all times mentioned herein, respondent McIlvaine was licensed by the Department, under a restricted license, as a real estate salesperson. At no time mentioned herein was she licensed under respondent Marchesiello or any other broker.

5. Respondent Fabian did not become licensed under the Real Estate Law until January 12, 1993, when he was licensed by the Department, under a conditional license, as a real estate salesperson.

6. Respondent Dohn did not become licensed under the Real Estate Law until August 12, 1992, when he was licensed by the Department as a real estate salesperson.

7. The three-year limitation set forth in Section 10101 of the Code, and laches (inferentially) have been raised as defenses. The three-year limitation has been applied to exclude conduct that occurred more than three years before the accusation was filed from consideration herein. The defense of laches has been considered and found not to apply.

8. All of the matters hereinafter described occurred in California during the period June 1991 through 1992.

9. Respondent Marchesiello conducted a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others, for or in expectation of compensation. In connection therewith, said respondent:

a. Employed and/or compensated respondents McIlvain and Fabian for performing activities for which a real estate license was required, to wit: soliciting and/or negotiating real estate loans, when McIlvain was not licensed under respondent Marchesiello or any other broker, and before respondent Fabian became licensed under the Real Estate Law.

b. Charged and collected an advance fee without having previously submitted to the Real Estate Commissioner the form of advance fee agreement proposed for use.

c. Failed to deposit such fee, which was a trust fund, into a real estate broker trust account or otherwise deal with it as required by Section 10146 of the Code.

d. Used the fictitious business names United Federal Company or Corporation (hereafter UFC) and/or Greater American Mortgage (GAM) when those names were not registered as fictitious business names on the Department's records.

e. Failed to provide to borrowers the borrower disclosure statement required to be given by Section 10240 of the Code.

10. It was alleged and proved that "[i]n approximately June 1991, Jose L. Medina (Medina) applied for a loan from United Savings Bank (lender). The loan was to be secured by the real property Medina was purchasing, which was located at 740 7th Street, Richmond, CA. McIlvaine, on behalf of UFC, acted as Medina's agent in soliciting the lender and negotiating the loan." Respondent McIlvaine was not licensed under respondent Marchesiello or any other broker at the time.

11. It was alleged that "[i]n connection with the Medina loan, one or more of the respondents participated in a plan and scheme to defraud the lender by advising Medina how to obtain a false 'gift letter'" and "[p]ursuant to the plan and scheme, McIlvaine and Fabian arranged a loan to Medina from Helen Davis and/or George Turkmany." However, that allegation was withdrawn in the following exchange between respondent Marchesiello and complainant's counsel, which appears on pages 195 and 196 of the reporter's transcript for March 7, 1995:

Mr. Marchesiello: Your Honor, does [Mr. Van Driel's withdrawal of his exhibit 11] stipulate that the gift funds are withdrawn as well, the question of the gift letter?

Mr. Van Driel: Right. It is out, right....

12. Although not alleged, it was proved that in connection with the Medina loan, respondent McIlvaine caused a false employment verification to be submitted to the lender. Although it may not be considered as a separate ground for discipline because it was not alleged, such conduct by McIlvaine may and will be considered in aggravation.

13. Respondent Fabian engaged in the activities described in Finding 9a on behalf of borrowers or lenders, for or in expectation of compensation before he became licensed under the Real Estate Law.

14. On July 5, 1991, respondent Fabian took a loan application from prospective borrowers Hershel and Maria Manson on which the space to describe "other income" had been correctly left blank. When the application was subsequently submitted to a prospective lender, however, the space had been filled in, without the Mansons' knowledge or consent, to falsely indicate that they had other income of \$1,000 a month, and the application was accompanied by falsified documents purporting to verify that nonexistent income. When Mr. Manson learned about the false

entry and documents and asked respondent Fabian about them, said respondent replied "I have to be candid with you, I did it so you would qualify for the loan."

15. The evidence did not establish that before becoming licensed under the Real Estate Law, respondent Dohn performed any activities for which a real estate license was required.

DETERMINATION OF ISSUES

1. The facts set forth in Finding 9a constitute violation by respondent Marchesiello of Section 10137 of the Code, and establish cause under that section to suspend or revoke his license.

2. The facts set forth in Finding 9b constitute violation by respondent Marchesiello of Section 2970 of Title 10, California Code of Regulations (hereafter the Regulations), and establish cause under Section 10177(d) of the Code to suspend or revoke his license.

