

FILED

AUG 25 2010

DEPARTMENT OF REAL ESTATE

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

SUSANA D. SILVA,

No. H-8635 SF

Respondent.

ORDER DENYING REINSTATEMENT OF BROKER LICENSE
BUT GRANTING RIGHT TO AN UNRESTRICTED SALESPERSON LICENSE

On June 2, 2004, in Case No. H-8635 SF, a Decision was rendered revoking the real estate broker license of Respondent effective July 19, 2004. On April 8, 2008 an order was entered herein denying Respondent's petition for reinstatement of Respondent's real estate broker license effective May 6, 2008, but granting Respondent the right to issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on June 24, 2008, and Respondent has operated as a restricted licensee since that time.

On May 10, 2010, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

///

1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 I have considered Respondent's petition and the evidence and arguments in
6 support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has
7 undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate
8 broker license.

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

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

14 Respondent has been licensed as a restricted real estate salesperson for the past
15 two years. She has not reported that she has represented principals in real estate transactions
16 under the supervision of the real estate broker to whom she is licensed. Respondent has not
17 demonstrated that she has changed her business practices that resulted in license discipline.

18 I am satisfied, however, that it will not be against the public interest to issue an
19 unrestricted real estate salesperson license to Respondent.

20 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
21 reinstatement of Respondent's real estate broker license is denied; however, an unrestricted real
22 estate salesperson license shall be issued to Respondent if Respondent satisfies the following
23 requirements:

- 24 1. Submits a completed application and pays the fee for a real estate
25 salesperson license within the 12 month period following the date of this Order; and
26 2. Submits proof that Respondent has completed the continuing education
27 requirements for renewal of the license sought. The continuing education courses must be

1 completed either (i) within the 12 month period preceding the filing of the completed
2 application, or (ii) within the 12 month period following the date of this Order.

3 This Order shall become effective at 12 o'clock noon on **SEP 15 2010**

4 IT IS SO ORDERED 8/23/10

5 JEFF DAVI
6 Real Estate Commissioner

7 

8 BY: Barbara J. Bigby
9 Chief Deputy Commissioner

FILED

APR 15 2008

DEPARTMENT OF REAL ESTATE

By Jean Aranda

BEFORE THE DEPARTMENT OF REAL ESTATE
OF THE STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
SUSANA D. SILVA,)
Respondent.)

No. H-8635 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On June 2, 2004, a Decision was rendered herein
revoking the real estate broker license of Respondent effective
July 19, 2004.

On July 19, 2005, Respondent petitioned for
reinstatement of said real estate broker license. The petition of
July 19, 2005 was denied effective January 11, 2007.

On January 15, 2008, Respondent petitioned a second
time for reinstatement of said real estate broker license, and
the Attorney General of the State of California has been given
notice of the filing of said petition.

///

1 I have considered Respondent's petition and the
2 evidence and arguments in support thereof. Respondent has failed
3 to demonstrate to my satisfaction that Respondent has undergone
4 sufficient rehabilitation to warrant the reinstatement of
5 Respondent's unrestricted real estate broker license.

6 The burden of proving rehabilitation rests with the
7 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
8 petitioner is required to show greater proof of honesty and
9 integrity than an applicant for first time licensure. The proof
10 must be sufficient to overcome the prior adverse judgment on the
11 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
12 395).

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

18 Section 2911(k). Correction of business practices
19 resulting in injury to others or with the potential to cause such
20 injury.

21 In supported of her July 19, 2005 petition, Respondent
22 reported that she started in real estate in her early 20's and
23 that she was taught to "push everything through". Respondent
24 stated that this included falsifying documents sent to the
25 lender. Respondent stated that Respondent continued the practice
26 of "pushing everything through" for eleven and one-half years
27 with Respondent's previous broker.

1 The Accusation filed January 22, 2004 herein alleged
2 cause to discipline the license of Respondent under Section
3 10176(i) of the Business and Professions Code on the ground that,
4 during 2002, in course of Respondent's mortgage loan brokerage
5 activities, Respondent negotiated or attempted to negotiate
6 several fraudulent loans.

7 (1) Respondent solicited both Downey Savings and
8 Washington Mutual to refinance the "Diaz" residence, providing
9 the lenders a First National Bank verification of deposit that
10 had been altered to say Diaz had \$11,274.03 on deposit when the
11 correct amount was \$274.03. Downey Savings detected the
12 discrepancy, but Washington Mutual made the loan.

13 (2) Respondent solicited both Downey Savings and
14 Greenpoint Mortgage to finance Eric Farrelly's purchase of a
15 residence. To induce the lenders to make the loan, Respondent
16 represented, contrary to fact, that Farrelly intended to occupy
17 the house as his residence and was the sole purchaser. In fact,
18 Respondent was a partner with Farrelly in the purchase.
19 Respondent provided Downey a Monterey Credit Union verification
20 of deposit that had been altered to say Farrelly had \$66,662.64
21 on deposit when the correct amount was \$6,662.64. Downey declined
22 to make the loan. Respondent provided Greenpoint a statement -
23 contrary to fact - that Farrelly had been faithfully paying
24 \$1250 per month rent for years, and another statement by
25 Farrelly's sister that - contrary to fact - the sister was making
26 a \$22,930.85 gift to her brother to cover his downpayment.

27 ///

1 Greenpoint made the loan. Farrelly was in a dating relationship
2 with Respondent at the time of his transaction.

3 Respondent admitted that Respondent prepared the loan
4 applications and that some of the supporting information was
5 false. Farrelly says Farrelly just signed what Respondent asked
6 him to sign, and Respondent agrees. It is clear that the
7 verification of deposit forms in the Diaz and Farrelly
8 transaction had been falsified, as was the verification of
9 rental. Respondent does not concede that Respondent personally
10 falsified the verification forms, but they were obviously
11 falsified and it is clear that Respondent sent them to the
12 lenders.

