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FILED
AUG 16 2007

DEPARTMENT OF REAL ESTATE

By Juan R. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
DINO JERRY ZAPANTIS,)	No. H-7076 SF
Respondent.)	No. H-2035 SD
	2305

ORDER DENYING REINSTATEMENT OF LICENSE

On May 10, 1995, a Decision was rendered in Case No. H-7076 SF revoking Respondent's real estate salesperson license effective June 1, 1995, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on September 20, 1995. Respondent's real estate salesperson license was revoked in Case No. H-7076 SF pursuant to the provisions of Section 10177(f) of the Code on the ground Respondent participated in diverting real estate trust funds from the purposes authorized by the owners thereof.

Between September 20, 1995 and December 5, 1995, Respondent's restricted real estate salesperson license was

1 suspended pursuant to the provisions of Section 10153.4 of the
2 Code.

3 On March 11, 1997, an Accusation was filed in Case No.
4 ²³⁰⁵~~H-2035~~ SD alleging cause to suspend or revoke Respondent's
5 restricted real estate salesperson license. On March 31, 1997,
6 Respondent's restricted real estate salesperson license was
7 suspended indefinitely pending hearing on the Accusation filed in
8 Case No. H-2035 SD.

9 On May 12, 1997, a Decision was rendered in Case No.
10 ²³⁰⁵~~H-2035~~ SD revoking Respondent's restricted real estate
11 salesperson license effective June 9, 1997. Respondent's
12 restricted real estate salesperson license was revoked in Case
13 No. H-2035 SD pursuant to the provisions of Section 10177(k) of
14 the Code on the ground Respondent failed to comply with the
15 continuing education condition imposed in Case No. H-7076 SF.

16 On July 26, 2006, Respondent petitioned for
17 reinstatement of said real estate salesperson license, and the
18 Attorney General of the State of California has been given notice
19 of the filing of said petition.

20 I have considered the petition of Respondent and the
21 evidence submitted in support thereof. Respondent has failed to
22 demonstrate to my satisfaction that Respondent has undergone
23 sufficient rehabilitation to warrant the reinstatement of
24 Respondent's real estate salesperson license at this time.

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

1 integrity than an applicant for first time licensure. The proof
2 must be sufficient to overcome the prior adverse judgment on the
3 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
4 395).

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

10 Section 2911(b). Restitution to any person who has
11 suffered monetary losses through "substantially related" acts or
12 omissions of the applicant.

13 Respondent's license was initially disciplined because
14 of Respondent's participation in the diversion of real estate
15 trust funds. In response to item 5 in the petition ("Has
16 restitution been made...?"), Respondent answered "No". Respondent
17 has failed to demonstrate restitution of diverted trust funds.

18 Section 2911(h). Stability of family life and
19 fulfillment of parental and familial responsibilities subsequent
20 to the conviction or conduct that is the basis for denial of the
21 agency action sought.

22 Respondent's petition states that Respondent is not
23 married but has a twelve year old child. No further information
24 was submitted. The information submitted is insufficient to
25 demonstrate stability of family life and fulfillment of parental
26 and familial responsibilities.

27 ///

1 Section 2911(i). Completion of, or sustained enrollment
2 in, formal educational or vocational training courses for
3 economic self-improvement.

4 Respondent has not submitted evidence of qualifying
5 educational activities since revocation of Respondent's license.

6 Section 2911(l). Significant or conscientious
7 involvement in community, church or privately-sponsored programs
8 designed to provide social benefits or to ameliorate social
9 problems.

10 Respondent has not submitted evidence of qualifying
11 community service activities since revocation of Respondent's
12 license.

13 Section 2911(n). Change in attitude from that which
14 existed at the time of the conduct in question as evidenced by
15 any or all of the following: (1) Testimony of applicant; (2))
16 Evidence from family members, friends or other persons familiar
17 with applicant's previous conduct and with his subsequent
18 attitudes and behavioral patterns. (3) Evidence from probation or
19 parole officers or law enforcement officials competent to testify
20 as to applicant's social adjustments. (4) Evidence from
21 psychiatrists or other persons competent to testify with regard
22 to neuropsychiatric or emotional disturbances. (5) Absence of
23 subsequent felony or misdemeanor convictions that are reflective
24 of an inability to conform to societal rules when considered in
25 light of the conduct in question.

26 Respondent has not submitted evidence demonstrating a
27 change in the attitude that resulted in the revocation of

1 Respondent's license. No evidence has been submitted from family
2 members, friends or other persons familiar with applicant's
3 previous conduct and with his subsequent attitudes and behavioral
4 patterns. Respondent has not even submitted statements on his on
5 behalf. In fact, Respondent failed to fully complete several
6 items in the petition form. In an effort to correct this, on
7 September 26, 2006, the Deputy Commissioner assigned to review
8 Respondent's current petition for reinstatement wrote Respondent
9 to request submission of additional information in support of the
10 petition to be submitted by October 6, 2006. Respondent did not
11 respond to this request. On May 25, 2007, the Deputy Commissioner
12 assigned to review Respondent's current petition for
13 reinstatement again wrote Respondent to request submission of the
14 additional information by June 7, 2007. Respondent did not
15 respond to this request.

