

1 Among those terms, conditions and restrictions, you
2 were required to take and pass the Professional Responsibility
3 Examination within six months from the effective date of the
4 Decision. The Commissioner has determined that as of March 4,
5 2004, you have failed to satisfy this condition and as such, you
6 are in violation of Section 10177(k) of the Business and
7 Professions Code.

8 NOW, THEREFORE, IT IS ORDERED under authority of
9 Section 10156.7 of the Business and Professions Code of the
10 State of California that the restricted real estate broker
11 license heretofore issued to Respondent and the exercise of any
12 privileges thereunder is hereby suspended until such time as you
13 provide proof satisfactory to the Department of compliance with
14 the "condition" referred to above, or pending final determination
15 made after hearing (see "Hearing Rights" set forth below).
16 Furthermore, you have no right to renew your restricted license
17 if this "condition" isn't satisfied by the date your restricted
18 license expires.

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

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

1 Estate License pursuant to Business and Professions Code Section
2 10175.2.

3 I have given due consideration to the petition of
4 Respondent ANDREW EUGENE TURNAUER, Jr. concerning the
5 suspension. I find that the public interest and welfare will be
6 adequately served by permitting Respondent ANDREW EUGENE
7 TURNAUER, Jr. to pay a monetary penalty to the Department in lieu
8 of the actual twenty (20) day suspension ordered in this case,
9 under the following conditions:

10 As to Respondent ANDREW EUGENE TURNAUER, Jr. the
11 entire twenty (20) days of said suspension shall be stayed upon
12 the condition that said Respondent pays a monetary penalty
13 pursuant to Section 10175.2 of the Business and Professions Code
14 at a rate of \$250.00 for each day of the suspension for a total
15 monetary penalty of \$5,000.00:

16 (a) Said payment shall be in the form of a cashier's
17 check or certified check made payable to the
18 Recovery Account of the Real Estate Fund. Said
19 check must be delivered to the Department prior
20 to the effective date of the Order in this
21 matter.

22 (b) No further cause for disciplinary action against
23 the Real Estate License of Respondent ANDREW
24 EUGENE TURNAUER, Jr. occurs within one (1) year
25 from the effective date of the decision in this
26 matter.

27 ///

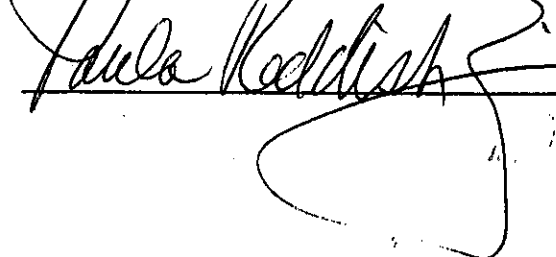
1 (c) If said Respondent fails to pay the monetary
2 penalty in accordance with the terms and
3 conditions of the Order, the Commissioner may,
4 without a hearing, order the immediate execution
5 of all or any part of the stayed suspension,
6 under this Order, in which event the said
7 Respondent shall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

11 (d) If said Respondent pays the monetary penalty and
12 satisfies the other conditions specified in the
13 Order in the decision in this matter, and if no
14 further cause for disciplinary action against the
15 real estate license of Respondent occurs within
16 two (2) years from the effective date of the
17 decision, the entire stay hereby granted under
18 this Order shall become permanent.

19 I have given due consideration to the petition of
20 Respondents as to all issues. Other than allowing Respondent
21 ANDREW EUGENE TURNAUER, Jr. to pay a monetary penalty in lieu of
22 suspension, I find no good cause to reconsider the Decision of
23 May 15, 2003 and reconsideration is hereby denied.

