

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

**FILED**

AUG 18 2008

DEPARTMENT OF REAL ESTATE

By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ) NO. H-9724 SF  
13 GARY R. BOWERS, and )  
14 ANDREW A. LEWIS, ) STIPULATION AND AGREEMENT  
15 Respondents. )

16 It is hereby stipulated by and between Respondent  
17 GARY R. BOWERS (hereinafter referred to as "Respondent"),  
18 acting by and through his attorney of record, Thomas C. Lasken,  
19 and the Complainant, acting by and through Michael B. Rich,  
20 Counsel for the Department of Real Estate, as follows for the  
21 purpose of settling and disposing of the Accusation filed on  
22 October 19, 2006, in this matter (hereinafter "the  
23 Accusation"):

24 1. All issues which were to be contested and all  
25 evidence which was to be presented by Complainant and  
26 Respondent at a formal hearing on the Accusation, which hearing  
27 was to be held in accordance with the provisions of the

H-9724 SF

GARY R. BOWERS

1 Administrative Procedure Act (APA), shall instead and in place  
2 thereof be submitted solely on the basis of the provisions of  
3 this Stipulation and Agreement.

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

8           3. On November 6, 2006, Respondent filed a Notice of  
9 Defense pursuant to Section 11505 of the Government Code for  
10 the purpose of requesting a hearing on the allegations in the  
11 Accusation. Respondent hereby freely and voluntarily withdraws  
12 said Notice of Defense. Respondent acknowledges that  
13 Respondent understands that by withdrawing said Notice of  
14 Defense, Respondent will thereby waive Respondent's right to  
15 require the Commissioner to prove the allegations in the  
16 Accusation at a contested hearing held in accordance with the  
17 provisions of the APA and that Respondent will waive other  
18 rights afforded to Respondent in connection with the hearing  
19 such as the right to present evidence in defense of the  
20 allegations in the Accusation and the right to cross-examine  
21 witnesses.

22           4. Without admitting the truth of the allegations  
23 contained in the remaining paragraphs of the Accusation,  
24 Respondent stipulates that he will not interpose a defense  
25 thereto. This Stipulation is based on the factual allegations  
26 contained in the Accusation. In the interests of expedience and  
27 economy, Respondent chooses not to contest the allegations, but

1 to remain silent, and understands that, as a result thereof,  
2 these factual allegations, without being admitted or denied,  
3 will serve as a basis for the disciplinary action stipulated to  
4 herein. The Real Estate Commissioner shall not be required to  
5 provide further evidence to prove said factual allegations.

6 5. It is understood by the parties that the Real  
7 Estate Commissioner may adopt the Stipulation and Agreement as  
8 his decision in this matter, thereby imposing the penalty and  
9 sanctions on Respondent's real estate license and license  
10 rights as set forth in the "Order" below. In the event that  
11 the Commissioner in his discretion does not adopt the  
12 Stipulation and Agreement, it shall be void and of no effect,  
13 and Respondent shall retain the right to a hearing and  
14 proceeding on the Accusation under all the provisions of the  
15 APA and shall not be bound by any admission or waiver made  
16 herein.

17 6. This Stipulation and Agreement shall not  
18 constitute an estoppel, merger or bar to any further  
19 administrative or civil proceedings by the Department of Real  
20 Estate with respect to any matters which were not specifically  
21 alleged to be causes for accusation in this proceeding.

#### 22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations, admissions  
24 and waivers and solely for the purpose of settlement of the  
25 pending Accusation without hearing, it is stipulated and agreed  
26 that the following Determination of Issues shall be made:

27 I

1           The acts and omissions of Respondent GARY R. BOWERS  
2 described in the Accusation are grounds for the suspension or  
3 revocation of the licenses and license rights of Respondent  
4 under the provisions of Sections 10148, 10240, and 10159.5 of  
5 the Business and Professions Code and Section 2731 of Chapter  
6 6, Title 10, California Code of Regulations in conjunction with  
7 Section 10177(d) of the Business and Professions Code, Section  
8 4975(a)(1), (a)(2) and (c) of the Financial Code, and Sections  
9 10176(a) and (i), and 10177(g) of the Business and Professions  
10 Code.

