

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

3 Telephone: (415) 904-5917
4

FILED
MAR 25 1996

DEPARTMENT OF REAL ESTATE

5 By Lynda Montiel
6 Lynda Montiel

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BRIAN PAUL FORNESI,) No. H-7298 SF
13 Respondent.) STIPULATION AND AGREEMENT
14) IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between BRIAN PAUL
16 FORNESI (Respondent) and the Complainant, acting by and through
17 Deidre L. Johnson, Counsel for the Department of Real Estate, as
18 follows for the purpose of settling and disposing of the
19 Accusation filed on October 31, 1995 in this matter:

20 1. All issues which were to be contested and all
21 evidence which was to be presented by Complainant and Respondent
22 at a formal hearing on the Accusation, which hearing was to be
23 held in accordance with the provisions of the California
24 Administrative Procedures Act (APA), shall instead and in place
25 thereof be submitted solely on the basis of the provisions of this
26 Stipulation and Agreement in Settlement.
27

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

5 3. On November 8, 1995, Respondent filed his Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA, and that he will waive
14 other rights afforded to him in connection with the hearing such
15 as the right to present evidence in defense of the allegations in
16 the Accusation and the right to cross-examine witnesses.

17 4. Respondent, pursuant to the limitations set forth
18 below, hereby admits that the factual allegations of the
19 Accusation are true and correct and the Real Estate Commissioner
20 shall not be required to provide further evidence of such
21 allegations. A true copy of the Accusation is attached hereto as
22 Annex A and incorporated herein by reference.

23 5. It is understood by the parties that the Real Estate
24 Commissioner may adopt the Stipulation and Agreement in Settlement
25 as his decision in this matter thereby imposing the penalty and
26 sanctions on Respondent's real estate license and license rights
27 as set forth in the below "Order". In the event that the

1 Commissioner in his discretion does not adopt the Stipulation and
2 Agreement in Settlement, it shall be void and of no effect, and
3 Respondent shall retain the right to a hearing and proceeding on
4 the Accusation under all the provisions of the APA and shall not
5 be bound by any admission or waiver made herein.

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

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and
15 waivers and for the purpose of settlement of the pending
16 Accusation without a hearing, it is stipulated and agreed that the
17 following determination of issues shall be made:

18 I

19 The acts and/or omissions of Respondent as set forth in
20 the Accusation violate Section 10130 of the Code, and constitute
21 grounds for disciplinary action against the real estate license
22 and license rights of Respondent under the provisions of Sections
23 10137, 10177(d), and 10177(k) of the California Business and
24 Professions Code.

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ORDER

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The real estate broker license and licensing rights of Respondent BRIAN PAUL FORNESI 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) 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.
- (2) 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 the provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.
- (3) 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 one (1) year has elapsed from the effective date of this Decision.

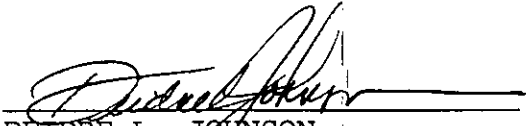
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- (4) Respondent shall submit with any application for licensure under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:
 - (a) That the employing broker has read the Decision of the Real Estate 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 of activities for which a real estate license is required.

- (5) 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.

- (6) Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.

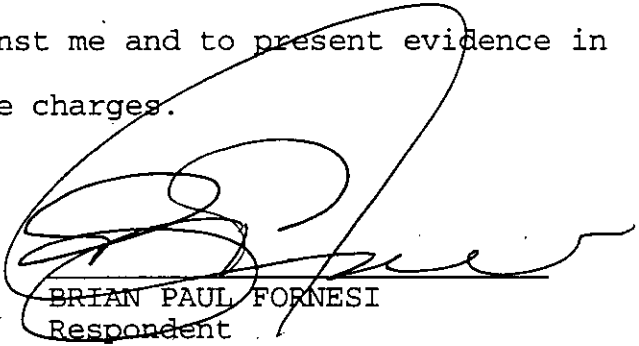
DATED: March 11, 1996 
 DEIDRE L. JOHNSON
 Counsel for Complainant

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I have read the Stipulation in Settlement and Agreement, understand I have the right to discuss it with an attorney, and its terms are understood by me and are agreeable and acceptable to me. I have had this agreement reviewed by an attorney on my behalf. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

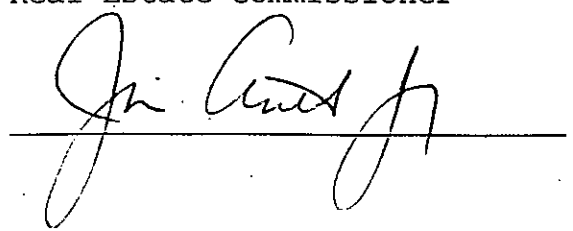
DATED: 3/10/96


BRIAN PAUL FORNESI
Respondent

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 April 12th, 1996.

