

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAY 13 2009

DEPARTMENT OF REAL ESTATE

By [Signature]

In the Matter of the Accusation of)
)
HILLTOPLENDING CORPORATION,)
HILLTOP FINANCIAL MORTGAGE,)
INC., THANH NGOC NGUYEN,)
IBRAHIM K. KABA, and)
NATHAN O'NEAL COOK,)
)
Respondents.)

NO. H-10327 SF

OAH NO. 2008040673

DECISION

The Proposed Decision dated April 9, 2009, 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.

Pursuant to Section 11517(c)(2)(C) of the Government Code, the following clarification is made to Page 1, paragraph 3 of the Proposed Decision:

"No appearance was made by or on behalf of respondents Hilltop Lending Corporation (Hilltop Lending) and Hilltop Financial Mortgage, Inc. (Hilltop Financial). The allegations against Thanh Ngoc Nguyen were resolved by stipulation and decision, effective December 23, 2008 (case no. H-10464). Respondent Ibrahim K. Kaba was present but otherwise not represented. Respondent Nathan O'Neal Cook was present and represented by his Counsel, Steven D. Zavodnick."

The following correction is made on Page 10, paragraph 18 of the Legal Conclusions of the Proposed Decision:

"...Respondent did, however, establish that he is substantially rehabilitated from his misconduct, ..."

This Decision shall become effective at 12 o'clock noon on JUN 02 2009

IT IS SO ORDERED

[Signature]
JEFF DAVI
Real Estate Commissioner

[Signature]

COPY

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

HILLTOP LENDING
CORPORATION, HILLTOP
FINANCIAL MORTGAGE, INC.,
THANH NGOC NGUYEN,
IBRAHIM K. KABA, AND
NATHAN O'NEAL COOK,

Respondents.

Case No. H-10327 SF

OAH No. 2008040673

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 24, 2009.

Complainant E. J. Haberer II, Deputy Real Estate Commissioner, was represented by David B. Seals, Counsel, Department of Real Estate.

No appearance was made by or on behalf of respondents Hilltop Lending Corporation (Hilltop Lending) and Hilltop Financial Mortgage, Inc. (Hilltop Financial). The allegations against Thanh Ngoc Nguyen were resolved by stipulation and decision, effective December 23, 2008 (case no. H-10464).

The matter was submitted on March 24, 2009.

FACTUAL FINDINGS

1. At the hearing, the Accusation was amended to delete the following: the reference to Hilltop Financial in paragraph IX, line 23; subparagraphs (a), (c), and (d) of paragraph XV; and paragraphs XVI and XVII in their entirety.
2. Respondents Hilltop Financial and Hilltop Lending were properly served with the Accusation pursuant to Government Code section 11505. Inasmuch as neither respondent filed a notice of defense, this hearing proceeded by default pursuant to Government Code section 11520 as to respondents Hilltop Financial and Hilltop Lending.
3. At all times relevant to this proceeding, respondents were licensed and had license rights under the Real Estate Law (Part 1 of Division 4 of the Business and

Professions Code). Respondents, acting jointly and in concert with one another, were engaged in the mortgage loan brokerage business and in the business of negotiating the purchase and resale of real property.

4. At all times relevant to this proceeding, Hilltop Lending was licensed by the department as a corporate real estate broker by and through respondent Nguyen as designated officer-broker of Hilltop Lending to qualify said corporation and to act for said corporation as a real estate broker. Hilltop Lending's license expired on January 1, 2008. The acts or omissions of Hilltop Lending, set forth below, refer to the acts or omissions of the officers, directors, employees, agents and real estate licensees employed by Hilltop Lending in furtherance of the business of Hilltop Lending, while acting within the scope of their corporate authority and employment.

5. At all times relevant to this proceeding, Hilltop Financial was licensed by the department as a corporate real estate broker from September 30, 2005, through February 28, 2007, by and through respondent Kaba as designated officer-broker of Hilltop Financial to qualify said corporation and to act for said corporation as a real estate broker.¹ Hilltop Financial's license was cancelled on January 28, 2008.

6. At all times relevant to this proceeding, Kaba was licensed by the department as a real estate broker individually, and as designated broker of Hilltop Financial. As its designated officer-broker from September 30, 2005 through February 28, 2007, Kaba was responsible, pursuant to Business and Professions Code section 10159.2, for the supervision of the activities of the officers, agents, real estate licensees and employees of Hilltop Financial for which a license is required.² The acts or omissions of Hilltop Financial, set forth below, refer to the acts or omissions of the officers, directors, employees, agents and real estate licensees employed by Hilltop Financial in furtherance of the business of Hilltop Financial, while acting within the scope of their corporate authority and employment.