3. The facts set forth in Finding 9c constitute violation by respondent Marchesiello of Section 10146 of the Code, and establish cause under Section 10177(d) of the Code to suspend or revoke his license.

4. The facts set forth in Finding 9d constitute violation by respondent Marchesiello of Section 2731 of the Regulations, and establish cause under Section 10177(d) of the Code to suspend or revoke his license.

5. The facts set forth in Finding 9e constitute violation by respondent Marchesiello of Section 10240 of the Code, and establish cause under Section 10177(d) of the Code to suspend or revoke his license.

6. The facts set forth in Finding 10 constitute violation by respondent McIlvaine of Section 10137 of the Code, and establish cause under that section to suspend or revoke her license.

7. The allegation that respondent McIlvain violated Section 10176(i) or 10177(j) of the Code was based entirely upon the allegations that were withdrawn, as set forth in Finding 11. Therefore, the allegation that she violated those code sections must be considered either withdrawn, as well, or not proved.

8. The facts set forth in Finding 13 constitute violation by respondent Fabian of Section 10130 of the Code, and establish cause under Section 10177(d) of the Code to suspend or revoke his license.

9. The facts set forth in Finding 14 constitute fraud and/or dishonest dealing by respondent Fabian, and establish cause under Section 10177(j) of the Code to suspend or revoke his license.

10. The evidence did not establish any violation by, or cause for disciplinary action against, respondent Dohn.

ORDER

John Conrad Dohn

1. The accusation is dismissed as to respondent John Conrad Dohn.

Jacquine McIlvaine

2. All licenses and license rights of respondent Jacquin McIlvain under the Real Estate Law are revoked.

Brian Maxwell Fabian

3. All licenses and license rights of respondent Brian Maxwell Fabian under the Real Estate Law are revoked.

Gianfranco Amadeo Marchesiello

4. The real estate broker's license of respondent Gianfranco Amedeo Marchesiello is revoked; provided, however, a restricted real estate broker license shall be issued to said 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 not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

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

DATED: SEPT. 19, 1996


JERRY MITCHELL
Administrative Law Judge

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MAY - 4 1995

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BEFORE THE DEPARTMENT OF REAL ESTATE - 4 1995
STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

By *Victoria Dillon*
Victoria Dillon

Case No. H-7048 SF

OAH No. N 9404125

In the Matter of the Accusation of

GIANFRANCO AMEDEO MARCHESIELLO,
JACQUIN McILVAINE,
BRIAN MAXWELL FABIAN and
JOHN CONRAD DOHN,

}

Respondent s

SECOND CONTINUED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

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

OFFICE OF ADMINISTRATIVE HEARINGS, World Savings Building

1970 Broadway, Second Floor, Oakland, CA 94612

on Tuesday, October 31, 1995 (1 Day Hearing), at the hour of 10:00 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 4, 1995

By *John Van Driel*
JOHN VAN DRIEL, Counsel

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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

GIANFRANCO AMEDEO MARCHESIELLO,
JACQUIN McILVAINE,
BRIAN MAXWELL FABIAN and
JOHN CONRAD DOHN,

}

Case No. H-7048 SF

OAH No. N 9404025

Respondent ^S

CONTINUED

NOTICE OF/HEARING ON ACCUSATION

To the above named respondent:

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

OFFICE OF ADMINISTRATIVE HEARINGS

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

on Tuesday & Wednesday, March 7 and 8, 1995 (2 Days), 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: November 4, 1994

By

John Van Driel
JOHN VAN DRIEL, Counsel

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FILED
MAY 18 1994

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GIANFRANCO AMEDEO MARCHESIELLO,
JACQUIN MC ILVAINE,
BRIAN MAXWELL FABIAN and
JOHN CONRAD DOHN,

}

By *Victoria Dillon*

Case No. H-7048 SF Victoria Dillon

OAH No. N 9404025

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 Avenue, Room 2248, San Francisco, CA 94102

(Monday and Tuesday)

on October 3 and October 4, 1994 (2 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 18, 1994

By

John Van Driel
JOHN VAN DRIEL,

Counsel

nd

COPY

Telepac

1 JOHN VAN DRIEL, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107

5 Telephone: (415) 904-5917

FILED
MAR 14 1994

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)
12 GIANFRANCO AMEDEO MARCHESIELLO,) No. H-7048 SF
13 JACQUIN MC ILVAINE,) ACCUSATION
14 BRIAN MAXWELL FABIAN and)
15 JOHN CONRAD DOHN,)
Respondents.)