24 IT IS HEREBY ORDERED July 24, 2003.

25 PAULA REDDISH ZINNEMANN
26 Real Estate Commissioner

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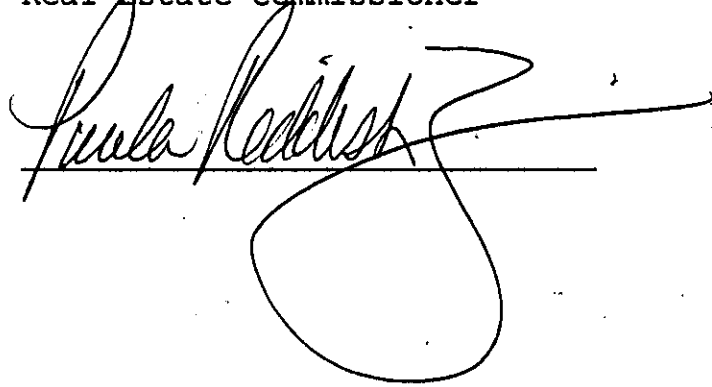
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IT IS HEREBY ORDERED that the effective date of the Decision of the Commissioner of May 15, 2003, is stayed for an additional ten (10) days.

The Decision of the Real Estate Commissioner of May 15, 2003, shall become effective at 12 o'clock noon on July 26, 2003.

DATED: July 16, 2003

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish", is written over a horizontal line. The signature is highly cursive and extends significantly below the line.

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FILED
JUN 10 2003

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
) No. H-8167 SF
ASHLEY McIVER LTD., CARMINE C. PASCUCCI)
and ANDREW E. TURNAUER, JR.)
)
Respondent.)

ORDER STAYING EFFECTIVE DATE

On May 15, 2003, a Decision was rendered in the above-entitled matter to become effective June 16, 2003.

On June 9, 2003, Respondent petitioned for reconsideration of the Decision of May 15, 2003.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of May 15, 2003, shall become effective at 12 o'clock noon on July 16, 2003.

DATED: June 10, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

John R. Liberto

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 27 2003

DEPARTMENT OF REAL ESTATE

Shelly Ely

* * *

In the Matter of the Accusation of)
ASHLEY McIVER LTD., CARMINE C.)
PASCUCCI and ANDREW E. TURNAUER, JR.,)
Respondents.)

NO. H-8167 SF

OAH NO. N2003020345

DECISION

The Proposed Decision dated April 23, 2003, 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 16, 2003.

DATED: *Macey 13*, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

ASHLEY McIVER LTD;
CARMINE CHARLES PASCUCCI; and
ANDREW EUGENE TURNÄUER, Jr.

Respondents.

Case No. H-8167 SF

OAH No. N2003010560

PROPOSED DECISION

This matter was heard before Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on March 24, 2003.

The respondent, Carmine Charles Pascucci, was personally present but was not otherwise represented. Respondents Ashley McIver LTD and Andrew Eugene Turnauer, Jr. were represented by their attorney, J. Michael Phelps.

Michael B. Rich, Counsel for the Department of Real Estate, represented the complainant, Charles W. Koenig.

FACTUAL FINDINGS

1. Charles W. Koenig made the First Amended Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. At all times material respondent Ashley McIver Ltd (McIver) was licensed by the Department of Real Estate (Department) as a corporate real estate broker.

At all times material respondent Carmine Charles Pascucci (Pascucci) was licensed by the Department as an individual real estate broker and as the designated broker/officer of McIver.

At all times material respondent Andrew Eugene Turnauer, Jr. (Turnauer) was associated with or in the employ of McIver. On or about November 22, 2000, the real

estate salesperson license of Turnauer expired. At no time between approximately November 22, 2000 and January 4, 2002, was Turnauer licensed by the Department as either a real estate broker or salesperson. At all other times material Turnauer was licensed by the Department as a real estate salesperson.

3. At all times material McIver engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California, including the business of soliciting borrowers and lenders or negotiating loans in connection with loans secured directly or collaterally by liens on real property, wherein such loans were brokered, arranged, processed, and/or consummated on behalf of others pursuant to section 10131(d) of the Business and Professions Code (Code), for or in expectation of compensation.