11                               ORDER

12                               I

13           A. All licenses and licensing rights of Respondent  
14 GARY R. BOWERS under the Real Estate Law are suspended for a  
15 period of ninety (90) days from the effective date of the  
16 Decision herein; provided, however:

17               1. If Respondent GARY R. BOWERS petitions, forty-five  
18 (45) days of the ninety (90) day suspension shall be stayed upon  
19 the condition that:

20               (a) Respondent GARY R. BOWERS pays a monetary penalty  
21 pursuant to Section 10175.2 of the Code of \$4,500.00.

22               (b) Said payment shall be in the form of a cashier's  
23 check or certified check made payable to the Recovery Account of  
24 the Real Estate Fund. Said check must be received by the  
25 Department prior to the effective date of the Decision in this  
26 matter.

27               (c) If Respondent GARY R. BOWERS fails to pay the

1 monetary penalty in accordance with the terms and conditions of  
2 the Decision, the Commissioner may, without a hearing, vacate  
3 and set aside the stay order, and order the immediate execution  
4 of all or any part of the stayed suspension.

5 (d) No final subsequent determination be made, after  
6 hearing or upon stipulation, that cause for disciplinary action  
7 against Respondent GARY R. BOWERS occurred within two (2) years  
8 of the effective date of the Decision herein. Should such a  
9 determination be made, the Commissioner may, in his or her  
10 discretion, vacate and set aside the stay order, and order the  
11 execution of all or any part of the stayed suspension, in which  
12 event the Respondent shall not be entitled to any repayment nor  
13 credit, prorated or otherwise, for money paid to the Department  
14 under the terms of this Decision.

15 (e) If Respondent GARY R. BOWERS pays the monetary  
16 penalty and if no further cause for disciplinary action against  
17 the real estate license of Respondent occurs within two (2)  
18 years from the effective date of the Decision herein, then the  
19 stay hereby granted shall become permanent.

20 2. Forty-five (45) days of said ninety (90) day  
21 suspension shall be stayed upon condition that:

22 (a) No final subsequent determination be made, after  
23 hearing or upon stipulation, that cause for disciplinary action  
24 against Respondent GARY R. BOWERS occurred within two (2) years  
25 of the effective date of the Decision herein.

26 (b) Should such a determination be made, the  
27 Commissioner may, in his or her discretion, vacate and set aside

1 the stay order, and order the execution of all or any part of  
2 the stayed suspension, in which event the Respondent GARY R.  
3 BOWERS shall not be entitled to any repayment nor credit,  
4 prorated or otherwise, for money paid to the Department under  
5 the terms of this Decision.

6 (c) If no order vacating the stay is issued, and if no  
7 further cause for disciplinary action against the real estate  
8 license of Respondent GARY R. BOWERS occurs within two (2) years  
9 from the effective date of the Decision, then the stay hereby  
10 granted shall become permanent.

11  
12  
13 May 21, 2008  
14 DATED

Michael B. Rich  
MICHAEL B. RICH, Counsel  
Department of Real Estate

15  
16 \* \* \*

17 I have read the Stipulation and Agreement and its  
18 terms are understood by me and are agreeable and acceptable to  
19 me. I understand that I am waiving rights given to me by the  
20 California Administrative Procedure Act (including but not  
21 limited to Sections 11506, 11508, 11509, and 11513 of the  
22 Government Code), and I willingly, intelligently, and  
23 voluntarily waive those rights, including the right of requiring  
24 the Commissioner to prove the allegations in the Accusation at a  
25 hearing at which I would have the right to cross-examine  
26 witnesses against me and to present evidence in defense and  
27 mitigation of the charges.