16 The statements in the petition itself indicate
17 Respondent is not a reliable witness. In response to item 4 in
18 the petition ("Have you ever been a defendant in any civil court
19 litigation, including small claims court?"), Respondent answered
20 "no". This is inaccurate. Respondent has been a defendant in
21 numerous civil actions, including but not limited to the
22 following:

23 (a) On March 11, 1991, in the Municipal Court of the
24 State of California, County of San Mateo, Case No. 0103570, a
25 civil action was commenced against Respondent by the Collection
26 Bureau of San Jose. On June 27, 1991, a judgment in the sum of

27 ///

1 \$2,289.46 was entered against Respondent in favor of the
2 plaintiff.

3 (b) On October 7, 1991, in the Superior Court of the
4 State of California, County of San Mateo, Case No. 366722, a
5 civil action was commenced against Respondent by Allen and Karen
6 Wheeler.

7 (c) On November 18, 1991, in the Municipal Court of
8 the State of California, County of San Mateo, Case No. 110391, a
9 civil action was commenced against Respondent by Wells Fargo
10 Bank. On January 5, 1992, a judgment in the sum of \$14,593.71 was
11 entered against Respondent in favor of the plaintiff.

12 (d) On January 11, 1993, in the Municipal Court of the
13 State of California, County of San Mateo, Case No. 83321, a civil
14 action was commenced against Respondent by Detailed Analysis,
15 Inc.

16 (e) On March 23, 1993, in the Municipal Court of the
17 State of California, County of San Mateo, Case No. 83872, a civil
18 action was commenced against Respondent by David Chodack.

19 (f) On August 11, 1995, in the Municipal Court of the
20 State of California, County of San Mateo, Case No. 0393295, a
21 civil action was commenced against Respondent by the Islas
22 Bradna.

23 (g) On September 14, 1999, in the Municipal Court of
24 the State of California, County of San Mateo, Case No. 0172481, a
25 civil action was commenced against Respondent by the State of
26 California.

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In the absence of affirmative evidence of rehabilitation, these inaccuracies in Respondent's petition make it difficult to justify the conclusion that there has been a favorable change in Respondent's attitude.

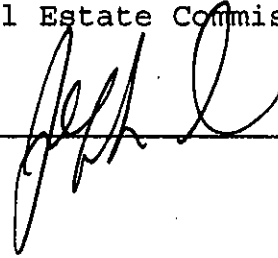
Given the violations found and the fact that Respondent has not established that Respondent has satisfied Sections 2911(b), (h), (i), (l) or (n) of the Regulations, I am not satisfied that Respondent is sufficiently rehabilitated to receive a real estate salesperson license.

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

This Order shall become effective at 12 o'clock noon SEP 06 2007, 2007.

IT IS SO ORDERED 8-9-07, 2007.

JEFF DAVI
Real Estate Commissioner



Alay-San
x2

COPY

FILED
MAY 12 1995

DEPARTMENT OF REAL ESTATE

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *Victoria Dillon*
Victoria Dillon

* * *

In the Matter of the Accusation of)
)
VIP MORTGAGE CORPORATION,)
JACK STANTON CROSS,)
RANDY CARTER and)
DINO JERRY ZAPANTIS,)
)
Respondents.)

NOS. H-7076 SF
OAH NO. N-9407162

DECISION

The Proposed Decision dated April 17, 1995, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on June 1, 1995.

IT IS SO ORDERED May 10, 1995.

JOHN R. LIBERATOR
Interim Commissioner

by: *Betty R. Ludeman*
BETTY R. LUDEMAN
Assistant Commissioner,
Enforcement

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

VIP MORTGAGE CORPORATION,)
JACK STANTON CROSS,)
RANDY CARTER and)
DINO JERRY ZAPANTIS,)

Respondents.)

Case No: H-7076 SF ..

OAH No.: N 9407162

PROPOSED DECISION

This matter was heard before Jonathan Lew,
Administrative Law Judge, State of California, Office of
Administrative Hearings on March 2, 1995, in San Francisco,
California.

The Department of Real Estate was represented by
John Van Driel, Counsel.

Respondents Randy Carter and Dino Jerry Zapantis were
present and represented themselves. There was no appearance by,
or on behalf of, Jack Stanton Cross and VIP Mortgage Corporation.

FINDINGS OF FACT

I

Complainant Les R. Bettencourt, a Deputy Real Estate
Commissioner of the State of California, made and issued the
Accusation against Respondents in his official capacity only, and
not otherwise.

II

Respondents VIP Mortgage Corporation (VIP), Jack
Stanton Cross (Cross), Randy Carter (Carter) and Dino Jerry
Zapantis (Zapantis) 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, as follows:

A. Respondent VIP was licensed on October 4, 1991, by the Department of Real Estate (Department) as a real estate corporation with Cross as its designated officer through October 20, 1992. Beginning on October 21, 1992, VIP has not had a designated officer through whom it may act as a real estate broker.

B. At all times pertinent herein, Respondent Cross was and is licensed by the Department as a real estate broker. Cross was licensed as the designated officer of VIP from October 4, 1991 through October 20, 1992. His broker license expired on April 6, 1994, and the license certification prepared in November 1994 does not indicate whether it has since been renewed.

Cross apparently resides in Guam. The Department made repeated attempts to serve him with appropriate notices at both his address of record and forwarding addresses. Compliance with notice requirements under Government Code sections 11505 and 11509 was established. This matter proceeded as a default hearing in respect to Cross under Government Code section 11520.