7. Respondent Cook was licensed by the department as a real estate salesperson between July 27, 2004 and January 27, 2006. According to department records, Hilltop Financial was registered as respondent's employing broker from January 1, 2005 through May 10, 2007; and Hilltop Lending was never registered as respondent's employing broker. Respondent's license as a real estate salesperson was suspended from January 28 through April 2, 2006, pursuant to section 10153.4, subdivision (c).³ This suspension was lifted, and Cook's salesperson license was reinstated, effective April 3, 2006. Cook's salesperson license will expire on July 26, 2012. Cook has never been licensed by the department as a real estate broker.

¹ Although the Accusation states that Kaba was the designated broker of Hilltop Financial as of October 27, 2005, department records established that Kaba assumed this position on September 30, 2005.

² All references are to the Business and Professions Code, unless otherwise indicated.

³ Although the Accusation states that Cook's salesperson license was suspended on January 27, 2009, department records established that his license suspension was effective on January 28, 2008.

8. Between October 27, 2005, and June 21, 2006, Hilltop Lending and Hilltop Financial used the fictitious business name "Connect Real Estate" and "Connect Realty," without first obtaining a license from the department bearing either fictitious business name.⁴ Kaba and Cook acknowledged that "Connect" was an entity of Hilltop Financial and Hilltop Lending.

9. Between October 27, 2005, and June 21, 2006, Hilltop Lending maintained a branch office at 2970 Hilltop Mall, Suite 300, Richmond, California, without having first received from the department a license to operate that branch office. According to department records, Hilltop Lending never received a license to operate that branch office.

10. Between October 27, 2005, and February 15, 2006, Hilltop Financial maintained a branch office at 2970 Hilltop Mall, Suite 300, Richmond, California, without having first received from the department a license to operate that branch office. Departmental records indicate that Hilltop Financial received a branch license for its Hilltop Mall office as of February 16, 2006.

11. Robin S. Tanner, Senior Deputy Commissioner, Department of Real Estate, investigated the activities of respondents. Tanner determined that Hilltop Lending maintained branch offices at the following locations without having first received licenses from the department to operate such branches: 1350 Old Bayshore, Suite 910, Burlingame, California, and 4005 Hacienda Drive, Suite 420, Pleasanton, California. Tanner was not sure if Hilltop Lending maintained a branch office at 3900 Newport Mall Road, Suite 205, Newark, California.

12. Respondents Kaba, Hilltop Financial and Hilltop Lending failed to retain copies of mortgage loan disclosure statements (MDLS) in their files for three years. This was established by the testimony of Tanner. Tanner asked Kaba to provide her with Hilltop Financial's files from real estate transactions, as well as financial records and loan logs. Kaba did not provide Tanner with financial records or loan logs. He did, however, provide her with 19 files of real estate transactions conducted by the Hilltop Mall branch office in 2005 and 2006. Kaba represented that these files were "complete." Tanner produced 12 of the files at the hearing. Some of the files contained the broker name "Connect Realty;" other files did not list any broker name. Tanner reviewed the files and determined that not one file contained a mortgage loan disclosure statement. Kaba did not offer any explanation for the lack of disclosures.

13. Neither the borrowers nor the disclosure statements were produced at the hearing. It was not established by clear and convincing evidence that respondents failed to

⁴ Department records indicate that Hilltop Financial added "Connects Real Estate Services" as a fictitious name as of April 22, 2005, but never had a license for the use of the business names "Connect Real Estate" or "Connect Realty."

obtain the borrower's signature on the disclosure statement, or that respondents failed to provide a copy of such statement to the borrower.

14. At the hearing, Kaba acknowledged that none of the files he presented to Tanner contained a MDLS. Kaba explained that he thought Cook was a licensed broker, and that, therefore, Cook was responsible for ensuring that the files contained such statements.

15. Kaba acknowledged that as designated officer of Hilltop Financial, it was his duty to supervise the activities of each branch and the salespersons licensed under him. He testified that he did not believe that he needed to supervise Cook because he thought that Cook was a licensed broker. Kaba stated that he thought that a copy of Cook's license was in the possession of Hilltop Lending, but he did not think that he needed to verify that Cook had a broker license. Kaba was not aware that Cook's real estate salesperson license had been suspended by the department. Kaba stated that he "never paid Cook one penny," and that Cook was paid by Nguyen.