H/N MICHAEL RICH

FAX (916) 221-1158

11/07/2007 13:40 FAX 8162279458

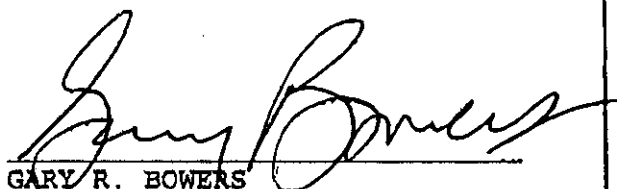
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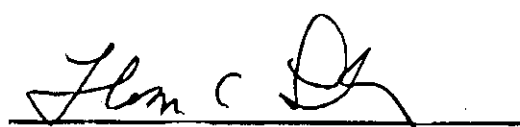
DATED

  
GARY R. BOWERS  
Respondent

Approved as to form and content by counsel for  
Respondent.

November 7, 2007

DATED


  
THOMAS C. LASKEN  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted by me as my Decision in this matter as to Respondent  
GARY R. BOWERS and shall become effective at 12 o'clock noon on  
SEP 08 2008

IT IS SO ORDERED 8-17-08

JEFF DAVI  
Real Estate Commissioner

  
BY: Barbara J. Bigby  
Chief Deputy Commissioner





1 thereof be submitted solely on the basis of the provisions of  
2 this Stipulation and Agreement.

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

7           3. On November 1, 2006, Respondent filed a Notice of  
8 Defense pursuant to Section 11505 of the Government Code for  
9 the purpose of requesting a hearing on the allegations in the  
10 Accusation. Respondent hereby freely and voluntarily withdraws  
11 said Notice of Defense. Respondent acknowledges that  
12 Respondent understands that by withdrawing said Notice of  
13 Defense Respondent will thereby waive Respondent's right to  
14 require the Commissioner to prove the allegations in the  
15 Accusation at a contested hearing held in accordance with the  
16 provisions of the APA and that Respondent will waive other  
17 rights afforded to Respondent in connection with the hearing  
18 such as the right to present evidence in defense of the  
19 allegations in the Accusation and the right to cross-examine  
20 witnesses.

21           4. Respondent, pursuant to the limitations set forth  
22 below, hereby admits that the factual allegations in the  
23 Accusation pertaining to Respondent are true and correct and  
24 stipulates and agrees that the Real Estate Commissioner shall  
25 not be required to provide further evidence of such  
26 allegations.

27           5. It is understood by the parties that the Real

1 Estate Commissioner may adopt the Stipulation and Agreement as  
2 his decision in this matter, thereby imposing the penalty and  
3 sanctions on Respondent's real estate license and license  
4 rights as set forth in the "Order" below. In the event that  
5 the Commissioner in his discretion does not adopt the  
6 Stipulation and Agreement, it shall be void and of no effect,  
7 and Respondent shall retain the right to a hearing and  
8 proceeding on the Accusation under all the provisions of the  
9 APA and shall not be bound by any admission or waiver made  
10 herein.

11           6. This Stipulation and Agreement shall not  
12 constitute an estoppel, merger or bar to any further  
13 administrative or civil proceedings by the Department of Real  
14 Estate with respect to any matters which were not specifically  
15 alleged to be causes for accusation in this proceeding.

16                           DETERMINATION OF ISSUES

17           By reason of the foregoing stipulations, admissions  
18 and waivers and solely for the purpose of settlement of the  
19 pending Accusation without hearing, it is stipulated and agreed  
20 that the following Determination of Issues shall be made:


21   I

22           The acts and omissions of Respondent ANDREW A. LEWIS  
23 described in the Accusation are grounds for the suspension or  
24 revocation of the licenses and license rights of Respondent  
25 under the provisions of Sections 4975 subsection (a)(1), (a)(2)  
26 and (c) of the Financial Code and Section 10176(i), 10177(j)  
27 and 10177(g) of the Business and Professions Code.



1 California Administrative Procedure Act (including but not  
2 limited to Sections 11506, 11508, 11509, and 11513 of the  
3 Government Code), and I willingly, intelligently, and  
4 voluntarily waive those rights, including the right of requiring  
5 the Commissioner to prove the allegations in the Accusation at a  
6 hearing at which I would have the right to cross-examine  
7 witnesses against me and to present evidence in defense and  
8 mitigation of the charges.