C. Respondent Carter was licensed by the Department as a real estate salesperson under the real estate broker license of Helen Nelson from April 10, 1991 through December 20, 1992. From December 21, 1992 through April 7, 1994, Carter was licensed under the real estate broker license of Cross. On June 23, 1994, his license was activated under the employ of Charles Deward Easterwood. Carter's salesperson license is due to expire on April 9, 1995.

D. Respondent Zapantis was licensed by the Department as a conditional real estate salesperson under VIP from August 11, 1992 through October 21, 1992. From October 22, 1992 through December 28, 1992, Zapantis had no broker affiliation and was therefore ineligible to perform acts requiring a real estate license. On December 29, 1992, Zapantis was activated in the employ of Equifund Corporation. He was terminated from the employ of Equifund Corporation as of August 5, 1992. His conditional salesperson license expired as of February 11, 1994, and his salesperson license will expire August 10, 1996. As of February 12, 1994, his salesperson license was suspended indefinitely per Business and Professions Code section 10153.4(c).

III

At all times pertinent to this action, Respondents engaged in the business of, acted in the capacity of, and assumed to act as real estate licensees within the State of California.

This included the operation and conduct of 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; and wherein such loans were arranged, negotiated, processed and consummated on behalf of others, for or in expectation of compensation.

IV

At the suggestion and urging of Carter, Zapantis formed and incorporated VIP in August 1991. Fifty percent of the shares of the corporation were held by Carter, and fifty percent were held by the parents of Zapantis. VIP did not service loans or perform its own escrows. Its sole activity was brokering loans between borrowers and institutional lenders. At the time of incorporation, Carter was licensed as a real estate salesperson under Helen Nelson. Zapantis' parents are not real estate licensees.

On September 1, 1991, Cross, who was also then a resident of Guam, executed a special power of attorney appointing Carter his attorney in fact, but without referring to any specific business name or entity. The instrument authorized Carter to:

"Recruit, train, supervise and manage loan agents in the solicitation, processing, underwriting and submission for funding of real estate loans. Mr. Carter is appointed to act on my behalf and in my stead to perform the supervision & management functions that I, as the sponsoring real estate broker would normally perform." (Exhibit 5)

The power of attorney was granted for a one year period effective September 1, 1991.

V

Thereafter, VIP was licensed as a real estate corporation in October 1991, and under authority of the special power of attorney, Carter began to act as the de facto real estate broker and office manager of VIP. Cross remained a resident of Guam over this entire period and essentially took no part at all in the supervision of the acts of VIP and its agents which required a real estate license.

As the individual who assumed responsibility for the activities of VIP, Carter assumed and did exercise overall supervision of the activities of VIP, its agents and employees which required a real estate license. He did so over the period from October 4, 1991 through November 1992. During this period, he was licensed as a real estate salesperson under the broker

license of Helen Nelson, from April 1991 until December 20, 1992. It was established that over the period that Carter was employed by VIP as a real estate salesperson and loan agent, he was not licensed to either VIP or Cross.

Carter performed activities on behalf of VIP and Cross for which a real estate license was required, for or in expectation of compensation, and solicited, negotiated and processed loans to be secured by deeds of trust to real property in various transactions. And during the time that Carter performed acts requiring a real estate license in the name of VIP through the cancellation of VIP's real estate corporation license on October 20, 1992, Cross failed to notify the Department in writing of the employment of Carter by VIP.

VI

An investigative audit was made by the Department of VIP books and records for the 1992 calendar year, to determine whether VIP handled and accounted for trust funds in accordance with the Real Estate Law and Commissioner's Regulations, and to make determinations regarding broker supervision. Documents examined included control (cash) accounts, bank statements, canceled checks, deposit records, loan files, and appraisal and credit billings.

VIP maintained a trust account for the receipt and disbursement of trust funds designated as the "VIP Mortgage Corp Trust Account", account # 10875-03137 at Bank of America - Foster City Branch. (VIP trust account). The sole signatories on the VIP trust account were Carter and Zapantis. Cross was not a signatory to this account. The borrowers' up front fees for appraisals and credit reports were deposited into this account. The fees were to be maintained there until the billings for these services were received, at which time appropriate disbursements were to be made.

VIP also maintained a general business checking account designated as the "VIP Mortgage Corporation Account", account # 10873-03138 at Bank of America - Foster City Branch. (VIP general account). Carter and Zapantis were both signatories on this account.

VII

As of September 30, 1992, the VIP trust account had an adjusted balance of \$1,969.71 and trust fund accountability of \$26,726.65, causing a trust fund shortage of \$24,756.94. As of October 30, 1992, the VIP trust account had an adjusted balance of \$1,230.71 and trust fund accountability of \$28,236.65, causing a trust fund shortage of \$27,005.94. The above shortages were caused by trust funds being used to pay for VIP's general

operating expenses and other personal expenses on behalf of Carter and Zapantis. Actual trust obligations for appraisal and credit services went unpaid.

Between January and October 1992, Carter and Zapantis made unauthorized disbursements of trust funds in an amount exceeding \$27,000 from the VIP trust account. The unauthorized disbursements were used for operating expenses of VIP, including the payment of compensation to Carter and Zapantis. In 1992, Carter received a total income of \$47,757.89, and Zapantis received a total income of \$18,765.09 out of VIP's general account as general operating expenses. Trust monies were also used for personal expenses. For example, Carter wrote VIP trust check no. 194 to "Who's Who Worldwide Registry Inc. on behalf of himself.

By depositing trust funds into the VIP general account, trust funds were commingled with non-trust funds during the audit period.