4. During the period from approximately November 22, 2000, to approximately January 4, 2002, when Turnauer's license was expired, Turnauer was employed by or associated with McIver, and performed activities for McIver for which a real estate license is required, for or in expectation of compensation. Turnauer solicited and/or negotiated loans secured by real property in California, in expectation of compensation from or was paid by or otherwise received compensation from McIver in various such transactions, including the following:

<u>Borrower</u>	<u>Property</u>	<u>Application Date</u>
Grace Muchmore	1810 Wedgemont Place	1/19/01
Marc Goodman	14 Rowan Way	2/20/01
Daryl J. Eigen	2280 Paradise Drive	5/1/01
Lewisa Goggin	23 Roscoe Street	12/4/01
Bill Jensen	Not stated	1/4/02

5. In connection with its loan business McIver failed to provide and/or failed to retain for a period of three years signed copies of the "Borrower Disclosure" statement as required by section 10240 of the Code, in conformance with section 10421 of the Code, including the following transactions:

<u>Borrower</u>	<u>Property</u>	<u>Application Date</u>
Grace Muchmore	1810 Wedgemont Place	2/19/01
Marc Goodman	14 Rowan Way	2/20/01

Daryl J. Eigen	2280 Paradise Drive	5/1/01
James LeClair	600 Plymouth Way	5/31/01
Charles Der	17 Wildwood Place	10/9/01
Lewisa Goggin	23 Roscoe Street	12/4/01

6. Within the past three years, during the course of the activities described above, McIver received and disbursed funds in trust on behalf of others. In doing so it maintained a trust checking bank account.

McIver permitted Turnauer, a person who neither held a California real estate license nor was bonded, to be a signatory on the above trust account in violation of section 2834 of the Department's regulations.

7. At all times material Pascucci was responsible, as the designated officer of McIver, for the supervision and control of the activities conducted on behalf of McIver by its officers and employees. Pascucci failed to exercise reasonable supervision and control over the mortgage lending and employment activities of McIver in the following respects: Pascucci permitted, ratified, and/or caused the conduct described in Findings 4, 5, and 6, and failed to take reasonable steps to prevent the employment of an unlicensed person to conduct licensed activities, the handling of trust funds by an unlicensed and unbonded person, and compliance with the borrower disclosure statement requirements.

8. It was not established that McIver failed to maintain on file with the Real Estate Commissioner a new address for the principal place of business for its real estate brokerage activities.

9. In February 2002, the Department conducted a broker office survey of McIver's real estate practice, including a records review of its real estate transactions. In preparing for the review Turnauer became aware that his license had expired in November 2000. He had been under the assumption the expiration date was November 2002. He immediately enrolled in and completed continuing education courses required for the renewal of his license. However, he had difficulty in obtaining documentation evidencing completion of the course work. He has since renewed his real estate salesperson license.

10. Respondents believed that their obligation was to mail the disclosure statement to the borrowers and to keep a copy in their files. This was the practice they followed. Respondents' contention that they asked the borrowers to return a signed copy of the disclosure statements was not credible. Their files contain no documentation to support this contention.

Section 10240 provides that the disclosure statement "be personally signed by the borrower" and "When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower."

Respondents contend the unsigned disclosure statements in their files are identical to those signed by the borrowers, thus they maintain they were in compliance with section 10240 of the Code. However, the statutory language expressly requires the licensee to maintain signed copies of the disclosure statements. In addition, compliance with section 10240 could not be ascertained by a review of the broker's records if all that is required is an unsigned copy.

11. Turnauer has been a real estate salesperson since 1982. He and his wife have owned McIver since 1996.

Pascucci was broker of record of McIver from December 4, 2000 until sometime in 2003 when he left to open his own brokerage firm. He has been a licensed real estate salesperson since 1978 and a licensed real estate broker for approximately ten years.