13 Respondent has submitted no evidence showing correction
14 of the deficient loan origination practices that resulted in the
15 revocation of Respondent's license.

16 Given the violations found and the fact that Respondent
17 has not engaged as a broker in the operation of a real estate
18 brokerage business or otherwise acted in a fiduciary capacity,
19 Respondent has not established that Respondent has complied with
20 Section 2911 (k), Title 10, California Code of Regulations.

21 Section 2911(n). Change in attitude from that which
22 existed at the time of the conduct in question as evidenced by
23 any or all of the following: (1) Testimony of applicant; (2))
24 Evidence from family members, friends or other persons familiar
25 with applicant's previous conduct and with his subsequent
26 attitudes and behavioral patterns. (3) Evidence from probation or
27 parole officers or law enforcement officials competent to testify

1 as to applicant's social adjustments. (4) Evidence from
2 psychiatrists or other persons competent to testify with regard
3 to neuropsychiatric or emotional disturbances. (5) Absence of
4 subsequent felony or misdemeanor convictions that are reflective
5 of an inability to conform to societal rules when considered in
6 light of the conduct in question.

7 The Department is charged with providing maximum
8 protection for the public. Where, as here, it has been determined
9 based on reliable evidence that a licensee has engaged in
10 misconduct bearing on her fitness to interact safely with the
11 public in her capacity as a licensee, the Department must assess
12 the risk that the licensee will either persist in the type of
13 conduct that resulted in the revocation or has learned her lesson
14 and may be counted upon to avoid further misconduct. Of the
15 relevant criteria of rehabilitation listed in Regulation 2911,
16 none is more important in predicting future behavior than the
17 Respondent's "change in attitude" since the acts resulting in the
18 revocation. In fact, virtually all of the criteria in the
19 regulation are an attempt to gauge whether the applicant has so
20 changed her subjective outlook that a repetition of the offending
21 conduct no longer seems likely.

22 In this instance, the concern is whether Respondent is
23 likely to again commit a type of mortgage loan fraud that is
24 currently having such calamitous consequences for this nation's
25 economy. Respondent explains her change in attitude as follows:

26 "Before I went into business for myself, I knew
27 that what I had done was wrong and I now recognize

1 through counseling that I was more of a follower
2 who tried to please everyone and not a real strong
3 person on my own. I started counseling in about
4 2000 to help me through my divorce and I continued
5 after I left Veronick Home Loans and DRE started
6 their investigation. My counselor helped me
7 realize that I was always a people pleaser and
8 wanted to be liked by everyone. I've realized
9 that I am a stronger person now and I feel I am
10 not a follower but a person who can stand up to
11 someone and say that I cannot perform acts that I
12 know are not ethical or legal."

13 The record does include information tending to support
14 Respondent's claim to rehabilitation. It has been six years since
15 the misconduct resulting in the license revocation. Respondent
16 has provided substantial evidence of extensive community service
17 activities since license discipline. Respondent has made
18 conscientious efforts toward educational self improvement,
19 including earning a 2007 Associate of Arts degree and continuing
20 community college enrollment. Respondent's psychological
21 counselor has certified to Respondent's participation in
22 counseling. Respondent's petition is supported by current letters
23 from friends and associates. Nevertheless, Respondent's claim to
24 a change in attitude is solely self-certified. Given the gravity
25 of the offenses, Respondent's certification of her own
26 rehabilitation cannot be accepted at face value.

27 Consequently, I am not satisfied that Respondent is
sufficiently rehabilitated to receive an unrestricted real estate
broker license. Additional time and evidence of correction as a
restricted real estate salesperson is necessary to establish that
Respondent is rehabilitated.

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

4 A restricted real estate salesperson license shall be
5 issued to Respondent pursuant to Section 10156.5 of the Business
6 and Professions Code, if Respondent satisfies the following
7 conditions prior to and as a condition of obtaining a restricted
8 real estate salesperson license within nine (9) months from the
9 date of this Order:

10 1. Submittal of a completed application and payment of
11 the fee for a restricted real estate salesperson license.

12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 The restricted license issued to Respondent shall be
18 subject to all of the provisions of Section 10156.7 of the
19 Business and Professions Code and to the following limitations,
20 conditions and restrictions imposed under authority of Section
21 10156.6 of that Code:

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

27 ///

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

7 C. Respondent shall not be eligible to apply for the
8 issuance of an unrestricted real estate license or the removal of
9 any of the limitations, conditions or restrictions of a
10 restricted license until two (2) years have elapsed from the date
11 of the issuance of the restricted license to Respondent.

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

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

20 2. That the employing broker will exercise close
21 supervision over the performance by the restricted licensee
22 relating to activities for which a real estate license is
23 required.

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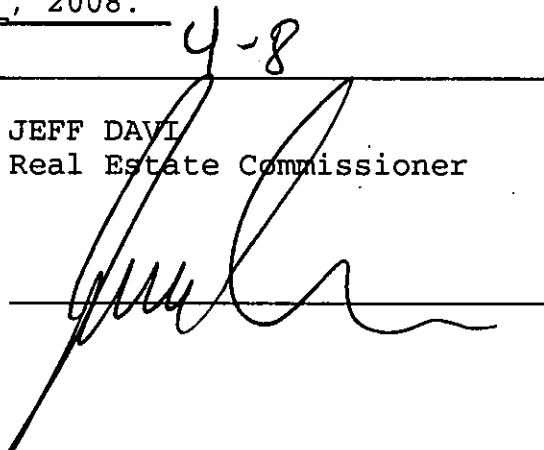
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This Order shall become effective at 12 o'clock

noon on MAY 06 2008, 2008.