VIII

In 1992, VIP collected advance funds from borrowers for the specific purpose of paying for appraisals and credit reports. These funds were collected as trust funds and deposited into the VIP trust account. VIP then ordered appraisals/credit reports to be done in connection with these loans, which were subsequently performed by various companies including Pacific Property Appraisal, Detailed Analysis, California Appraisal Service and Credit Reports, Inc. Bills incurred over this period approximated \$27,000, and VIP has failed to pay for same.

Bills for appraisals and credit services which were reviewed by the Department were anywhere from three to twelve months past due as of April 1993. A list of accounts payable as of the time of hearing is not available. Carter avers that he is willing to make restitution of same and that he continues to use some of the same appraisal companies to service his loan applications.

IX

VIP failed to maintain separate beneficiary or transaction records for the VIP trust account during the audit period, as required by section 2831.1 of Title 10, California Code of Regulations (CCR) and, therefore, was unable to reconcile the separate records with the records of all trust funds received and disbursed, as required by section 2831.2 of the regulations.

X

During the audit period, in connection with loans it brokered, VIP received both commissions and borrower's loan proceeds and rebates from the lender not derived from loan proceeds, without disclosing to the borrower the amount of the rebates from the lender. For example, in the Erickson/Pidge loan file it was determined that VIP was compensated \$4,640.00 for brokering the loan. Of this amount, \$1,240 was compensation to VIP in the form of points, and \$3,400 was a rebate in the form of compensation not from loan proceeds. The borrower was only made aware of the \$1,200 loan original fee or points.

Earlier, Zapantis represented to the Department that in approximately 90 percent of VIP's loans, the borrowers did not receive disclosures. These include the Good Faith Estimate, a Truth-in-Lending Statement and the Mortgage Loan Disclosure Statement (Borrower).

XI

In July 1992, VIP compensated Robert Cobbs and Orlando Tinoco for performing services which required a real estate license. Although both were licensed as real estate salespersons, they had no broker affiliation on record with the Department under either Respondents VIP or Jack Cross.

XII

On November 13, 1992, Cross registered the fictitious business name "First Class Mortgage" with the Department. Thereafter, Carter began to act as the de facto real estate broker and office manager of the mortgage loan brokerage known as First Class Mortgage (FCM) pursuant to the Cross special power of attorney. Carter had just parted with VIP. The new business involved mortgage loan packaging and followed much the same practices as that previously followed by VIP. As the individual who assumed responsibility for the activities of FCM, Carter assumed to and did exercise overall supervision of the activities of FCM, its agents and employees which required a real estate license from November 13, 1992 to the present.

Carter became licensed under the broker license of Cross on December 21, 1992, and continued so until April 7, 1994. During that period, Cross continued to be a resident of Guam and took no active part in the supervision of the acts of FCM and its agents which require a real estate license.

As of June 1993, Cross closed approximately sixteen transactions dating from October 26, 1992, and totalling approximately \$3 million.

XIII

In June 1993, an investigative audit was made by the Department on the books and records of Cross, doing business as FCM, for the period of October 26, 1992 through June 22, 1993.

FCM maintained a trust account for the receipt and disbursement of trust funds designated as the "First Class Mortgage Trust Account", account no. 01164-06272 at Bank of America, Burlingame, CA. (FCM trust account). The trust account was used to handle credit and appraisal fees collected in advance. The FCM trust account was not held in the name of Cross, as trustee. And Cross was not a signatory on the FCM Trust account, the only signatory being Carter.

As of June 22, 1993, the FCM trust account had an adjusted balance of \$1,400.74 and trust fund accountability of \$1,745.00, causing a trust fund shortage of \$344.26. The negative account balance was caused by disbursements in excess of receipts for a particular beneficiary. Authorization to make the disbursements was not obtained from the other beneficiaries whose funds were used.

XIV

FCM failed to maintain separate beneficiary or transaction records for the FCM trust account during the audit period, and therefore was unable to reconcile the separate records with the record of all trust funds received and disbursed. Cross' record of all trust funds received and paid out (control record) did not include a daily balance and the date funds were received.

XV

On June 18, 1993, a \$55.00 check from a prospective borrower was written to FCM for a credit report. As of June 22, 1993, the check had not been deposited into the FCM trust account, into a neutral escrow depository or into the hands of a principal on behalf of whom the funds were received, as required by section 2830 of the regulations.

XVI

During the audit period, FCM failed to provide the Mortgage Loan Disclosure Statement required by section 10240 of the Business and Professions Code to borrowers before they became obligated to complete the loan transactions. Carter avers that Cross was providing a disclosure statement, but not in a form approved by the Department.

XVII

Over the audit period, FCM employed John B. Islas, a non-licensee, to contact prospective clients to see if they would be interested in speaking with one of Cross' licensed loan agents regarding information on current loan programs available. This activity was not performed under the supervision of a real estate broker and Islas was not licensed by the Department as a real estate broker or salesperson at the time. At the time, Carter did not believe that Islas' activities required a license.

XVIII

By reason of all the above, Cross failed to exercise reasonable supervision and control of the activities of VIP and FCM for which a real estate license is required. He was negligent or incompetent in performing acts for which a real estate license is required, in that he knew or should have known all the facts set forth above; and that he could and should have taken steps to assure the full compliance of VIP and FCM and its agents and employees with the Real Estate Law.