LEGAL CONCLUSIONS

1. Cause was established for discipline against Turnauer pursuant to sections 10130, 10137, 10177(d) and (f) of the Code, under the facts in Finding 4.
2. Cause was established for discipline against McIver pursuant to sections 10137 and 10177(d) of the Code, under the facts in Finding 4.
3. Cause was established for discipline against McIver pursuant to sections 10240 and 10177(d) of the Code, under the facts in Finding 5.
4. Cause was established for discipline against McIver and Turnauer pursuant to section 10177(d) of the Code and section 2834 of the Department's regulations, under the facts in Finding 6.
5. Cause was established for discipline against Pascucci pursuant to section 10177(h) of the Code, under the facts set forth in Findings 4; 5, 6, and 7.

ORDER

1. All licenses and licensing rights of respondent Carmine Charles Pascucci under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and

Professions Code if respondent makes application thereof 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 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 Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
- (e) Respondent shall, within six 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.

- (f) Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 20 days from the date of issuance of said restricted license.

2. All licenses and licensing rights of respondent Andrew Eugene Turnauer, Jr. 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 thereof 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 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 Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may

order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

- (e) Respondent shall, within six 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.
- (f) 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:

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

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.

- (g) Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 20 days from the date of issuance of said restricted license.

3. All licenses and licensing rights of respondent Ashley McIver Ltd under the Real Estate Law are revoked; provided, however, a restricted real estate corporate real estate broker license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application thereof 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 years have elapsed from the effective date of this Decision.~~

DATED: April 23, 2003.



ROBERT R. COFFMAN
Administrative Law Judge
Office of Administrative Hearings

FILED

MAR 20 2003

DEPARTMENT OF REAL ESTATE

Shelly Ely

1 MICHAEL B. RICH, Counsel
State Bar No. 84257
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

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BEFORE THE

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DEPARTMENT OF REAL ESTATE

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STATE OF CALIFORNIA

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* * *

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In the Matter of the Accusation of)

NO. H-8167 SF

13

ASHLEY McIVER LTD;)

14

CARMINE CHARLES PASCUCCI; and,)

15

ANDREW EUGENE TURNAUER, Jr.,)

FIRST AMENDED
ACCUSATION

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Respondents.)

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The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for causes of Accusation against ASHLEY McIVER LTD, CARMINE CHARLES PASCUCCI, and ANDREW EUGENE TURNAUER, Jr., is informed and alleges as follows:

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23

FIRST CAUSE OF ACCUSATION

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26

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this

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1 Accusation against Respondents in his official capacity and not
2 otherwise.

3 II

4 Respondents ASHLEY McIVER LTD, CARMINE CHARLES
5 PASCUCCI, and ANDREW EUGENE TURNAUER, Jr., are presently
6 licensed and/or have license rights under the Real Estate Law,
7 Part 1 of Division 4 of the California Business and Professions
8 Code (hereafter the Code).

9 III

10 At all times herein mentioned, Respondent ASHLEY
11 McIVER LTD (hereafter "Respondent CORPORATION") was and is
12 licensed by the Department of Real Estate (hereafter
13 "Department") as a corporate real estate broker.

14 IV

15 At all times herein mentioned, Respondent CARMINE
16 CHARLES PASCUCCI (hereafter "Respondent PASCUCCI") was and is
17 licensed by the Department of Real Estate (hereafter
18 "Department") as an individual real estate broker and as the
19 designated broker/officer of Respondent CORPORATION.

20 V

21 On or about November 22, 2000, the real estate
22 salesperson license of ANDREW EUGENE TURNAUER, Jr. (hereafter
23 "Respondent TURNAUER") expired and he has renewal rights until
24 November 22, 2002. At no time herein between about November 22,
25 2000, and January 4 2002, was Respondent TURNAUER licensed by
26 the Department as either a real estate broker or salesperson.
27

1 At all times herein mentioned, Respondent TURNAUER was
2 associated with or in the employ of Respondent CORPORATION.

3 VI

4 At all times herein mentioned, Respondent CORPORATION
5 engaged in the business of, acted in the capacity of, advertised
6 or assumed to act as a real estate broker within the State of
7 California, including the business of the soliciting borrowers
8 and lenders or negotiating loans in connection with loans
9 secured directly or collaterally by liens on real property,
10 wherein such loans were brokered, arranged, processed, and/or
11 consummated on behalf of others pursuant to Section 10131(d) of
12 the Code, for or in expectation of compensation.