16. Kaba testified that Nguyen was the designated officer broker of Hilltop Lending before he assumed that position. He believes that Nguyen, and not himself, is primarily responsible for the problems at Hilltop Financial. Kaba testified that Hilltop Financial had 77 branch offices and 600 employees. Kaba resigned his position as designated officer of Hilltop Financial after 13 months because he had a "falling out" with Nguyen.

17. Kaba did not present any evidence regarding his employment since February, 2007, when, according to Departmental records, his position as designated officer-broker of Hilltop Financial was cancelled.

Respondent Cook

18. Between January 28, 2006 and April 2, 2006, when Cook's real estate salesperson license was suspended, Hilltop Financial and Hilltop Lending employed and compensated him for his work in negotiating the purchase and sale of real property and arranging for mortgage loans in the following transactions:

(a) The sale to Carolene Ross of real property at 1643 63rd Street, Berkeley, California, and mortgage loans to Ross from First NLC Financial Services LLC to finance the purchase;

(b) The sale to Andre Villeroy of real property at 792 6th Street, Richmond, California, and mortgage loans to Villeroy from WMC Mortgage to finance the purchase of the property;

- (c) The sale to Chyna Akilah of real property at 6666 Brann Street, Oakland, California, and mortgage loans to Akilah from Plaza Home Mortgage, Inc., to finance the purchase of the property;
- (d) The sale to Jamal Mitchell of real property at 1622-1624 99th Street, Oakland, California, and mortgage loans to Mitchell from Argent Mortgage Company, Inc., to finance the purchase;
- (e) The sale to Marcus Shiref of real property at 1887 Bolder Avenue, Riverside, California, and mortgage loans to Shiref from Wausau Mortgage Corporation dba Board Street to finance the purchase;
- (f) The sale to Nadia Zakiyyah of real property at 1632 88th Avenue, Oakland, California, and mortgage loans to Zakiyyah from WMC Mortgage to finance the purchase;
- (g) The sale to Khariman Iman of real property at 2591 Illinois Avenue, East Palo Alto, California;
- (h) The sale to Helal Abbas of real property at 2005 90th Avenue, Oakland, California, and mortgage loans to Abbas from Fremont Investments and Loan to finance the purchase;
- (i) The sale of Jason Lee of real property at 501 Crescent Avenue, San Francisco, California, and mortgage loans to Lee from Pro30 Funding to finance the purchase;
- (j) The sale to Orlando Mixon of real property at 4824 Forecast Way, Stockton, California; and
- (k) The sale to Kimberly Anderson of real property at 2024 8th Avenue, Oakland, California, and mortgage loans to Anderson from Fremont Investment and Loan to finance the purchase.

19. Cook did not dispute that he conducted the transactions set forth in Factual Finding 18, and that he received compensation for them.

20. Respondent stated that during the time in which he was suspended, he was the branch manager for Hilltop Financial at the office located at 2970 Hilltop Mall, Suite 300, Richmond, California. He thought that Hilltop Lending and Hilltop Financial were "all one" entity, with Hilltop Lending acting as the "umbrella" for Hilltop Financial. Cook was not completely sure if his paycheck was from Hilltop Lending or Hilltop Financial, although he thought he was probably paid by Hilltop Lending. After he was paid, he would then pay others in the office with cashier's checks, in an amount that he set. He knew that Kaba and Nguyen were brokers but he did not know which entity each broker was connected with. He did not have anyone supervising him at his job. He was the only one at the branch office

with a real estate license. According to Cook, Kaba came to his branch office one time during his employment there.

21. Cook realized that under the terms of his conditional salesperson license that had been issued to him on July 27, 2004, that he needed to satisfy the course requirements set forth in section 10153.4 within 18 months from the date that his conditional license was issued. On July 19 and 20, 2005, Cook took and completed two courses from First Tuesday, an online program that offers "DRE-Approved Continuing Education." Respondent testified that he assumed, based on a conversation with someone from First Tuesday, that they would send the department proof that he completed the two courses. According to respondent, several weeks after he completed the courses at First Tuesday, he called the department to see when he should send in his evidence of coursework completion. Respondent testified that he was told by department staff that he did not need to turn in his evidence of coursework completion at that time. He further stated that he was told by department staff "not to worry," and to wait until the January 27 date approached before sending in his paperwork. Respondent testified that he relied on the department's representations to him; and, therefore, he took no action at that time.