Through the special power of attorney that he executed in favor of Carter, Cross essentially relinquished his overall responsibility for the supervision of the acts of real estate salespersons, agents and employees of VIP and FCM. He delegated his supervisory responsibility to Randy Carter, a real estate salesperson, who at the time was not even licensed under Cross or VIP. Cross clearly did not have the ability at any time that he was in Guam to step in and assume adequate control and supervision over the management of either business, or to oversee the handling of monies received and held in trust for clients served.

XIX

Carter admits to the essential findings detailed above. He avers that it was never his desire to harm anyone, that he was ignorant of certain Department record keeping requirements, that he misused his license, that it was wrong to withdraw monies from trust for unauthorized purposes, that he feels responsible for his actions and that he is willing to make restitution to outstanding creditors.

He continues to work through First Class Mortgage, under the employ of real estate broker Charles Easterwood who currently resides in Utah. Easterwood had visited his offices only twice since April 1994, and reviewed those business matters he was working on at the time. Carter has also travelled back to Utah on several occasions, bringing files with him. Given the relatively low volume of business in recent months, Carter believes that he is adequately supervised. Still he acknowledges that Easterwood is basically an absentee broker, and is making

arrangements with a second broker to supervise his business.

Carter has a business/economics background from St. Mary's College. The idea of forming VIP mortgage was essentially his, and he persuaded Zapantis and his parents, against their better judgment, to go half with him. Zapantis suggests that even the money put up by Carter really was not his own. At the time, the Zapantis family was attempting only to refinance their existing mortgage with some cash out to pay outstanding debt on another business venture known as Consumers Mortgage Reduction

Service (CMRS). Carter then called Cross in Guam to offer him a position as broker-for VIP with a commission of \$1,000 per month, which was accepted. Thereafter the special power of attorney was executed vesting full authority in Carter to represent Cross in all company matters.

XX

Problems began when VIP's monthly outlay exceeded income coming into the business, and trust monies were used to cover operating expenses. Carter and Zapantis intended to reimburse monies taken from the trust account when brokerage fees and commissions came through. However, when monies did finally come in, it went instead to pay for salaries or CMRS closeout expenses. These matters created conflict and increased tension between the parties as they each accused the other of not restoring monies taken from the trust account. First Zapantis, and then Carter resigned their positions with VIP, with Carter eventually leaving to form FCM with Cross, and Zapantis remaining with VIP to attempt to continue operations under a new broker. When this did not transpire, VIP closed its doors in December 1992. Existing files were transferred to Equifund Corporation, a licensed real estate brokerage firm in San Mateo.

XXI

Zapantis wrote to the Department as early as December 1992 and disclosed all that was occurring. He has continued to cooperate with the Department's investigation and has been both forthright and accepting of his responsibility in the manner in which VIP was operated, particularly in respect to trust fund disbursements. It is apparent that not only were he and his parents persuaded by Carter to become half partners in the business, but that they continued to daily rely upon Carter's judgments and business decisions. Carter was perceived as being far more educated and experienced in loan brokering, and Zapantis and his parents were all too pleased to allow him to "run the whole show."

Zapantis is unemployed and is currently looking to work in a banking institution. He expresses a willingness to make personal restitution for trust funds inappropriately disbursed. It would not be contrary to the public interest to issue him a restricted license at this time.

XXII

In contrast, Carter was the moving force behind the formation, and then the management and operation of VIP. He has continued to work in an essentially unsupervised setting at FCM.

Although he states that he is willing to make full restitution, his actions up until now seem to suggest otherwise. He has not

demonstrated that he has substantially changed his business practices, and he has apparently grown accustomed to performing responsibilities at the level of a real estate broker with little or no supervision by a licensed broker.

For these and other reasons set forth in earlier Findings, it would not be in the public interest to issue Carter a restricted license at this time.

DETERMINATION OF ISSUES

I

Cause for disciplinary action exists against Respondent VIP Mortgage Corporation under the following Business and Professions Code (BPC) and Title 10 CCR sections:

- | | | |
|----|---|--------------|
| 1. | BPC section <u>10137</u> | Finding V |
| 2. | BPC sections <u>10177(d)</u> , <u>10161.8</u>
Title 10 CCR section <u>2752</u> ✓ | Finding V |
| 3. | BPC sections <u>10177(d)</u> , <u>10145</u>
Title 10 CCR section <u>2832.1</u> | Finding VII |
| 4. | BPC sections <u>10177(d)</u> , Title 10
CCR sections <u>2831.2</u> and <u>2831.2</u> | Finding IX |
| 5. | BPC section <u>10176(e)</u> | Finding VII |
| 6. | BPC section <u>10176(g)</u> | Finding X |
| 7. | BPC section <u>10137</u> | Finding XI |
| 8. | BPC section <u>10176(i)</u> | Finding VIII |

II

Cause for disciplinary action exists against Respondent Jack Stanton Cross under the following Business and Professions Code (BPC) and Title 10 CCR sections:

1. BPC sections 10177(d) and (h), Finding V
2. BPC section 10177(h) Finding VI
3. BPC section 10177(g) Finding XII
4. BPC section 10177(d) Finding XIII
Title 10 CCR section 2830
5. BPC section 10177(d), 10145 Finding XIII
Title 10 CCR section 2832.1
6. BPC section 10177(d), Title 10 Finding XIV
CCR sections 2831.1 and 2831.2
7. BPC section 10177(d) Finding XV
Title 10 CCR section 2830
8. BPC section 10177(d), 10240 Finding XVI
9. BPC section 10137 Finding XVII
10. BPC section 10177(h) Finding XVIII
11. BPC section 10177(g) Finding XVIII

III

Cause for discipline exists against Respondent Randy Carter under the following Business and Professions Code (BPC) and Title 10 CCR sections:

1. BPC sections 10130 and 10177(d) Finding V
2. BPC section 10177(j) Finding VII
3. BPC section 10130 and 10177(g) Finding XII

IV

Cause for discipline exists against Respondent Dino Jerry Zapantis under Business and Professions Code section 10177(j), by reason of the matters set forth in Finding VII.