13 VII

14 During the period from at least November 22, 2000, to
15 about January, 4, 2002, when Respondent TURNAUER's license was
16 expired, Respondent TURNAUER was employed by or associated with
17 Respondent CORPORATION, and performed activities for Respondent
18 CORPORATION for which a real estate license is required, for or
19 in expectation of compensation. Respondent TURNAUER solicited
20 and/or negotiated loans secured by real property in California,
21 in expectation of compensation from or was paid by or otherwise
22 received compensation from Respondent CORPORATION in various
23 such transactions, including, but not limited to, the following:

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	<u>Borrower</u>	<u>Property</u>	<u>Application Date</u>
1			
2	Grace Muchmore	1810 Wedgemont Place	2/19/01
3	Marc Goodman	14 Rowan Way	2/20/01
4	Darly J. Eigen	2280 Paradise Drive	5/1/01
5	Lewis Goggin	23 Roscoe Street	12/4/01
6	Bill Jensen	Not stated	1/4/02

VIII

8 The acts and/or omissions of Respondent TURNAUER as
9 alleged above violate Section 10130 of the Code, and constitute
10 grounds for disciplinary action against Respondent TURNAUER
11 pursuant to Sections 10137 and 10177(d) and (f) of the Code.

IX

13 The above acts and/or omissions of Respondent
14 CORPORATION, in employing and/or compensating Respondent
15 TURNAUER when Respondent TURNAUER was not duly licensed by the
16 Department, constitute grounds for disciplinary action against
17 Respondent corporation pursuant to Sections 10137 and 10177(d)
18 of the Code.

20 SECOND CAUSE OF ACCUSATION

X

22 There is hereby incorporated in this Second, separate
23 and distinct, Cause of Accusation, all of the allegations
24 contained in Paragraphs I, II, III and IV of the First Cause of
25 Accusation with the same force and effect as if herein fully set
26 forth.

27 ///

1 XI

2 In connection with the loan brokerage business
3 described in Paragraph VI above, Respondent CORPORATION failed
4 to provide and/or failed to retain for a period of three (3)
5 years the "Borrower Disclosure" statement as required by Section
6 10240, in conformance with Section 10421 of the Code, including,
7 but not limited to, the following transactions:

8

9 <u>Borrower</u>	<u>Property</u>	<u>Application Date</u>
10 Grace Muchmore	1810 Wedgemont Place	2/19/01
11 Marc Goodman	14 Rowan Way	2/20/01
12 Daruly J. Eigen	2280 Paradise Drive	5/1/01
13 James LeClair	600 Plymouth Way	5/31/01
14 Charles Der	17 Wildwood Place	10/9/01
15 Lewisa Goggin	23 Roscoe Street	12/4/01

16 XII

17 The facts alleged above are grounds for the suspension
18 or revocation of Respondent CORPORATION's license under the
19 provisions of Section 10240 in conjunction with 10177(d) of the
20 Code.

21

22 THIRD CAUSE OF ACCUSATION

23 XIII

24 There is hereby incorporated in this Third, separate
25 and distinct, Cause of Accusation, all of the allegations
26 contained in Paragraphs I, II, III, IV and VI of the First Cause
27 of Accusation with the same force and effect as if herein fully

1 set forth.

2 XIV

3 Respondent CORPORATION has failed to maintain on file
4 with the Real Estate Commissioner a new address for the
5 principal place of business for its real estate brokerage
6 activities.

7 XV

8 Respondent CORPORATION maintains more than one place
9 of business and failed to apply for and procure an additional
10 license for each branch office so maintained by it.

11 XVI

12 The facts alleged above are a violation of Section
13 2715 of the Regulations of the Real Estate Commissioner, Title
14 10, Chapter 6, California Code of Regulations (hereafter the
15 "Regulations"), and/or Section 10163 of the Code and are grounds
16 for the suspension or revocation of Respondent CORPORATION's
17 license under the provisions of Section 10165 and/or Section
18 10177(d) of the Code.