9  
10 7/6/07  
11 DATED

  
11 ANDREW A. LEWIS  
Respondent

12  
13 \* \* \*

14 The foregoing Stipulation and Agreement is hereby  
15 adopted by me as my Decision in this matter as to Respondent  
16 ANDREW A. LEWIS and shall become effective at 12 o'clock noon on  
17 AUG 23, 2007.

18 IT IS SO ORDERED 7-26, 2007.

19  
20 JEFF DAVI  
21 Real Estate Commissioner

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27

1 MICHAEL B. RICH, Counsel  
2 State Bar Number 84257  
3 Department of Real Estate  
4 P. O. Box 187007  
5 Sacramento, CA 95818-7007  
6  
7 Telephone: (916) 227-0789

FILED  
OCT 19 2006

DEPARTMENT OF REAL ESTATE

By A. E. L.

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 GARY R. BOWERS, and ) NO. H-9724 SF  
13 ANDREW A. LEWIS, ) ACCUSATION  
14 Respondents. )

15  
16 The Complainant, E. J. HABERER II, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against GARY R. BOWERS, and ANDREW A. LEWIS, is  
19 informed and alleges as follows:

20 FIRST CAUSE OF ACTION

21 I

22 The Complainant, E. J. HABERER II, a Deputy Real  
23 Estate Commissioner of the State of California, makes this  
24 Accusation against Respondent in his official capacity and not  
25 otherwise.

26 ///

27 ///

1 II

2 Respondent GARY R. BOWERS is presently licensed and/or  
3 has license rights under the Real Estate Law, Part 1 of Division  
4 4 of the California Business and Professions Code (hereafter  
5 "the Code").

6 III

7 At all times herein mentioned, Respondent GARY R.  
8 BOWERS (hereafter "Respondent BOWERS") was and is licensed by  
9 the Department of Real Estate (hereinafter "the Department") as  
10 a real estate broker.

11 IV

12 At all times herein mentioned, Respondent BOWERS  
13 engaged in the business and acted in the capacity of a real  
14 estate broker in California, on behalf of another or others, for  
15 or in expectation of compensation under:

16 a.) Section 10131(a) of the Code, Respondent sold or  
17 offered to sell, bought or offered to buy, solicited  
18 prospective sellers or purchases of, solicited or  
19 obtained listings of, and/or negotiated the purchase  
20 or sale of real property; and/or,

21 b.) Section 10131(d) of the Code, including the  
22 operation of and conduct of a mortgage loan brokerage  
23 business with the public wherein lenders and borrowers  
24 were solicited for loans secured directly of  
25 collaterally by liens on real property, wherein such  
26 loans were arranged, negotiated, processed, and  
27 consummated, and/or wherein such loans were serviced

1 and payments thereon were collected on behalf of  
2 others.

3 V

4 On or about February 20, 2005, on behalf of Damon  
5 Bowers (hereinafter "Buyer"), Respondent submitted a RESIDENTIAL  
6 PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (hereinafter  
7 "Agreement") to Mason-McDuffie Real Estate, Inc., a licensed  
8 corporate real estate broker doing business under the fictitious  
9 name of Prudential California Realty (hereinafter "Sellers'  
10 Agent") on behalf of Scott M. Greene and Sarah P. Greene  
11 (hereinafter "Sellers) relating to real property located at 911  
12 Joree Lane in San Ramon, California (hereinafter "the  
13 Property").

14 VI

15 On or about March 22, 2005, pursuant to Buyer's  
16 acceptance of a counteroffer, the Sellers signed the Agreement  
17 accepting the offer on the Property.

18 VII

19 The Agreement provided, in pertinent part, that ". . .  
20 Buyer has given a deposit in the amount of \$1,000 to the agent  
21 submitting the offer by personal check made payable to Ticor  
22 Title which shall be held uncashed until Acceptance and then  
23 deposited within 3 business days after Acceptance." However,  
24 Respondent had not received a deposit from the Buyer in any  
25 amount at the time the Agreement was presented or accepted.