IT IS SO ORDERED 4-8, 2008.

JEFF DAVIS
Real Estate Commissioner

A handwritten signature in dark ink, appearing to read 'Jeff Davis', is written over a horizontal line. The signature is stylized with a large initial 'J' and a long, sweeping tail.

FILED

JAN 10 2007

DEPARTMENT OF REAL ESTATE

By *Jan Hunt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-8635 SF

SUSANA D. SILVA,

Respondent.

ORDER DENYING RECONSIDERATION

On October 28, 2006, an Order Denying Reinstatement of License was rendered in the above-entitled matter. Said Order which was to become effective on December 12, 2006, was stayed by separate Order to January 11, 2007.

On December 1, 2006, the Department of Real Estate received Respondent's petition for reconsideration of the Order of October 28, 2006.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 28, 2006, and reconsideration is hereby denied.

IT IS SO ORDERED 1-10-07

JEFF DAVI
Real Estate Commissioner

Jeff Davi

FILED
DEC 04 2006

DEPARTMENT OF REAL ESTATE

By *Juan Acuna*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

SUSANA D. SILVA,)

No. H-8635 SF

Respondent.)

ORDER STAYING EFFECTIVE DATE

On October 28, 2006, an Order Denying Reinstatement of License was rendered in the above-entitled matter to become effective on December 12, 2006. On December 4, 2006, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Order Denying Reinstatement of License of October 28, 2006.

IT IS HEREBY ORDERED that the effective date of the Order Denying Reinstatement of License be stayed for a period of thirty (30) days. The Order Denying Reinstatement of License of October 28, 2006, shall become effective at 12 o'clock noon on January 11, 2007.

DATED: December 4, 2006.

JEFF DAVI
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

FILED

NOV 21 2006

DEPARTMENT OF REAL ESTATE

By Jean Brunob

BEFORE THE DEPARTMENT OF REAL ESTATE
OF THE STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
SUSANA D. SILVA,)
Respondent.)

No. H-8635 SF

ORDER DENYING REINSTATEMENT OF LICENSE

On June 2, 2004, a Decision was rendered herein
revoking the real estate broker license of Respondent.

On July, 2005, Respondent petitioned for reinstatement
of said real estate broker license, and the Attorney General of
the State of California has been given notice of the filing of
said petition.

I have considered Respondent's petition and the
evidence and arguments in support thereof. Respondent has failed
to demonstrate to my satisfaction that Respondent has undergone
sufficient rehabilitation to warrant the reinstatement of
Respondent's unrestricted real estate broker license.

1 The burden of proving rehabilitation rests with the
2 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
3 petitioner is required to show greater proof of honesty and
4 integrity than an applicant for first time licensure. The proof
5 must be sufficient to overcome the prior adverse judgment on the
6 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
7 395).

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

13 Section 2911(h). Stability of family life and
14 fulfillment of parental and familial responsibilities subsequent
15 to the conviction or conduct that is the basis for denial of the
16 agency action sought. Respondent is single without children. No
17 information has been submitted regarding Respondent's familial
18 life or responsibilities since revocation of Respondent's
19 license.

20 Section 2911(k). Correction of business practices
21 resulting in injury to others or with the potential to cause such
22 injury. In support of her petition, Respondent reports that she
23 started in real estate in her early 20's and that she was taught
24 to "push everything through". Respondent stated that this
25 included falsifying documents sent to the lender. Respondent
26 stated that Respondent continued the practice of "pushing
27 everything through" for eleven and one-half years with

1 Respondent's previous broker. Respondent stated that when
2 Respondent received Respondent's own broker license and started
3 Respondent's own business Respondent continued to falsify
4 documents.

5 The Accusation filed January 22, 2004 herein alleged
6 cause to discipline the license of Respondent under Section
7 10176(i) of the Business and Professions Code on the ground that,
8 during 2002, in course of Respondent's mortgage loan brokerage
9 activities, Respondent negotiated or attempted to negotiate
10 several fraudulent loans.

11 (1) Respondent solicited both Downey Savings and
12 Washington Mutual to refinance the "Diaz" residence, providing
13 the lenders a First National Bank verification of deposit that
14 had been altered to say Diaz had \$11,274.03 on deposit when the
15 correct amount was \$274.03. Downey Savings detected the
16 discrepancy, but Washington Mutual made the loan.

17 (2) Respondent solicited both Downey Savings and
18 Greenpoint Mortgage to finance Eric Farrelly's purchase of a
19 residence. To induce the lenders to make the loan, Respondent
20 represented, contrary to fact, that Farrelly intended to occupy
21 the house as his residence and was the sole purchaser. In fact,
22 Respondent was a partner with Farrelly in the purchase.
23 Respondent provided Downey a Monterey Credit Union verification
24 of deposit that had been altered to say Farrelly had \$66,662.64
25 on deposit when the correct amount was \$6,662.64. Downey
26 declined to make the loan. Respondent provided Greenpoint a
27 statement - contrary to fact - that Farrelly had being faithfully

1 paying \$1,250 per month rent for years, and another statement by
2 Farrelly's sister that - contrary to fact - the sister was making
3 a \$22,930.85 gift to her brother to cover his downpayment.