22. In approximately the middle of September, Cook received a letter from the department dated September 10, 2005, which clearly outlined his responsibility to complete the required coursework and provide evidence of such completion to the department. The letter further informed respondent that the department had not received proof of his completion of the coursework. The department notified him that if he not do so by January 27, 2006, his license would be automatically suspended. Respondent did not take any action in response to this letter. He offered no explanation for that failure.

23. Effective January 28, 2006, Cook's license was suspended pursuant to section 10153.4. Cook did not know that his license was suspended until late March 2006, when he was so informed by a colleague who had inquired as to the status of Cook's license on the department's web site. Upon learning that his license had been suspended, he stopped conducting real estate activities for which his license was required. He promptly obtained the completion certificates from First Tuesday and forwarded them to the department. It never occurred to respondent to call the department to make sure that it had received evidence that he had completed his coursework. Had he known that his license had been suspended, he would not have conducted any real estate transactions.

24. Respondent learned a "life lesson" from his mistake to check the status of his license and make sure "things are in order."

25. After respondent left Hilltop Financial and Hilltop Lending, he worked for Propel Realty in Castro Valley. Respondent left the real estate field about four to six months ago, and currently works for an internet company in San Ramon. He would like to become a financial analyst, and toward that end, he has applied to Haas Business School to obtain a master's degree in business administration.

LEGAL CONCLUSIONS

Hilltop Lending

1. Section 10240, subdivision (a), provides that a broker who negotiates a mortgage loan on behalf of a borrower within the meaning of section 10131; must provide the borrower with a written disclosure statement. Such statements must be signed by the borrower and the broker, or by a real estate licensee acting for the broker in negotiating the loan. That section further provides that copies of such statements must be retained by the broker who negotiated the loan for a period of three years. Cause for discipline exists under this section, as it interacts with section 10177, subdivision (d), based upon the failure of Hilltop Lending to retain copies of MDLS's, as set forth in Factual Finding 12.

Section 10240, subdivision (a), also provides that a broker must obtain the borrower's signature on the MDLS, and that the broker must provide a copy of the MDLS to the borrower. Based upon the matters set forth in Factual Finding 13, it was not established that respondent violated these provisions of section 10240, subdivision (a).

2. Section 10159.5 provides that where a broker desires to have a license issued under a fictitious business name, the broker must file "with his application a certified copy of his fictitious business name statement filed with the county clerk." Based on the matters set forth in Factual Finding 8, cause for discipline exists under this section, as it interacts with sections 10177, subdivision (d), and 10165.

3. Section 10163 provides that a broker must apply for and obtain a license for each branch office. That section further provides that the Department may determine whether or not a broker is operating a brokerage business at any location, which requires a branch office license. Title 10, California Code of Regulations, section 2715, provides that every broker shall maintain on file with the Department the address of his principal place of business, and the address of each branch business office. That section further provides that if the address or location of the principal place of business or a branch office changes, the broker must notify the Department of such change no later than the next business day following the change. Section 10165 provides for suspension or revocation of the license of the real estate licensee who violates this section. Based on the matters set forth in Factual Findings 9 and 11, cause for discipline exists under these sections, as they interact with sections 10177, subdivision (d) and 10165.

4. Section 10137 makes it "unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, an individual for performing the duties of a real estate salesperson if that individual is not licensed under the broker employing or compensating him." Based on the matters set forth in Factual Findings 7, 18, 19, 20, cause for discipline exists under this section, as it interacts with section 10177, subdivision (d).

5. Section 10161.8 requires that the broker shall immediately notify the Department in writing whenever a real estate salesperson either enters employment with the

broker. Based on the matters set forth in Factual Finding 7, 18, 19 and 20, cause for discipline exists under this section, as it interacts with section 10177, subdivision (d).

6. Based upon the evidence adduced at the hearing, it is determined that revocation of Hilltop Lending's licensing rights under the real estate law is the appropriate discipline.

Hilltop Financial

7. Section 10159.5 provides that where a broker desires to have the license issued under a fictitious business name, he must file "with his application a certified copy of his fictitious business name statement filed with the county clerk." Based upon the matters set forth in Factual Finding 8, cause for discipline was established under this section, as it interacts with sections 10177, subdivision (d) and 10165.

8. Section 10161.8 requires that the broker shall immediately notify the Department in writing whenever a real estate salesperson either enters employment with the broker. Based upon the matters set forth in Factual Finding 7, cause for discipline was not established under this section, as it interacts with section 10177, subdivision (d).