The matters set forth in Findings XVIII through XXII were considered in making the following order. Because no suspension is being ordered, the suggestion that a monetary penalty in lieu of suspension under BPC section 10175.2 is not recommended.

ORDER

A. All real estate licenses and licensing rights issued to Respondent VIP Mortgage Corporation by the Department of Real Estate are revoked pursuant to Determination of Issues I, separately and for all subsections thereunder.

B. All real estate licenses and licensing rights issued to Respondent Jack Stanton Cross by the Department of Real Estate are revoked pursuant to Determination of Issues II, separately and for all subsections thereunder.

C. All real estate licenses and licensing rights issued to Respondent Randy Carter by the Department of Real Estate are revoked pursuant to Determination of Issues III, separately and for all subsections thereunder.

D. All licenses and licensing rights of Respondent Dino Jerry Zapantis 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:

1. Prior to the delivery or mailing of Respondent's restricted license, Respondent shall submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate. If Respondent fails to present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

2. If Respondent has not satisfied the requirements for an unqualified license within four years from the date of issuance of the restricted license revoked herein, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

3. 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.

4. 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.

5. 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 years elapse from the effective date of this Decision.

6. 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.

7. Respondent shall, within nine 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.

DATED: April 17, 1995



JONATHAN LEW
Administrative Law Judge

COPY

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FILED
NOV 03 1994

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
VIP MORTGAGE CORPORATION,
JACK STANTON CROSS,
RANDY CARTER and
DINO JERRY ZAPANTIS,

}

By *Victoria Dillon*
Victoria Dillon

Case No. H-7076

OAH No. N 9407162

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

on Thursday, March 2, 1995, 1 day 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: November 3, 1994

By *John Van Driel*
JOHN VAN DRIEL, Counsel

W

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
MAY 11 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 V I P MORTGAGE CORPORATION,)
13 JACK STANTON CROSS,)
14 RANDY CARTER and)
15 DINO JERRY ZAPANTIS,)
16 Respondents.)

No. H- 7076 SF

ACCUSATION

17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against V I P MORTGAGE CORPORATION, JACK STANTON CROSS,
20 RANDY CARTER and DINO JERRY ZAPANTIS, is informed and alleges as
21 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.

1 II

2 Respondents V I P MORTGAGE CORPORATION (VIP), JACK
3 STANTON CROSS (Cross), RANDY CARTER (Carter) and DINO JERRY
4 ZAPANTIS (Zapantis) are presently licensed and/or have license
5 rights under the Real Estate Law, Part 1 of Division 4 of the
6 California Business and Professions Code (hereafter the Code).

7 III

8 On October 4, 1991, VIP was licensed by the Department
9 as a real estate corporation with Cross as its designated officer
10 through October 20, 1992. Beginning on October 21, 1992, VIP has
11 not had a designated officer through whom it may act as a real
12 estate broker.

13 IV

14 At all times herein mentioned, Cross was and is licensed
15 by the Department as a real estate broker. Cross was licensed as
16 the designated officer of VIP from October 4, 1991 through October
17 20, 1992.

18 V

19 Carter was licensed by the Department as a real estate
20 salesperson under the real estate broker license of Helen Nelson
21 from April 10, 1991 through December 20, 1992. From December 21,
22 1992 through the present, Carter has been licensed under the real
23 estate broker license of Cross.

24 VI

25 Zapantis was licensed by the Department as a conditional
26 real estate salesperson under VIP from August 11, 1992 through
27 October 21, 1992. From October 22, 1992 through December 28,

1 1992, Zapantis had no broker affiliation and was therefore
2 ineligible to perform acts requiring a real estate license.

3 VII

4 At all times herein mentioned, Respondents engaged in
5 the business of, acted in the capacity of, and assumed to act as
6 real estate licensees within the State of California, including
7 the operation and conduct of a mortgage loan brokerage business
8 with the public wherein lenders and borrowers were solicited for
9 loans secured directly or collaterally by liens on real property,
10 wherein such loans were arranged, negotiated, processed and
11 consummated on behalf of others, for or in expectation of
12 compensation.

13 VIII

14 VIP was incorporated in the State of California by
15 Zapantis in August, 1991. Fifty percent of the shares of the
16 corporation were initially held by Carter and fifty percent of the
17 shares were held by Zapantis' parents. At the time of
18 incorporation, Carter was licensed as a real estate salesperson
19 under Helen Nelson and neither of Zapantis' parents was licensed
20 by the Department. On or about September 1, 1991, Cross, who was
21 and still is a resident of Guam and without referring to any
22 specifically named business or entity, signed a special power of
23 attorney giving Carter the authority to "recruit, train, supervise
24 and manage loan agents in the solicitation, processing,
25 underwriting and submission for funding of real estate loans."
26 The special power of attorney further provided that "Mr. Carter is
27 appointed to act on my behalf and in my stead to perform the

1 supervision and management functions that I, as the sponsoring
2 real estate broker would normally perform."