19 FOURTH CAUSE OF ACCUSATION

20 XVII

21 There is hereby incorporated in this Fourth, separate
22 and distinct, Cause of Accusation, all of the allegations
23 contained in Paragraphs I, II, III, IV and VI of the First Cause
24 of Accusation with the same force and effect as if herein fully
25 set forth.

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27 //

1 XVIII

2 Within the last three years, during the course of the
3 activities described above, Respondent CORPORATION received and
4 disbursed funds in trust on behalf of others.

5 XIX

6 On or about February 15, 2002, the Department
7 conducted a survey of the above business activities of
8 Respondent CORPORATION.

9 XX

10 Within the last three years, Respondent deposited the
11 above trust funds into a checking trust bank account at Bank of
12 America in Tiburon, California, bearing account number 10711-
13 09567, in the name of "Ashley McIver, Ltd Investor's Trust
14 Account" (HEREINAFTER "Trust Account 1.")

15 XXI

16 Respondent CORPORATION permitted Respondent TURNAUER,
17 a person who neither held a California real estate license nor
18 was bonded, to be a signatory on Trust Account 1 in violation of
19 Section 2834 of the Regulations.

20 XXII

21 The acts and/or omissions of Respondents as alleged
22 above constitute grounds for disciplinary action under the
23 Section 2834 of the Regulations in conjunction with 10177(d) of
24 the Code.

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1 FIFTH CAUSE OF ACCUSATION

2 XXIII

3 There is hereby incorporated in this Fifth, separate
4 and distinct, Cause of Accusation, all of the allegations
5 contained in Paragraphs I, II, III, IV and VI of the First Cause
6 of Accusation with the same force and effect as if herein fully
7 set forth.

8 XXIV

9 At all times mentioned above, Respondent PASCUCCI was
10 responsible, as the designated officer of Respondent
11 CORPORATION, for the supervision and control of the activities
12 conducted on behalf of the corporation by its officers and
13 employees. Respondent PASCUCCI failed to exercise reasonable
14 supervision and control over the mortgage lending and employment
15 activities of Respondent CORPORATION. In particular, Respondent
16 PASCUCCI permitted, ratified, and/or caused the conduct
17 described in the First, Second, Third and Fourth Causes of
18 Accusation above to occur, and failed to take reasonable steps
19 to prevent, including but not limited to, the employment of an
20 unlicensed person to conduct licensed activities, the handling
21 of trust funds by an unlicensed and unbonded person, failure to
22 notify the Department of Real Estate regarding business office
23 locations or obtain branch office licenses, failure to comply
24 with the borrower disclosure statement requirements, and failed
25 to implement policies, rules, procedures, and systems to ensure
26 the compliance of the corporation with the Real Estate Law.

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The above acts and/or omissions of Respondent PASCUCCI constitute grounds for disciplinary action under the provisions of Section 10177(h) of the Code.

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.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 20th day of March, 2003.

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

FILED
FEB 18 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ASHLEY McIVER LTD.,
CARMINE CHARLES PASCUCCI and
ANDREW EUGENE TURNAUER, JR.

}

Case No. H-8167 SF

OAH No. N2003010560

By Shelley Ely

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY -- MARCH 24, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: FEBRUARY 18, 2003

By

Michael B. Rich
MICHAEL B. RICH, Counsel

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
AUG 16 2002

DEPARTMENT OF REAL ESTATE

By Shelly Chy

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-8167 SF
12)
13 ASHLEY McIVER LTD;)
14 CARMINE CHARLES PASCUCCI; and,)
15 ANDREW EUGENE TURNAUER, Jr.,)
16)
17 Respondents.) ACCUSATION

17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against ASHLEY McIVER LTD, CARMINE CHARLES PASCUCCI,
20 and ANDREW EUGENE TURNAUER, Jr., is informed and alleges as
21 follows:

22 FIRST CAUSE OF ACCUSATION

23 I

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

27 ///

1 II

2 Respondents ASHLEY McIVER LTD, CARMINE CHARLES PASCUCCI,
3 and ANDREW EUGENE TURNAUER, Jr., are presently licensed and/or
4 have license rights under the Real Estate Law, Part 1 of
5 Division 4 of the California Business and Professions Code
6 (hereafter the Code).