9. Section 10240, subdivision (a), provides that a broker who negotiates a mortgage loan on behalf of a borrower within the meaning of section 10131, must provide the borrower with a written disclosure statement. Such statements must be signed by the borrower and the broker, or by a real estate licensee acting for the broker in negotiating the loan. The section further provides that copies of such statements must be retained by the broker who negotiated the loan for a period of three years. Cause for discipline exists under this section, as it interacts with section 10177, subdivision (d), based upon the failure of Hilltop Financial to retain copies of MDLS's, as set forth in Factual Finding 12.

Section 10240, subdivision (a), also provides that a broker must obtain the borrower's signature on the MDLS, and that the broker must provide a copy of the MDLS to the borrower. Based upon the matters set forth in Factual Finding 13, it was not established that respondent violated these provisions of section 10240, subdivision (a).

10. Section 10163 provides that brokers must apply for and obtain a license for each branch office. That section further provides that the Department may determine whether or not a broker is operating a brokerage business at any location, which requires a branch office license. Title 10, California Code of Regulations, section 2715, provides that every broker shall maintain on file with the Department the address of his principal place of business, and the address of each branch business office. That section further provides that if the address or location of the principal place of business or a branch office changes, the broker must notify the Department of such change no later than the next business day following the change. Section 10165 provides for suspension or revocation of the license of the real estate licensee who violates this section. Based upon the matters set forth in Factual

Finding 10, cause for discipline exists under these sections, as they interact with sections 10177, subdivision (d) and 10165.

11. Section 10137 makes it unlawful for a licensed broker to employ or compensate an individual for performing the services of a real estate salesperson if that individual is not licensed under such broker. Based upon the matters set forth in Factual Findings 7, 18, 19, 20, cause for discipline exists under this section, as it interacts with section 10177, subdivision (d).

12. Based upon the evidence adduced at the hearing, it is determined that revocation of Hilltop Financial's licensing rights under the real estate law is the appropriate discipline.

Kaba

13. Pursuant to section 10177, subdivisions (g) and (h), a real estate licensee may be disciplined for negligence; and, in cases involving a broker licensee or officer of a corporate broker licensee, for failing to exercise reasonable supervision over the activities of real estate salespersons or the activities of the corporation. Additionally, under section 10159.2, the designated officer is responsible for the supervision of the activities conducted on behalf of the corporation by its officers and employees. Based upon the matters set forth in Factual Findings 7, 8, 10, 12, 14, 15, 16, 18, 19, and 20, Kaba failed to exercise reasonable supervision and control over the mortgage brokering activities of Hilltop Financial, and its employees. Such evidence also established that Kaba permitted, ratified or caused the conduct set forth above to occur, and failed to take reasonable steps to ensure Hilltop Financial's compliance with real estate laws. Accordingly, cause for discipline exists under these sections, as they interact with section 10177, subdivision (d).

14. The evidence adduced at the hearing demonstrated that, on numerous occasions, respondent Kaba failed to supervise the activities of his employees, and the activities of the corporation where he served as officer-broker. Indeed, it is difficult to imagine how Kaba could adequately supervise the activities of Hilltop Financial when, as he stated, it had 77 branch offices. It is troubling that Kaba visited the Hilltop Mall branch office only once during the time in which Cook managed that office. The department cannot be assured that the public is protected when, as here, a licensee repeatedly fails to supervise the activities conducted on behalf of the corporation under which he is the broker-officer. Kaba's tendency to blame Nguyen for the problems of Hilltop Financial is also of concern in that it suggests that Kaba does not recognize a need to change how he approaches his professional obligations as a broker. No evidence of mitigation or rehabilitation was presented by Kaba. Under the circumstances, it is determined that revocation of Kaba's real estate broker license is the appropriate discipline.

Cook

15. Section 10130 makes it unlawful to engage in the business of a real estate agent without a license. Based upon the matters set forth in Factual Findings 7, 18 and 19,

cause for discipline exists under this section, as it interacts with section 10177, subdivision (d).

16. Section 10137 makes it unlawful for a real estate salesperson to accept compensation for services from his broker, when he is not currently licensed under that broker. Based upon the matters set forth in Factual Findings 7, 18 and 19, cause for discipline exists under this section, as it interacts with section 10177, subdivision (d).