16
17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against GIANFRANCO AMEDEO MARCHESIELLO, JACQUIN
20 MC ILVAINE, BRIAN MAXWELL FABIAN and JOHN CONRAD DOHN, is informed
21 and alleges as follows:

22 PRELIMINARY ALLEGATIONS

23 I

24 The Complainant, LES R. BETTENCOURT, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation against Respondents in his official capacity and not
27 otherwise.

II

Respondents GIANFRANCO AMEDEO MARCHESIELLO, JACQUIN MC ILVAINE, BRIAN MAXWELL FABIAN and JOHN CONRAD DOHN are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code).

III

At all times herein mentioned, Respondent GIANFRANCO AMEDEO MARCHESIELLO (Marchesiello) was and is licensed by the Department as a real estate broker.

IV

At all times herein mentioned JACQUIN MC ILVAINE (McIlvaine) held a restricted real estate salesperson license issued by the Department. McIlvaine has been licensed as a real estate salesperson since approximately 1980. On April 26, 1985, in case number H-5421 SF, McIlvaine's salesperson license was revoked and she was given the right to a restricted salesperson license for a violation of Code § 10176(a). According to the Department's records, from July 1, 1987 through February 21, 1989, McIlvaine was licensed as a restricted real estate salesperson under real estate broker Carlton Fitzner; from February 22, 1989 through December 7, 1992, McIlvaine had no broker affiliation; and from December 7, 1992 through the present, McIlvaine has been licensed under real estate broker Sedalia Benton.

V

BRIAN MAXWELL FABIAN (Fabian) was initially issued a conditional real estate salesperson license by the Department on

1 January 12, 1993, and since that time has had no broker
2 affiliation on the Department's records. At all times mentioned
3 herein, Fabian was the owner of the loan brokerage business known
4 as United Federal Company or UF Corp. (UFC) and directed and
5 controlled its business and affairs.

6 VI

7 JOHN CONRAD DOHN (Dohn) was initially licensed by the
8 Department as a real estate salesperson on August 12, 1992, under
9 the broker license of Marchesiello.

10 VII

11 At all times herein mentioned, Respondents engaged in
12 the business of, acted in the capacity of, advertised or assumed
13 to act as real estate licensees within the State of California,
14 including the operation and conduct of a mortgage loan brokerage
15 business with the public wherein lenders and borrowers were
16 solicited for loans secured directly or collaterally by liens on
17 real property; wherein such loans were arranged, negotiated,
18 processed and consummated on behalf of others, for or in
19 expectation of compensation.

20 FIRST CAUSE OF ACTION (Marchesiello)

21 VIII

22 During at least 1991 and 1992, Respondents McIlvaine,
23 Fabian and Dohn were employed by Marchesiello, doing business as
24 UFC or Greater American Mortgage (GAM) as real estate salespersons
25 and loan agents at times when McIlvaine was not licensed to
26 Marchesiello and Fabian and Dohn were not licensed as salespersons
27 or brokers by the Department. Each of the Respondents mentioned

1 performed activities on behalf of Marchesiello for which a real
2 estate license is required, for or in expectation of compensation,
3 and solicited, negotiated and processed loans to be secured by
4 deeds of trust to real property in various transactions, including
5 but not limited to the following:

6	<u>Borrower</u>	<u>Approx. Date</u>	<u>Agent</u>
7	McMiller	1/91	Fabian
	Chow	1/91	Fabian
8	Roberts	1/91	McIlvaine
	Molakides	6/91	Fabian
9	Medina	6/91	McIlvaine
	Manson	7/91	Fabian
10	Smith	9/91	Fabian
	Dye	10/91	Fabian
11	Zanardi	12/91	Dohn
	Cronquist	4/92	Fabian/Dohn

12 IX

13 In connection with Respondents' loan brokerage
14 activities, Respondents charged and collected up-front application
15 fees from borrowers in the transactions set out below. The
16 application fees were "advance fees" as defined in Section 10026
17 of the Code and also "trust funds" as defined in Section 10145 of
18 the Code. Respondents failed to deposit the funds into a real
19 estate broker trust account or otherwise deal with the funds as
20 required by Section 10146 of the Code. Instead, Respondents
21 deposited the funds or caused them to be deposited into their
22 general operating account. Respondents failed to obtain the prior

23 ///

24 ///

25 ///

26 ///

27 ///

1 written approval of the Department for the use of an advance fee
2 agreement in accepting the funds.