7 III

8 At all times herein mentioned, Respondent ASHLEY McIVER LTD
9 (hereafter "Respondent CORPORATION") was and is licensed by the
10 Department of Real Estate (hereafter "Department") as a
11 corporate real estate broker.

12 IV

13 At all times herein mentioned, Respondent CARMINE CHARLES
14 PASCUCCI (hereafter "Respondent PASCUCCI") was and is licensed
15 by the Department of Real Estate (hereafter "Department") as an
16 individual real estate broker and as the designated
17 broker/officer of Respondent CORPORATION.

18 V

19 On or about November 22, 2000, the real estate
20 salesperson license of ANDREW EUGENE TURNAUER, Jr. (hereafter
21 "Respondent TURNAUER") expired and he has renewal rights until
22 November 22, 2002. At no time herein between about November 22,
23 2000, and January 4 2002, was Respondent TURNAUER licensed by
24 the Department as either a real estate broker or salesperson.
25 At all times herein mentioned, Respondent TURNAUER was
26 associated with or in the employ of Respondent CORPORATION.

27 ///

1 VI

2 At all times herein mentioned, Respondent CORPORATION
3 engaged in the business of, acted in the capacity of, advertised
4 or assumed to act as a real estate broker within the State of
5 California, including the business of the soliciting borrowers
6 and lenders or negotiating loans in connection with loans
7 secured directly or collaterally by liens on real property,
8 wherein such loans were brokered, arranged, processed, and/or
9 consummated on behalf of others pursuant to Section 10131(d) of
10 the Code, for or in expectation of compensation.

11 VII

12 During the period from at least November 22, 2000, to
13 about January, 4, 2002, when Respondent TURNAUER's license was
14 expired, Respondent TURNAUER was employed by or associated with
15 Respondent CORPORATION, and performed activities for Respondent
16 CORPORATION for which a real estate license is required, for or
17 in expectation of compensation. Respondent TURNAUER solicited
18 and/or negotiated loans secured by real property in California,
19 in expectation of compensation from or was paid by or otherwise
20 received compensation from Respondent CORPORATION in various
21 such transactions, including, but not limited to, the following:

<u>Borrower</u>	<u>Property</u>	<u>Application Date</u>
23 Grace Muchmore	1810 Wedgemont Place	2/19/01
24 Marc Goodman	14 Rowan Way	2/20/01
25 Darly J. Eigen	2280 Paradise Drive	5/1/01
26 Lewisa Goggin	23 Roscoe Street	12/4/01
27 Bill Jensen	Not stated	1/4/02

1 VIII

2 The acts and/or omissions of Respondent TURNAUER as
3 alleged above violate Section 10130 of the Code, and constitute
4 grounds for disciplinary action against Respondent TURNAUER
5 pursuant to Sections 10137 and 10177(d) and (f) of the Code.

6 IX

7 The above acts and/or omissions of Respondent
8 CORPORATION, in employing and/or compensating Respondent
9 TURNAUER when Respondent TURNAUER was not duly licensed by the
10 Department, constitute grounds for disciplinary action against
11 Respondent corporation pursuant to Sections 10137 and 10177(d)
12 of the Code.

13 SECOND CAUSE OF ACCUSATION

14 X

15 There is hereby incorporated in this Second, separate
16 and distinct, Cause of Accusation, all of the allegations
17 contained in Paragraphs I, II, III and IV of the First Cause of
18 Accusation with the same force and effect as if herein fully set
19 forth.