3 FIRST CAUSE OF ACTION

4 IX

5 When VIP was licensed as a real estate corporation in
6 October, 1991, Carter began to act as the de facto real estate
7 broker and office manager of the VIP office pursuant to whatever
8 authority devolved upon him as a consequence of the Cross power of
9 attorney. As the individual who assumed responsibility for the
10 activities of VIP, Carter assumed to and, in fact, did exercise
11 overall supervision of the activities of VIP, its agents and
12 employees which required a real estate license from October 4,
13 1991 through approximately November, 1992, even though he was
14 licensed as a real estate salesperson under the broker license of
15 Helen Nelson from April, 1991 through December 20, 1992. During
16 this time, Cross was a resident of Guam and took no part in the
17 supervision of the acts of VIP and its agents which required a
18 real estate license.

19 X

20 During at least 1992, Carter was employed by VIP as a
21 real estate salesperson and loan agent at times when Carter was
22 not licensed to either VIP or Cross. Carter performed activities
23 on behalf of VIP and/or Cross for which a real estate license is
24 required, for or in expectation of compensation, and solicited,
25 negotiated and processed loans to be secured by deeds of trust to
26 real property in various transactions.

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XI

From the time Carter began performing acts requiring a real estate license in the name of VIP through the cancellation of VIP's real estate corporation license on October 20, 1992, Cross failed to notify the Department in writing of the employment of Carter by VIP.

SECOND CAUSE OF ACTION

XII

The allegations of paragraphs III through XI are incorporated herein by reference.

XIII

In March and April, 1993, an investigative audit was made by the Department on VIP's books and records for the period of January 1, 1992 through December 31, 1992 (the VIP audit).

The following facts were ascertained by the VIP audit for the period ending December 31, 1992.

- a. VIP maintained a trust account for the receipt and disbursement of trust funds, as that term is defined in Section 10145 of the Code, designated as the "VIP Mortgage Corp Trust Account", account # 10875-03137 at Bank of America, Foster City, Ca. (the VIP trust account). The sole signatories on the VIP trust account were Carter and Zapantis.
- b. VIP also maintained a general business checking account designated as the "VIP Mortgage Corporation Account", account # 10873-03138 at Bank of America, Foster City, Ca. (the VIP general account).

///

1 c. As of 9-30-92 the VIP trust account had an adjusted balance of
2 \$1,969.71 and trust fund accountability of \$26,726.65 causing a
3 trust fund shortage of \$24,756.94.

4 d. As of 10-30-92 the VIP trust account had an adjusted balance
5 of \$1,230.71 and trust fund accountability of \$28,236.65 causing a
6 trust fund shortage of \$27,005.94.

7 e. VIP failed to maintain separate beneficiary or transaction
8 records for the VIP trust account during the audit period, as
9 required by Section 2831.1 of Title 10, California Code of
10 Regulations (the Regulations) and, therefore, was unable to
11 reconcile the separate records with the record of all trust funds
12 received and disbursed, as required by Section 2831.2 of the
13 Regulations.

14 f. During the audit period, VIP deposited trust funds into the
15 VIP general account, thereby commingling trust funds with the non-
16 trust funds in the account.

17 g. During the audit period, in connection with loans it brokered,
18 VIP received both commissions from borrower's loan proceeds and
19 rebates from the lender not derived from the loan proceeds,
20 without disclosing to the borrower the amount of the rebates from
21 the lender.

22 h. In approximately July, 1992, VIP compensated Robert Cobbs and
23 Orlando Tinoco for performing services which required a real
24 estate license while both Cobbs and Tinoco were licensed as real
25 estate salespersons but they had no broker affiliation on the
26 records of the Department.

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XIV

In at least 1992, VIP collected funds from borrowers specifically for appraisals. The funds collected were trust funds. During the audit period, VIP, by or through its agents or employees, requested and ordered appraisals to be done for those borrowers who had paid for their appraisals in advance. Although the appraisals were ordered and provided by various appraisal companies, including Pacific Property Appraisal, Detailed Analysis, California Appraisal Service, and Credit Reports, Inc., VIP failed to pay the providers for the appraisals performed and delivered pursuant to VIP's request.

THIRD CAUSE OF ACTION

XV

The allegations of paragraphs III through XIV are incorporated herein by reference.

XVI

From at least January through October, 1992, Carter and Zapantis made unauthorized disbursements of trust funds in the amount of approximately \$32,000 from the VIP trust account. The unauthorized disbursements were used for operating expenses of VIP, including the payment of compensation to Carter and Zapantis, and, in at least two cases, for personal expenses of Carter and Zapantis.

FOURTH CAUSE OF ACTION

XVII

The allegations of paragraphs III through XVI are incorporated herein by reference.

XVIII

1
2 On or about November 13, 1992, Cross registered the
3 fictitious business name "First Class Mortgage" with the
4 Department. On or about that date, Carter began to act as the de
5 facto real estate broker and office manager of the mortgage loan
6 brokerage known as First Class Mortgage (FCM), also pursuant to
7 the Cross power of attorney. As the individual who assumed
8 responsibility for the activities of FCM, Carter assumed to and,
9 in fact, did exercise overall supervision of the activities of
10 FCM, its agents and employees which required a real estate license
11 from approximately November 13, 1992 through the present. Carter
12 became licensed under the broker license of Cross on December 21,
13 1992. During this time, Cross has continued to be a resident of
14 Guam and has taken no part in the supervision of the acts of FCM
15 and its agents which require a real estate license.