26 ///

27 ///

1 VIII

2 Respondent's representation that he was in receipt of  
3 the \$1,000 deposit was false, and was known by Respondent to be  
4 false at the time he made it.

5 IX

6 The acts and/or omissions of Respondent described  
7 above are grounds for the revocation or suspension of all  
8 Respondent's licenses under Sections 10176(a) and (i) and/or  
9 10177(g) of the Code.

10 SECOND CAUSE OF ACTION

11 X

12 There is hereby incorporated in this Second, separate  
13 and distinct, Cause of Action, all of the allegations contained  
14 in Paragraphs I, II, III and IV of the First Cause of Action  
15 with the same force and effect as if herein fully set forth.

16 XI

17 On or about September 28, 2004, on behalf of Darren  
18 Bowers (hereinafter "Buyer"), Respondent submitted a VANAT LAND  
19 PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (hereinafter  
20 "Agreement") to III Create, Inc., a licensed corporate real  
21 estate broker doing business under the fictitious name of REMAX  
22 Executive (hereinafter "Sellers' Agent") on behalf of Phyllis H.  
23 Castello, Arlene Bettencourt, Lisa Diane Bettencourt, April  
24 Silveira, Thomas Bettencourt, Deci Bettencourt, and Michelle  
25 Bloxham (hereinafter "Sellers") relating to real property located  
26 at 10625 Morgan Territory Road in Contra Costa County,  
27 California (hereinafter "the Property").



XII

On or about October 12, 2004, pursuant to Buyer's acceptance of a counteroffer, the Sellers signed the Agreement accepting the offer on the Property.

XIII

The Agreement provided, in pertinent part, that ". . . Buyer has given a deposit in the amount of \$5,000 to the agent submitting the offer by personal check made payable to Alliance Title which shall be held uncashed until Acceptance and then deposited within 3 business days after Acceptance." However, Respondent had not received a deposit from the Buyer in any amount at the time the Agreement was presented or accepted.

XIV

Respondent's representation that he was in receipt of the \$5,000 deposit was false, and was known by Respondent to be false at the time he made it.

XV

The acts and/or omissions of Respondent described above are grounds for the revocation or suspension of all Respondent's licenses under Sections 10176(a) and (i) and/or 10177(g) of the Code.

THIRD CAUSE OF ACTION

XVI

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

1 XVII

2 Within the three year period next preceding to the  
3 filing of this Accusation and at all times herein mentioned,  
4 Respondent utilized and conducted his real estate brokerage  
5 activities, as set forth in Paragraph IV, above, under the  
6 fictitious business name of "THE BOWERS GROUP."

7 XVIII

8 At no time did the Department issue a real estate  
9 license to Respondent BOWERS under the fictitious business name  
10 recited in Paragraph XVII, above.

11 XIX

12 Within the three year period next preceding to the  
13 filing of this Accusation and at all times herein mentioned, for  
14 or in expectation of compensation, on behalf of another or  
15 others, Respondent accepted listings to sell or buy, made offers  
16 to buy or sell, and/or negotiated the purchase or sale of real  
17 property, and/or solicited for loans secured directly of  
18 collaterally by liens on real property, wherein such loans were  
19 arranged, negotiated, processed, and consummated and/or wherein  
20 such loans were serviced and payments thereon were collected,  
21 pursuant to the fictitious business name recited in Paragraph  
22 XVII, above, including, but not limited to, the following  
23 transactions:

24 Loan Transactions:

25 1.) Real Property: 5070 Alpine Road, Portola Valley,  
26 California

27 Borrower: Fletcher Hyler and Sheryl Root-Hyler

1                    Loan Amount: \$1,232,000.00

2                    Loan Application Date: 12/29/03

3                    2.) Real Property: 5070 Alpine Road, Portola Valley,  
4                    California