20 XI

21 In connection with the loan brokerage business
22 described in Paragraph VI above, Respondent CORPORATION failed
23 to provide the "Borrower Disclosure" statement as required by
24 Section 10240, in conformance with Section 10421 of the Code,
25 including, but not limited to, the following transactions:

26 ///

27 ///

<u>Borrower</u>	<u>Property</u>	<u>Application Date</u>
Grace Muchmore	1810 Wedgemont Place	2/19/01
Marc Goodman	14 Rowan Way	2/20/01
Daruly J. Eigen	2280 Paradise Drive	5/1/01
James LeClair	600 Plymouth Way	5/31/01
Charles Der	17 Wildwood Place	10/9/01
Lewisa Goggin	23 Roscoe Street	12/4/01

XII

The facts alleged above are grounds for the suspension or revocation of Respondent CORPORATION's license under the provisions of Section 10240 in conjunction with 10177(d) of the Code.

THIRD CAUSE OF ACCUSATION

XIII

There is hereby incorporated in this Third, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIV

Respondent CORPORATION has failed to maintain on file with the Real Estate Commissioner a new address for the principal place of business for its real estate brokerage activities.

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XV

Respondent CORPORATION maintains more than one place of business and failed to apply for and procure an additional license for each branch office so maintained by it.

XVI

The facts alleged above are a violation of Section 2715 of the Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations (hereafter the "Regulations"), and/or Section 10163 of the Code and are grounds for the suspension or revocation of Respondent CORPORATION's license under the provisions of Section 10165 and/or Section 10177(d) of the Code.

FOURTH CAUSE OF ACCUSATION

XVII

There is hereby incorporated in this Fourth, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I, II, III, IV and VI of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XVIII

Within the last three years, during the course of the activities described above, Respondent CORPORATION received and disbursed funds in trust on behalf of others.

XIX

On or about February 15, 2002, the Department conducted a survey of the above business activities of Respondent CORPORATION.

1 XX

2 Within the last three years, Respondent deposited the above
3 trust funds into a checking trust bank account at Bank of
4 America in Tiburon, California, bearing account number 10711-
5 09567, in the name of "Ashley McIver, Ltd Investor's Trust
6 Account" (HEREINAFTER "Trust Account 1.")

7 XXI

8 Respondent CORPORATION permitted Respondent TURNAUER, a
9 person who neither held a California real estate license nor was
10 bonded, to be a signatory on Trust Account 1 in violation of
11 Section 2834 of the Regulations.

12 XXII

13 The acts and/or omissions of Respondents as alleged above
14 constitute grounds for disciplinary action under the Section
15 2834 of the Regulations in conjunction with 10177(d) of the
16 Code.

17 FIFTH CAUSE OF ACCUSATION

18 XXIII

19 There is hereby incorporated in this Fifth, separate
20 and distinct, Cause of Accusation, all of the allegations
21 contained in Paragraphs I, II, III, IV and VI of the First Cause
22 of Accusation with the same force and effect as if herein fully
23 set forth.

24 XXIV

25 At all times mentioned above, Respondent PASCUCCI was
26 responsible, as the designated officer of Respondent
27 CORPORATION, for the supervision and control of the activities


1 conducted on behalf of the corporation by its officers and
2 employees. Respondent PASCUCCI failed to exercise reasonable
3 supervision and control over the mortgage lending and employment
4 activities of Respondent CORPORATION. In particular, Respondent
5 PASCUCCI permitted, ratified, and/or caused the conduct
6 described in the First, Second, Third and Fourth Causes of
7 Accusation above to occur, and failed to take reasonable steps
8 to prevent, including but not limited to, the employment of an
9 unlicensed person to conduct licensed activities, the handling
10 of trust funds by an unlicensed and unbonded person, failure to
11 notify the Department of Real Estate regarding business office
12 locations or obtain branch office licenses, failure to comply
13 with the borrower disclosure statement requirements, and failed
14 to implement policies, rules, procedures, and systems to ensure
15 the compliance of the corporation with the Real Estate Law.

16 XXV

17 The above acts and/or omissions of Respondent PASCUCCI
18 constitute grounds for disciplinary action under the provisions
19 of Section 10177(h) of the Code.

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

8
9 
10 LES R. BETTENCOURT
 Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 13th day of August, 2002.