4 Greenpoint made the loan. Farrelly was in a dating relationship
5 with Respondent at the time of his transaction.

6 Respondent admitted that Respondent prepared the loan
7 applications and that some of the supporting information was
8 false. Farrelly says Farrelly just signed what Respondent asked
9 him to sign, and Respondent agrees. It is clear that the
10 verification of deposit forms in the Diaz and Farrelly
11 transaction had been falsified, as was the verification of
12 rental. Respondent does not concede that Respondent personally
13 falsified the verification forms, but they were obviously
14 falsified and it is clear that Respondent sent them to the
15 lenders.

16 Respondent has submitted no evidence showing correction
17 of the deficient loan origination practices that resulted in the
18 revocation of Respondent's license.

19 Given the violations found and the fact that Respondent
20 has not engaged as a broker in the operation of a real estate
21 brokerage business or otherwise acted in a fiduciary capacity,
22 Respondent has not established that Respondent has complied with
23 Section 2911 (k), Title 10, California Code of Regulations.

24 Section 2911(1). Significant or conscientious
25 involvement in community, church or privately-sponsored programs
26 designed to provide social benefits or to ameliorate social
27 problems. Respondent submitted no evidence of significant or

1 conscientious involvement in community service activities, other
2 than evidence of substantial charitable donations by Respondent
3 or her brokerage during the months immediately preceding and
4 following the revocation of Respondent's license.

5 Consequently, I am not satisfied that Respondent is
6 sufficiently rehabilitated to receive a real estate broker
7 license. Additional time and evidence of correction is necessary
8 to establish that Respondent is rehabilitated.

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

12 This Order shall become effective at 12 o'clock
13 noon on DEC 12 2006, 2006.

14 DATED: 10/28/, 2006.

15 JEFF DAVI
16 Real Estate Commissioner
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DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000
Telephone: (916) 227-0789

FILED
JUN 28 2004

DEPARTMENT OF REAL ESTATE

By *Loa Frost*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) DRE No. H-8635 SF
SUSANA D. SILVA,) OAH No. N-2004020505
Respondent.)

In the Matter of the Application of) DRE No. H-8768 SF
ERIC M. FARRELLY,)
Respondent.)

It is hereby stipulated by and between Respondent
SUSANA D. SILVA (herein "SILVA") and Respondent ERIC M. FARRELLY
(herein FARRELLY"), individually and by and through Bradford J.
Hinshaw, Esq., attorney of record herein for Respondents SILVA
and FARRELLY (herein jointly "Respondents", and the Complainant,
acting by and through James L. Beaver, Counsel for the Department
of Real Estate (herein "the Department"), as follows for the

DRE No. H-8635 SF
DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 purpose of settling and disposing of the Accusation filed on
2 January 22, 2004 by the Department in these proceedings with
3 respect to Respondent SILVA's real estate broker license (herein
4 "the Accusation") and the Statement of Issues filed herein May 3,
5 2004 by the Department in these proceedings in connection with
6 Respondent FARRELLY's application for a real estate salesperson
7 license (herein "the Statement of Issues").

8 1. All issues which were to be contested and all
9 evidence which was to be presented by Complainant and Respondents
10 at a formal hearing on the Accusation and/or the Statement of
11 Issues, which hearing was to be held in accordance with the
12 provisions of the Administrative Procedure Act (APA), shall
13 instead and in place thereof be submitted solely on the basis of
14 the provisions of this Stipulation and Agreement.

15 2. Respondent SILVA acknowledges that she has
16 received, read and understands the Statement to Respondent, the
17 Discovery Provisions of the APA and the Accusation filed by the
18 Department in these proceedings. On February 4, 2004, Respondent
19 SILVA filed a Notice of Defense pursuant to Section 11505 of the
20 Government Code for the purpose of requesting a hearing on the
21 allegations in the Accusation. Respondent SILVA hereby freely and
22 voluntarily withdraws said Notice of Defense.

23
24 Respondent SILVA acknowledges that she understands that, if this
25 Stipulation and Agreement is accepted by the Commissioner, by

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 withdrawing said Notice of Defense Respondent SILVA will thereby
2 waive Respondent's right to require the Real Estate Commissioner
3 (herein "the Commissioner") to prove the allegations in the
4 Accusation at a contested hearing held in accordance with the
5 provisions of the APA and that Respondent SILVA will waive other
6 rights afforded to Respondent in connection with the hearing such
7 as the right to present evidence in defense of the allegations in
8 the Accusation and the right to cross-examine witnesses. However,
9 Respondent SILVA is not waiving Respondent SILVA's right to a
10 hearing if this Stipulation and Agreement is not accepted by the
11 Commissioner.

12 3. Respondent FARRELLY acknowledges that he has
13 received and read the Statement of Issues and the Statement to
14 Respondent filed by the Department in connection with his
15 application for a real estate salesperson license. Respondent
16 understands that the Commissioner may hold a hearing on the
17 Statement of Issues for the purpose of requiring further proof of
18 Respondent FARRELLY 's honesty and truthfulness and to prove
19 other allegations therein, or that he may in his discretion waive
20 the hearing and grant Respondent FARRELLY a restricted real
21 estate salesperson license based upon this Stipulation and
22 Agreement. Respondent FARRELLY also understands that by filing
23 the Statement of Issues in this matter the Real Estate
24 Commissioner is shifting the burden to Respondent to make a
25

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 satisfactory showing that Respondent FARRELLY meets all the
2 requirements for issuance of a real estate salesperson license.
3 Respondent further understands that by entering into this
4 stipulation and waiver, Respondent FARRELLY will be stipulating
5 that the Real Estate Commissioner has found that Respondent
6 FARRELLY has failed to make such a showing, thereby justifying
7 the denial of the issuance to Respondent FARRELLY of an
8 unrestricted real estate salesperson license.