XIX

16
17 In June, 1993, an investigative audit was made by the
18 Department on the books and records of Cross, doing business as
19 FCM, for the period of October 26, 1992 through June 22, 1993 (the
20 FCM audit).

21 The following facts were ascertained by the second audit
22 for the period ending June 22, 1993.

23 a. FCM maintained a trust account for the receipt and
24 disbursement of trust funds designated as the "First Class
25 Mortgage Trust Account", account # 01164-06272 at Bank of America,
26 Burlingame, Ca. (the FCM trust account).

27 ///

1 b. The FCM trust account was not held in the name of Cross, as
2 trustee, as required by Section 2830 of the Regulations and Cross
3 was not a signatory on the FCM trust account.

4 c. As of 6-22-93 the FCM trust account had an adjusted balance of
5 \$1,400.74 and trust fund accountability of \$1,745.00 causing a
6 trust fund shortage of \$344.26.

7 d. FCM failed to maintain separate beneficiary or transaction
8 records for the FCM trust account during the audit period, as
9 required by Section 2831.1 of the Regulations and, therefore, was
10 unable to reconcile the separate records with the record of all
11 trust funds received and disbursed, as required by Section 2831.2
12 of the Regulations.

13 e. On June 17 or 18, 1993, William Adams made a check for \$55.00
14 payable to First Class Mortgage as advance payment of a credit
15 report fee. As of 6-22-93 the check from Adams had not been
16 deposited to the FCM trust account, into a neutral escrow
17 depository or into the hands of a principal on behalf of whom the
18 funds were received, as required by Section 2830 of the
19 Regulations.

20 f. During the audit period, FCM failed to provide the Mortgage
21 Loan Disclosure Statement required by Section 10240 of the Code to
22 borrowers before they became obligated to complete the loan
23 transactions.

24 g. During the audit period, FCM employed and/or compensated
25 John B. Islas to contact prospective borrowers by telephone to
26 determine whether they would be interested in discussing current
27 loan programs available with one of FCM's licensed loan agents.

1 This activity was not performed under the supervision of a real
2 estate broker and Islas was not licensed by the Department as a
3 real estate broker or salesperson at the time.

4 FIFTH CAUSE OF ACTION

5 XX

6 The allegations of paragraphs III through XIX are
7 incorporated herein by reference.

8 XXI

9 At all times mentioned herein, Cross failed to
10 exercise reasonable supervision and control of the activities of
11 VIP and FCM for which a real estate license is required and was
12 negligent or incompetent in performing acts for which a real
13 estate license is required, in that he knew or should have known
14 all the facts alleged above and that he could have and should have
15 taken steps to assure the full compliance of VIP and FCM and its
16 agents and employees with the Real Estate Law.

17 XXII

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


22	<u>Acc. Para.</u>	<u>Respondent</u>	<u>Violation</u>	<u>Grounds for Discipline</u>
23	IX	Cross		BPC 10177(h)
24		Carter	BPC 10130	BPC 10177(d)
25	X	VIP		BPC 10137
26	XI	VIP	Reg. 2752, BPC 10161.8	BPC 10177(d)
27	XIII a.	Cross		BPC 10177(h)

	<u>Acc. Para.</u>	<u>Respondent</u>	<u>Violation</u>	<u>Grounds for Discipline</u>
1				
2				
3	XIII c.	VIP	Reg. 2832.1,	
4	& d.		BPC 10145	BPC 10177(d)
5	XIII e.	VIP	Reg. 2831.1	
			Reg. 2831.2	BPC 10177(d)
6	XIII f.	VIP		BPC 10176(e)
7	XIII g.	VIP		BPC 10176(g)
8	XIII h.	VIP		BPC 10137
9	XIV	VIP		BPC 10176(i)
10	XV-XVI	Carter		BPC 10176(i)
11		Zapantis		BPC 10176(i)
12	XVII -	Carter		BPC 10130
	XVIII	Cross		BPC 10177(g)
13	XIX b.	Cross	Reg. 2830	BPC 10177(d)
14	XIX c.	Cross	Reg. 2832.1	
15			BPC 10145	BPC 10177(d)
16	XIX d.	Cross	Reg. 2831.1,	
			Reg. 2831.2	BPC 10177(d)
17	XIX e.	Cross	Reg. 2830	BPC 10177(d)
18	XIX f.	Cross	BPC 10240	BPC 10177(d)
19	XIX g.	Cross		BPC 10137
20	XX-XXI	Cross (as to VIP)		BPC 10177(h)
21	XX-XXI	Cross (as to FCM)		BPC 10177(g)
22				

23 WHEREFORE, Complainant prays that a hearing be conducted
 24 on the allegations of this Accusation and that upon proof thereof
 25 a decision be rendered imposing disciplinary action against all

26 ///
 27 ///

1 licenses and license rights of Respondents, under the Real Estate
2 Law (Part 1 of Division 4 of the Business and Professions Code)
3 and for such other and further relief as may be proper under other
4 provisions of law.

5
6 
7 LES R. BETTENCOURT
8 Deputy Real Estate Commissioner

9 Dated at San Francisco, California,
10 this 10th day of May, 1994.
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