IT IS SO ORDERED 3-19, 1996.

JIM ANTT, JR.
Real Estate Commissioner


Flag

COPY

FILED
FEB 6 1996

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

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

BRIAN PAUL FORNESI,

Case No. H-7298 SF

OAH No. N 9512238

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

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

OFFICE OF ADMINISTRATIVE HEARINGS, in the WORLD SAVINGS TOWER,

1970 Broadway, 2nd Floor, Oakland, CA 94612-3049

on Tuesday, May 7, 1996 (1/2 day), at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

DEPARTMENT OF REAL ESTATE

Dated: February 6, 1996

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

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

5 Telephone: (415) 904-5917

FILED
OCT 31 1995
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) No. H-7298 SF
13 BRIAN PAUL FORNESI,)
14 Respondent.)

15
16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for causes of
18 Accusation against BRIAN PAUL FORNESI, is informed and alleges as
19 follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation against Respondent in his official capacity and not
24 otherwise.

25 II

26 BRIAN PAUL FORNESI (hereafter Respondent) is presently
27 licensed and/or has license rights under the Real Estate Law, Part

1 1 of Division 4 of the California Business and Professions Code
2 (hereafter the Code) as a restricted real estate broker.

3 III

4 Beginning on or about August 30, 1993, Respondent was
5 issued a restricted real estate broker license by the Department
6 of Real Estate, which license was suspended commencing August 30,
7 1993 for a period of nine months thereafter. At no time herein
8 between at least September 1, 1993, and December 30, 1993, was
9 Respondent licensed by the Department to conduct active business
10 for which a real estate license is required.

11 IV

12 During the period from at least September 1, 1993 to
13 December 30, 1993, Respondent was employed or associated as a real
14 estate broker and loan agent with The Prudential Real Estate
15 Services of America, Inc., (hereafter Prudential), and performed
16 activities for Prudential for which a real estate license is
17 required, for or in expectation of compensation, and solicited,
18 negotiated and processed loans to be secured by deeds of trust to
19 real property in various transactions.

20 V

21 Respondent earned and/or was paid commissions on the
22 above transactions, including but not limited to the following:

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BORROWER	ADDRESS	DATE	COMMISSION	PAID
Moore	110 Lucero	9/1/93	\$2,250	Yes
Ponty	3341 Los Prados	9/1/93	1,840	Yes
Lamerdin	642 Alameda de Pulg	10/26/93	2,044	No
Lombardi	1589 Four Oaks	11/1/93	661	No
Warman	832 Foothill	11/30/93	980	No
Bedell	1461 Crestview	11/30/93	1,783	No
Graves	3504 Hillcrest	12/03/93	1,701	No

VI

Effective August 30, 1993, in Case No. H-6843 SF, the Real Estate Commissioner revoked the real estate broker license of Respondent and granted the right to a restricted broker license. Included in the terms, conditions and restrictions imposed on the restricted license was the following:

1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for nine (9) months from the date of issuance of said restricted license.

VII

By engaging in the activities for which an active real estate license is required as alleged in paragraphs IV and V above, Respondent violated the above suspension condition and restriction of licensure.


VIII

The above acts and/or omissions of Respondent violate Section 10130 of the Code, and constitute grounds for disciplinary action under Sections 10137, 10177(d) and/or 10177(k) of the Code.

PRIOR DISCIPLINARY ACTION

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2 Effective August 30, 1993, in Case No. H-6843 SF, the
3 Real Estate Commissioner revoked the real estate broker license of
4 Respondent and granted the right to a restricted broker license on
5 terms and conditions including a nine month suspension, for
6 violation of Section 2785(b)(2) of Title 10, California Code of
7 Regulations, and Sections 10176(a), 10176(i), and 10177(d) of the
8 Code.

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

16
17 
18 LES R. BETTENCOURT
19 Deputy Real Estate Commissioner

20 Dated at San Francisco, California,
21 this 19th day of October, 1995.