9 4. Respondent FARRELLY hereby requests that the Real
10 Estate Commissioner in his discretion issue a restricted real
11 estate salesperson license to Respondent FARRELLY under the
12 authority of Section 10156.5 of the Business and Professions
13 Code. Respondent FARRELLY is aware that, if this Stipulation and
14 Agreement is accepted by the Commissioner, by signing this
15 Stipulation and Agreement Respondent FARRELLY is waiving
16 Respondent's right to a hearing and the opportunity to present
17 evidence at the hearing to establish Respondent's rehabilitation
18 in order to obtain an unrestricted real estate salesperson
19 license. However, Respondent FARRELLY is not waiving Respondent
20 FARRELLY's right to a hearing and to further proceedings to obtain
21 a restricted or unrestricted license if this Stipulation and
22 Agreement is not accepted by the Commissioner.

23 5. This Stipulation and Agreement is based on the
24 factual allegations contained in the Accusation and the Statement
25

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 of Issues. In the interest of expediency and economy, Respondents
2 choose not to contest these factual allegations, but to remain
3 silent and understand that, as a result thereof, these factual
4 statements will serve as a prima facie basis for the
5 "Determination of Issues" and "Order" set forth below. The Real
6 Estate Commissioner shall not be required to provide further
7 evidence to prove such allegations.

8 6. This Stipulation and Respondent's decision not to
9 contest the Accusation and Statement of Issues are made for the
10 purpose of reaching an agreed disposition of these proceeding and
11 are expressly limited to these proceeding and any other
12 proceeding or case in which the Department of Real Estate (herein
13 "the Department"), the state or federal government, an agency of
14 this state, or an agency of another state is a party.

15 7. It is understood by the parties that the
16 Commissioner in his discretion may adopt the Stipulation and
17 Agreement as his decision in these proceedings, thereby imposing
18 the penalty and sanctions on Respondent SILVA's real estate
19 license and license rights and placing the restrictions on
20 Respondent FARRELLY's real estate license and license rights as
21 set forth in the "Order" below. In the event that the
22 Commissioner in his discretion does not adopt the Stipulation and
23 Agreement, it shall be void and of no effect, and Respondents
24 SILVA and FARRELLY shall, respectively, retain the right to a
25

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 hearing and proceeding on the Accusation and Statement of Issues
2 under all the provisions of the APA and shall not be bound by any
3 admission or waiver made herein.

4 8. This Stipulation and Agreement shall not
5 constitute an estoppel, merger or bar to any further
6 administrative or civil proceedings by the Department with
7 respect to any matters which were not specifically alleged to
8 be causes of action in these proceedings.

9 DETERMINATION OF ISSUES

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

14 I

15 The acts and omissions of Respondent SUSANA D. SILVA as
16 described in the Accusation are grounds for the suspension or
17 revocation of the licenses and license rights of Respondent
18 SUSANA D. SILVA under the provisions of Section 10176(i) of the
19 California Business and Professions Code.
20

21 II

22 I have read the Statement of Issues filed herein and
23 the foregoing Stipulation and Agreement signed by Respondent
24 FARRELLY. Respondent ERIC M. FARRELLY has failed to make a
25 satisfactory showing that Respondent ERIC M. FARRELLY meets all

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 the requirements for issuance of a real estate salesperson
2 license, thereby justifying the denial of the issuance to
3 Respondent ERIC M. FARRELLY of an unrestricted real estate
4 salesperson license. I am satisfied that the hearing for the
5 purpose of requiring further proof as to the honesty and
6 truthfulness of Respondent FARRELLY need not be called and that
7 it will not be inimical to the public interest to issue a
8 restricted real estate salesperson license to Respondent.

9 ORDER

10 I

11 All licenses and licensing rights of Respondent SUSANA
12 D. SILVA under the Real Estate Law are revoked.

13 II

14 The application of Respondent ERIC M. FARRELLY for an
15 unrestricted real estate salesperson license is denied; provided,
16 however, a restricted real estate salesperson license shall be
17 issued to Respondent if Respondent has otherwise fulfilled all of
18 the statutory requirements for licensure. The following
19 conditions, limitations, and restrictions will attach to the
20 restricted license issued by the Department pursuant hereto:
21

22 1. The license shall not confer any property right in
23 the privileges to be exercised, including the right of renewal,
24 and the Real Estate Commissioner may by appropriate order suspend
25

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 the right to exercise any privileges granted under this
2 restricted license in the event of:

3 a. The conviction of Respondent (including a plea of
4 nolo contendere) to a crime which bears a substantial
5 relationship to Respondent's fitness or capacity as a real estate
6 licensee; or

7 b. The receipt of evidence that Respondent has
8 violated provisions of the California Real Estate Law, the
9 Subdivided Lands Law, Regulations of the Real Estate
10 Commissioner, or conditions attaching to this restricted license.

11 2. Respondent shall not be eligible to apply for the
12 issuance of an unrestricted real estate license nor the removal
13 of any of the conditions, limitations or restrictions attaching
14 to the restricted license until two (2) years have elapsed from
15 the date of issuance of the restricted license to Respondent.
16

17 3. With the application for license, or with the
18 application for transfer to a new employing broker, Respondent
19 shall submit a statement signed by the prospective employing
20 broker on a form approved by the Department of Real Estate
21 wherein the employing broker shall certify as follows:

22 a. That broker has read the Statement of Issues which
23 is the basis for the issuance of the restricted license; and

24 b. That broker will carefully review all transaction
25 documents prepared by the restricted licensee and otherwise

26 DRE No. H-8635 SF
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Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 exercise close supervision over the licensee's performance of
2 acts for which a license is required.