5                    Borrower: Fletcher Hyler and Sheryl Root-Hyler

6                    Loan Amount: \$100,000.00

7                    Closing Date: 3/30/04

8                    3.) Real Property: RAFTER 7Z RANCH, Washoe County  
9                    Nevada

10                   Borrower: Patrick Firtzgerald

11                   Loan Amount: \$1,692,000.00

12                   Application Date: 11/5/04

13                   4.) Real Property: 2107-2123 Willow Pass Road, Bay  
14                   Point, California

15                   Borrower: Julio Cesar Gonzalez Gonzalez

16                   Loan Amount: \$506,150.00

17                   Application Date: 2/26/04

18                   Purchase Transactions:

19                   1.) Real property: 911 Joree Lane San Ramon, California

20                   Buyer: Damon Bowers

21                   Seller: Scott M. Greene and Sarah P. Greene

22                   Offer date: 2/20/05

23                   2.) Real property: 10625 Morgan Territory Road in  
24                   Contra Costa County, California

25                   Buyer: Darren Bowers

26                   Seller: Phyllis H. Castello, Arlene Bettencourt,  
27                   Lisa Diane Bettencourt, et al.

Offer date: 9/28/04

1 XX

2 The facts, as alleged in Paragraphs XVI through XIX,  
3 above, constitute a violation of Section 2731 of Chapter 6,  
4 Title 10, California Code of Regulations (hereinafter  
5 "Regulations") and/or Section 10159.5 of the Code and are  
6 grounds for the suspension or revocation of Respondent real  
7 estate broker license under the provisions of Section 10177(d)  
8 of the Code.

9 FOURTH CAUSE OF ACTION

10 XXI

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

15 XXII

16 Within the three year period next preceding to the  
17 filing of this Accusation and at all times herein mentioned, in  
18 connection with the loan brokerage business described in  
19 Paragraph IV, above, Respondent BOWERS failed to provide and/or  
20 failed to retain for a period of three (3) years a copy of the  
21 "Borrower Disclosure" statement showing the signature of the  
22 broker negotiating the loan, or the signature of a licensee  
23 acting for the broker negotiating the loan, and/or showing the  
24 broker license number, as required by Section 10240 of the Code,  
25 in conformance with Section 10241 of the Code, including, but  
26 not limited to, the following transactions:

27 1.) Real Property: 5070 Alpine Road, Portola Valley,

1 California

2 Borrower: Fletcher Hyler and Sheryl Root-Hyler

3 Loan Amount: \$100,000.00

4 Closing Date: 3/30/04

5 2.) Real Property: RAFTER 7Z RANCH, Washoe County,  
6 Nevada

7 Borrower: Patrick Firtzgerald

8 Loan Amount: \$1,692,000.00

9 Application Date: 11/5/04

10 3.) Real Property: 2107-2123 Willow Pass Road, Bay  
11 Point, California

12 Borrower: Julio Cesar Gonzalez Gonzalez

13 Loan Amount: \$506,150.00

14 Application Date: 2/26/04

15 XXIII

16 The facts alleged in Paragraph XXII, above, are  
17 grounds for the suspension or revocation of Respondent BOWERS'  
18 license under the provisions of Section 10240 of the Code in  
19 conjunction with 10177(d) of the Code and/or Section 10148 of  
20 the Code in conjunction with Section 10177(d) of the Code.

21 FIFTH CAUSE OF ACTION

22 XXIV

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

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XXV

Within the three year period next preceding to the filing of this Accusation and at all times herein mentioned, Respondent BOWERS 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.

XXVI

Within the three year period next preceding to the filing of this Accusation and at all times herein mentioned, Respondent BOWERS 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.

XXVII

The facts alleged above are a violation of Section 2715 of the Regulations, and/or Section 10163 of the Code and are grounds for the suspension or revocation of Respondent BOWERS' license under the provisions of Section 10165 and/or in conjunction with Section 10177(d) of the Code.

SIXTH CAUSE OF ACTION

XXVIII

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

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XXIX

Respondent ANDREW A LEWIS is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code.