3	<u>Approx.Date</u>	<u>Borrower</u>
4	6/91	Medina
	7/91	Manson
5	12/91	Zanardi
	4/92	Cronquist

6 X

7 Respondents used the fictitious business names UFC
8 and/or GAM in their loan brokerage business at a time that those
9 names were not registered as a fictitious business names on the
10 Department's records.

11 XI

12 In connection with Respondents' loan brokerage
13 activities, Respondents failed to provide to borrowers the
14 borrower disclosure statement required to be given by Section
15 10240 of the Code.

16 SECOND CAUSE OF ACTION (McIlvaine)

17 XII

18 In approximately June 1991, Jose L. Medina (Medina)
19 applied for a loan from United Savings Bank (lender). The loan
20 was to be secured by the real property Medina was purchasing,
21 which was located at 740 7th Street, Richmond, CA. McIlvaine, on
22 behalf of UFC, acted as Medina's agent in soliciting the lender
23 and negotiating the loan.

24 ///

25 ///

26 ///

27

XIII

1
2 In connection with the Medina loan, one or more of the
3 Respondents participated in a plan and scheme to defraud the
4 lender by advising Medina how to obtain a false "gift letter" from
5 a relative or other person, without notifying the lender of that
6 fact, so that Medina would have sufficient funds for a down
7 payment on the property to meet the lender's underwriting
8 requirements.

XIV

9
10 Pursuant to the plan and scheme, McIlvaine and Fabian
11 arranged a loan to Medina from Helen Davis and/or George Turkmany.
12 Medina executed a promissory note and deed of trust for the loan
13 in the amount of approximately \$10,800 and did not disclose this
14 secondary financing to the lender.

XV

15
16 In reliance on the false gift letter submitted by Medina
17 or on his behalf, the lender funded the Medina loan. If the
18 lender had known the true facts about the false gift letter, as
19 set out above, it would not have funded the loan.

THIRD CAUSE OF ACTION (Fabian)

XVI

21
22 Fabian engaged in the activities mentioned in paragraph
23 VIII on behalf of borrowers or lenders, for or in expectation of
24 compensation.

25 ///

26 ///

27 ///

XVII

At the time Fabian engaged in the acts referred to above, he did not possess a real estate broker or salesperson license issued by the Department.

XVIII

In connection with his loan brokerage activities, within three years of the filing of this Accusation, Fabian has undertaken a plan and scheme to defraud various lenders in loan transactions in which he acted as an agent of UFC or GAM. The plan and scheme involved the preparation and/or submission by Fabian or his employee of false employment verifications, pay records, tax returns, verifications of income, or other falsified documents which Fabian signed for borrowers without their knowledge or consent.

The transactions in which Fabian defrauded the various lenders, as set out above, include, but are not limited to, the Manson and Medina transactions referred to above.

FOURTH CAUSE OF ACTION (Dohn)

XIX

Dohn engaged in the activities mentioned in paragraph VIII on behalf of borrowers or lenders, for or in expectation of compensation.

XX

At the time Dohn engaged in the acts referred to above, he did not possess a real estate broker or salesperson license issued by the Department.

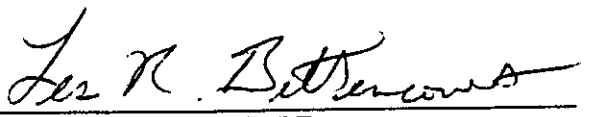
///

XXI

The acts and/or omissions of Respondents violate Sections of the Code (BPC) and Title 10, California Code of Regulations (Reg.) and constitute grounds for disciplinary action under Sections of the Code as follows.

<u>Acc. Para.</u>	<u>Respondent</u>	<u>Violation</u>	<u>Grounds for Discipline</u>
VIII	Marchesiello.....	BPC § 10137	
IX	Marchesiello.....	Reg. § 2970 BPC § 10146....	BPC § 10177(d)
X	Marchesiello.....	Reg. § 2731....	BPC § 10177(d)
XI	Marchesiello.....	BPC § 10240....	BPC § 10177(d)
XII	McIlvaine.....	BPC § 10137	
XII-XV	McIlvaine.....	BPC § 10176(i)	
XVI-XVII	Fabian.....	BPC § 10137	
XVIII	Fabian.....	BPC § 10176(i)	
XIX	Dohn.....	BPC § 10137	

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


 LES R. BETTENCOURT
 Deputy Real Estate Commissioner

Dated at San Francisco, California,
 this 14th day of March, 1994.