3 4. Respondent's restricted real estate salesperson
4 license is issued subject to the requirements of Section 10153.4
5 of the Business and Professions Code, to wit: Respondent shall,
6 within eighteen (18) months of the issuance of the restricted
7 license, submit evidence satisfactory to the Commissioner of
8 successful completion, at an accredited institution, of two of
9 the courses listed in Section 10153.2, other than real estate
10 principles, advanced legal aspects of real estate, advanced real
11 estate finance or advanced real estate appraisal. If Respondent
12 fails to timely present to the Department satisfactory evidence
13 of successful completion of the two required courses, the
14 restricted license shall be automatically suspended effective
15 eighteen (18) months after the date of its issuance. Said
16 suspension shall not be lifted unless, prior to the expiration of
17 the restricted license, Respondent has submitted the required
18 evidence of course completion and the Commissioner has given
19 written notice to Respondent of lifting of the suspension.
20

21 5. Pursuant to Section 10154, if Respondent has not
22 satisfied the requirements for an unqualified license under
23 Section 10153.4, Respondent shall not be entitled to renew the
24 restricted license, and shall not be entitled to the issuance of
25 another license which is subject to Section 10153.4 until four

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 years after the date of the issuance of the preceding restricted
2 license.

3 May 26, 2004
4 DATED

James L. Beaver
JAMES L. BEAVER, Counsel
Department of Real Estate

5 * * *

6 I have read the Stipulation and Agreement and discussed
7 it with my attorney and its terms are understood by me and are
8 agreeable and acceptable to me. I understand that I am waiving
9 rights given to me by the California Administrative Procedure Act
10 (including but not limited to Sections 1506, 1508, 1509, and
11 11513 of the Government Code), and I willingly, intelligently,
12 and voluntarily waive those rights, including the right of
13 requiring the Commissioner to hold a hearing at which I would
14 have the right to cross-examine witnesses against me and to
15 present evidence in defense and mitigation of the charges.

16 5-11-04

17 DATED

Susana D. Silva
SUSANA D. SILVA
Respondent

18 DATED

19 ERIC M. FARRELLY
Respondent

20 * * *

21 I have reviewed the Stipulation and Agreement as to
22 form and content and have advised my clients accordingly.

23 5-18-04

24 DATED

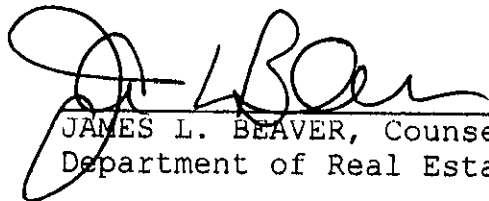
Bradford J. Hinshaw
BRADFORD J. HINSHAW
Attorney for Respondent

26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

1 years after the date of the issuance of the preceding restricted
2 license.

3 May 26 2004
4 DATED


JAMES L. BEAVER, Counsel
Department of Real Estate

5 * * *

6 I have read the Stipulation and Agreement and discussed
7 it with my attorney and its terms are understood by me and are
8 agreeable and acceptable to me. I understand that I am waiving
9 rights given to me by the California Administrative Procedure Act
10 (including but not limited to Sections 1506, 1508, 1509, and
11 11513 of the Government Code), and I willingly, intelligently,
12 and voluntarily waive those rights, including the right of
13 requiring the Commissioner to hold a hearing at which I would
14 have the right to cross-examine witnesses against me and to
15 present evidence in defense and mitigation of the charges.

16 DATED

SUSANA D. SILVA
Respondent


17
18 5-16-04
19 DATED


ERIC M. FARRELLY
Respondent

20 * * *

21 I have reviewed the Stipulation and Agreement as to
22 form and content and have advised my clients accordingly.

23 5-18-04
24 DATED


BRADFORD J. HINSHAW
Attorney for Respondent

25
26 DRE No. H-8635 SF
27 DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in The Matter Of The Accusation Of
SUSANA D. SILVA, Case No. H-8635 SF, and in The Matter Of The
Application Of ERIC M. FARRELLY, Case No. H-8768, and shall
become effective at 12 o'clock noon on July 19
2004.

IT IS SO ORDERED June 2, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

DRE No. H-8635 SF
DRE No. H-8768 SF

Accusation of SUSAN D. SILVA
Application of ERIC FARRELLY

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

FILED

MAR 19 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SUSANA L. SILVA,

Case No. H-8635 SF

OAH No. N-2004020505

Respondent

**FIRST AMENDED
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 **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **JUNE 2 & 3, 2004**, at the hour of **9:00 A.M.**, 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: MARCH 19, 2004

By

James L. Beaver
JAMES L. BEAVER, Counsel

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

FILED

MAR - 3 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

SUSANA L. SILVA,

Case No. H-8635 SF

OAH No. N-2004020505

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 **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612** on **MAY 13 & 14, 2004**, at the hour of **9:00 A.M.**, 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: MARCH 3, 2004

By James L. Beaver
JAMES L. BEAVER, Counsel (12)

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
JAN 22 2004

DEPARTMENT OF REAL ESTATE

Laurie A. Zeri

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-8635 SF

12 SUSANA D. SILVA,)

ACCUSATION

13 Respondent.)
14

15 The Complainant, Janice Waddell, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against SUSANA D. SILVA (herein "Respondent"), is informed and
18 alleges as follows:

19 FIRST CAUSE OF ACCUSATION

20 I

21 The Complainant, Janice Waddell, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 ///

25 ///

26 ///

27 ///

1 II

2 At all times herein mentioned, Respondent was and now
3 is licensed and/or has license rights under the Real Estate Law
4 (Part 1 of Division 4 of the Business and Professions Code)
5 (herein "the Code") as a real estate broker.