XXX

At all times herein mentioned, Respondent ANDREW A. LEWIS (hereafter "Respondent LEWIS") was and is licensed by the Department as a real estate broker.

XXXI

At all times herein mentioned, Respondent LEWIS engaged in the business and acted in the capacity of a real estate broker in California, on behalf of another or others, for or in expectation of compensation under Section 10131(d) of the Code, including the operation of and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated, and/or wherein such loans were serviced and payments thereon were collected on behalf of others.

XXXII

At all times mentioned herein Respondent BOWERS and Respondent LEWIS, and each of them, was a licensed person within the meaning of Section 4970 of the Financial Code.

///  
///  
///

1 XXXIII

2 At all times mentioned herein the Department was a  
3 licensing agency within the meaning of Section 4970 of the  
4 Financial Code.

5 XXXIV

6 Within the three year period next preceding to the  
7 filing of this Accusation and at all times herein mentioned, for  
8 or in expectation of compensation, on behalf of another or  
9 others, Respondents solicited for loans secured directly of  
10 collaterally by liens on real property, wherein such loans were  
11 arranged, negotiated, processed, and consummated and/or wherein  
12 such loans were serviced and payments thereon were collected,  
13 including, but not limited to, the following transaction:

14 1.) Real Property: 5070 Alpine Road, Portola Valley,  
15 California

16 Purpose of Property: Borrowers' primary residence

17 Purpose of Loan: Refinance

18 Borrowers: Fletcher Hyler and Sheryl Root-Hyler

19 Loan Amount: \$100,000.00

20 Closing Date: 3/30/04

21 Interest Rate: 18%

22 Points: 12 or 12% of loan amount or \$12,000.00

23 Default Rate: 3% over original interest rate or 21%

24 XXXV

25 The loan set forth in Paragraph XXXIV, above, is a  
26 "covered loan" within the meaning of Section 4970 of the  
27 Financial Code in that: 1.) the loan is secured by real property



1 located in California used, intended to be used or occupied as  
2 the principal dwelling of the consumer as a one-to-four  
3 residential unit; 2.) the principal balance does not exceed  
4 \$250,000.00; 3.) the 18 per cent interest rate was more than 8  
5 percentage points above the yield on Treasury securities having  
6 comparable periods of maturity on the 15th of the month  
7 immediately preceding the month in which the application for the  
8 extension of credit was received by the creditor; and/or, 4.)  
9 the total points and fees payable by the consumer at or before  
10 the closing for a mortgage or deed of trust will exceed 6  
11 percent of the total loan amount.

12 XXXVI

13 The loan set forth in Paragraph XXXIV, above, violated  
14 Section 4973(e) of the Financial Code in that the promissory note  
15 contained a provision that increased the interest rate in the  
16 event of default.

17 XXXVII

18 Respondents had no reasonable belief that Fletcher  
19 Hyler and Sheryl Root-Hyler, the borrowers, could make the  
20 scheduled payments on the loan in violation of Section 4973(f) of  
21 the Financial Code.

22 XXXVIII

23 Respondents failed to provide the consumer notice  
24 required by Section 4973(k)(1) of the Financial Code.

25 ///

26 ///

27 ///

1 XXXIX

2 Respondents originated the loan set forth in Paragraph  
3 XXXIV, above, financing points and fees in excess of \$1,000.00 or  
4 6 percent of the original principal balance, exclusive of points  
5 and fees, in violation of Section 4979.6 of the Financial Code.

6 XL

7 The acts and/or omissions of Respondents, and each of  
8 them, as described above are grounds for the suspension or  
9 revocation of Respondents' licenses and license rights under  
10 Sections 4975 subsection (a)(1), (a)(2) and (c) and Section  
11 10176(i) or 10177(j) or 10177(g) of the Business and Professions  
12 Code.

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

20  
21  
22   
23 E. J. HABERER II  
24 Deputy Real Estate Commissioner

25 Dated at Fresno, California,  
26 this 16th day of October, 2006.  
27