6 III

7 At all times herein mentioned, Respondent,
8 individually and in association with Veronick Mortgage Loans,
9 Inc., a licensed corporate real estate broker, engaged in the
10 business of, acted in the capacity of, advertised, and/or
11 assumed to act as a real estate broker within the State of
12 California within the meaning of Section 10131(d) of the Code,
13 including the operation and conduct of a mortgage loan brokerage
14 with the public wherein, on behalf of others, for compensation
15 or in expectation of compensation, Respondent solicited lenders
16 and borrowers for loans secured directly or collaterally by
17 liens on real property, and wherein Respondents arranged,
18 negotiated, processed, and consummated such loans.

19 IV

20 Between on or about May 9, 2002 and on or about
21 August 14, 2002, in course of the mortgage loan brokerage
22 activities described in Paragraph III, above:

23 (a) Respondent solicited and obtained an application
24 by Dean S. Diaz, Jr. (herein "Diaz") for a \$100,000.00 loan to
25 be secured by real property at 1401 Via Isola Street, Monterey,
26 California, for the purpose of refinancing an existing loan
27 encumbering the real property (herein "the Diaz loan");

1 (b) Respondent solicited both Downey Savings and Loan
2 Association (herein "Downey Savings") and Washington Mutual to
3 make the Diaz loan.

4 V

5 In course of the transaction described in Paragraph
6 IV, above, in order to induce Downey Savings to make the Diaz
7 loan, and in order to induce Washington Mutual to make the Diaz
8 loan, Respondent represented to both Downey Savings and to
9 Washington Mutual that, at Respondent's instance and request,
10 First National Bank had issued to Respondent its authentic
11 "Verification Of Deposit" dated June 19, 2002, certifying that
12 as of June 19, 2002, the sum of \$11,274.03 was on deposit in
13 account number 44010-510 maintained by Diaz at the Salinas,
14 California branch of First National Bank (herein "the Diaz
15 account"), and that the average balance in the Diaz account for
16 the two months preceding June 19, 2002 was \$11,361.00.

17 VI

18 The representations to Downey Savings and Washington
19 Mutual described in paragraph V, above, were false when made. In
20 truth and fact, as Respondent well and truly knew at the time:

21 (a) On or about June 19, 2002, at Respondent's
22 instance and request, First National Bank had issued to
23 Respondent its original "Verification Of Deposit" certifying
24 that as of June 19, 2002, the sum of \$274.03 was on deposit in
25 the Diaz account and that the average balance in the Diaz
26 account for the two months preceding June 19, 2002 was \$361.00;

27 ///

1 (b) Thereafter Respondent caused, suffered and
2 permitted the original Diaz Verification of Deposit to be
3 altered to state, contrary to fact, that as of June 19, 2002,
4 the sum of \$11,274.03 was on deposit in the Diaz account, and
5 that the average balance in the Diaz account for the two months
6 preceding June 19, 2002 was \$11,361.00 (herein "the altered Diaz
7 Verification of Deposit"); and

8 (c) Respondent submitted the altered Diaz
9 Verification of Deposit to both Downey Savings and Washington
10 Mutual knowing that it had been altered as described above.

11 VII

12 The acts and omissions of Respondent described in
13 Paragraphs IV through VI, inclusive, above, constitute the
14 substantial misrepresentation of a material fact and fraud and
15 dishonest dealing.

16 SECOND CAUSE OF ACCUSATION

17 VIII

18 There is hereby incorporated in this Second, separate
19 and distinct Cause of Accusation, all of the allegations
20 contained in Paragraphs I through VII, inclusive of the First
21 Cause of Accusation with the same force and effect as if herein
22 fully set forth.

23 IX

24 Between on or about May 27, 2002 and on or about July
25 8, 2002, in course of the mortgage loan brokerage activities
26 described in Paragraph III, above:

27 ///

1 (a) Respondent solicited and obtained an application
2 by Eric Farrelly (herein "Farrelly") for a \$283,500.00 loan to
3 be secured by residential real property at 1889 Highland Street,
4 Seaside, California (herein "the Highland residence"), for the
5 purpose of financing the purchase of the real property (herein
6 "the Farrelly loan"); and

7 (b) Respondent solicited Downey Savings to make the
8 Farrelly loan.

9 X

10 In course of the transaction described in Paragraph
11 IX, above, in order to induce Downey Savings to make the
12 Farrelly loan, Respondent represented to Downey Savings that:

13 (a) Farrelly was the sole purchaser of the Highland
14 residence; and

15 (b) Farrelly intended to occupy the Highland
16 residence as Farrelly's principal residence commencing upon
17 consummation of the purchase and Farrelly loan;

18 (c) At Respondent's instance and request, Monterey
19 Federal Credit Union (herein MFCU") had issued to Respondent its
20 authentic "Verification Of Deposit" dated June 1, 2002,
21 certifying that as of June 1, 2002, the sums tabulated below
22 were on deposit in the accounts tabulated below maintained by
23 Farrelly at the Monterey, California branch of MFCU (herein "the
24 Farrelly accounts"), and that the average balance in the
25 Farrelly accounts for the two months preceding June 1, 2002 were
26 as tabulated below:

27 ///

ITEM NO.	ACCOUNT IDENTIFICATION	CURRENT BALANCE	AVERAGE BALANCE
(1)	Savings S1	\$532.10	\$662.05
(2)	Savings S1.1	\$1,354.13	\$1,086.12
(3)	Checking	\$701.96	\$738.97
(4)	12 Mo. CD IRA	\$66,662.64	\$66,261.68

XI

The representations to Downey Savings described in Paragraph X, above, were false when made. In truth and fact, as Respondent well and truly knew at the time:

(a) The Highland residence was being purchased by George and Tracey Simms, husband and wife, as well as by Farrelly;

(b) Farrelly did not at all intend to occupy the Highland residence as his principal residence, but instead intended that the Highland residence would be occupied by George and Tracey Simms commencing upon consummation of the purchase and Farrelly loan;

(c) On or about June 1, 2002, MFCU had issued to Respondent, at Respondent's instance and request, an original "Verification Of Deposit" certifying that as of June 1, 2002, the sum of \$ 6662.64 was on deposit in the Farrelly 12 Mo. CD IRA account, and that the average balance in the Farrelly 12 Mo. CD IRA account for the two months preceding June 1, 2002 was \$ 6261.68;

///

///

1 (d) Respondent caused, suffered and permitted the
2 original Farrelly "Verification Of Deposit." to be altered to
3 state that as of June 1, 2002, the sum of \$66662.64 was on
4 deposit in the Farrelly 12 Mo. CD IRA account, and that the
5 average balance in the Farrelly 12 Mo. CD IRA account for the
6 two months preceding June 1, 2002 was \$66261.68; and

7 (e) Respondent submitted the altered Farrelly
8 Verification of Deposit to Downey Savings knowing that it had
9 been altered as described above.

10 XII

11 The acts and omissions of Respondent described in
12 Paragraphs IX through XI, inclusive, above, constitute the
13 substantial misrepresentation of material facts and fraud and
14 dishonest dealing.

15 THIRD CAUSE OF ACCUSATION

16 XIII

17 There is hereby incorporated in this Third, separate
18 and distinct Cause of Accusation, all of the allegations
19 contained in Paragraphs I through XII, inclusive of the First
20 and Second Causes of Accusation with the same force and effect
21 as if herein fully set forth.

22 XIV

23 Between on or about July 5, 2002 and on or about
24 July 25, 2002, in course of the mortgage loan brokerage
25 activities described in Paragraph III, above, Respondent
26 solicited GreenPoint Mortgage Funding, Inc. (herein "GreenPoint
27 Mortgage" to make the Farrelly loan.

XV

In course of the transaction described in Paragraph XIV, above, in order to induce GreenPoint Mortgage to make the Farrelly loan, Respondent represented to GreenPoint Mortgage that:

(a) Farrelly was the sole purchaser of the Highland residence;

(b) Farrelly intended to occupy the Highland residence as Farrelly's principal residence commencing upon consummation of the purchase and Farrelly loan;

(c) Between 1997 and July 8, 2002, Irene Amaral (herein "Amaral" was the owner of residential real property at 322 Hannon Street, Monterey, California (herein "the Hannon residence"; that between 1997 and July 8, 2002 Farrelly rented the Hannon residence from Amaral; and that Respondent had solicited and obtained from Amaral an authentic "Verification Of Rent Or Mortgage" dated July 8, 2002 certifying in good faith that between 1997 and July 8, 2002 Farrelly had regularly paid rent to Amaral as and for the rental of the Hannon residence; and

(d) Farrelly intended to finance the purchase of the Highland residence in part by means of a bona fide gift in the sum of \$22,930.85 from Farrelly's sister, Tracey Simms, also known as Tracey Farrelly, and that Respondent had solicited and obtained from Tracey Simms an authentic "Gift Affidavit" dated July 17, 2002 certifying in good faith that Tracey Simms had or
///

1 would make a bona fide gift to Farrelly in the sum of \$22,930.85
2 to be applied toward the purchase of the Highland residence.

3 XVI

4 The representations to GreenPoint Mortgage described
5 in Paragraph XV, above, were false when made. In truth and fact,
6 as Respondent well and truly knew at the time:

7 (a) The Highland residence was being purchased by
8 George and Tracey Simms, husband and wife, as well as by
9 Farrelly;

10 (b) Farrelly did not at all intend to occupy the
11 Highland residence as his principal residence, but instead
12 intended that the Highland residence would be occupied by George
13 and Tracey Simms commencing upon consummation of the purchase
14 and Farrelly loan;

15 (c) Between 1997 and July 8, 2002, the Hannon
16 residence was owned by John Farrelly, father of Farrelly and
17 Tracey Simms, and not by Amaral, and the statements by Amaral in
18 the "Verification Of Rent Or Mortgage" dated July 8, 2002 were
19 false when made; and

20 (d) Tracey Simms, together with her husband, George
21 Simms, was one of the purchasers of the Highland residence,
22 Tracey Simms was not making any substantial gift to Farrelly to
23 be applied toward the purchase of the Highland residence, and
24 the statements by Tracey Simms in the "Gift Affidavit" dated
25 July 17, 2002 were false when made.

26 ///

27 ///

XVII

The acts and omissions of Respondent described in Paragraphs XIV through XVI, inclusive, above, constitute the substantial misrepresentation of material facts and fraud and dishonest dealing..

XVIII

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondent under the following provisions of the Code:

(a) as to the First Cause of Accusation under Sections 10176(a) and 10176(i) of the Code;

(b) as to the Second Cause of Accusation under Sections 10176(a) and 10176(i) of the Code; and

(c) as to the Third Cause of Accusation under Sections 10176(a) and 10176(i) 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 Respondent 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 applicable provisions of law.


JANICE WADDELL
Deputy Real Estate Commissioner

Dated at Los Angeles, California

this 30th day of December, 2003.