17. The department is charged with the responsibility of monitoring the activities of its licensees to ensure compliance with applicable rules and regulations. In order to ensure the public's protection, the department must be satisfied that its licensees are willing and able to conduct their business within the bounds of the law, and that they exercise reasonable diligence and accuracy in doing so. Respondent must demonstrate his rehabilitation from his misconduct. The question, therefore, is whether respondent established that he is willing and able to discharge his duties as a real estate salesperson with diligence and accuracy.

18. In the instant case, respondent conducted his real estate activities and received compensation for his work when his license had been suspended. Contrary to the assertions of respondent's counsel, respondent's misconduct cannot be viewed as being so minimal as to require, at the most, a private reprimand. Respondent did, however, establish that he is substantially rehabilitated from his misconduct, to the extent that it would not be against the public interest to allow him to retain his salesperson license on a restricted basis. The factors considered in making this decision are as follows: Respondent completed the required coursework before the January 27, 2006 deadline. After learning that his license had been suspended, he promptly contacted the department and provided them with evidence that he had completed his coursework. Since his misconduct, respondent has worked steadily to achieve success in his life. He appears to have learned, in his words, a "life lesson" from his mistake.

Portions of respondent's testimony, however, were inconsistent as to why he did not provide the department with proof that he completed his coursework, and why he failed to make sure that his license remained in good standing at or near the January 27, 2006 deadline. For example, respondent could not explain why, after receiving the September, 2005 letter from the department, which clearly outlined his responsibilities, he took no further action to provide the department with evidence of completion of his coursework. There are also unanswered questions regarding respondent's conversation with a department staff person. It is hard to believe that a department representative would advise respondent not to submit proof that he had completed his class, or that such representative would tell him not to worry about it, when he was obligated to provide the proof within 18 months of receiving his conditional license. Even if such representations were made, however, it was not reasonable for respondent to rely on them. Indeed, it is of some concern that respondent would rely on such a conversation when something as important as his real estate licensure was at stake, particularly when he received a letter as late as September 2005 informing him that the department had not received evidence that he had completed his coursework.

In light of all of the evidence presented, it is determined that it is appropriate that respondent be allowed to retain his salesperson license on a restricted basis.

ORDERS

Hilltop Lending

1. All licenses and licensing rights of respondent Hilltop Lending Corporation under the Real Estate law are revoked by reason of Legal Conclusions 1 through 6, jointly and individually.

Hilltop Financial

2. All licenses and licensing rights of respondent Hilltop Financial Mortgage, Inc., under the Real Estate law are revoked by reason of Legal Conclusions 7 through 12, jointly and individually.

Kaba

3. All licenses and licensing rights of respondent Ibrahim K. Kaba under the Real Estate Law are revoked by reason of Legal Conclusions 13 and 14, jointly and individually.

Cook

4. All licenses and licensing rights of Nathan O'Neal Cook under the Real Estate Law are revoked by reason of Legal Conclusions 15 through 17, jointly and individually; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.6 if respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands

Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
4. 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.
5. Respondent shall, within six months from the effective date of this decision, take and pass the Professional Responsibility Examination administered by the Department of Real Estate 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.
6. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the

conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

DATED: _____

4/9/19



DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

FILED

MAR 17 2008

DEPARTMENT OF REAL ESTATE

[Signature]

1 DAVID B. SEALS, Counsel (SBN 69378)
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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-10327 SF
)	
12 HILLTOP LENDING CORPORATION,)	<u>ACCUSATION</u>
13 HILLTOP FINANCIAL MORTGAGE, INC.,)	
14 THANH NGOC NGUYEN,)	
15 IBRAHIM K. KABA, and)	
16 NATHAN O'NEAL COOK,)	
)	
17 Respondents.)	

17 The Complainant, E. J. HABERER II, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 Accusation against Respondents HILLTOP LENDING CORPORATION, a
20 corporation (herein "HILLTOP LENDING"), HILLTOP FINANCIAL
21 MORTGAGE, INC. herein "HILLTOP FINANCIAL", THANH NGOC NGUYEN
22 (herein "NGUYEN"), IBRAHIM K. KABA (herein "KABA"), and NATHAN
23 O'NEAL COOK (herein "COOK") (herein collectively "Respondents"),
24 is informed and alleges as follows:

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1 I

2 The Complainant, E. J. Haberer, II, a Deputy Real
3 Estate Commissioner of the State of California, makes this
4 Accusation in his official capacity.

5 II

6 At all times herein mentioned, Respondents were and
7 now are licensed and/or have license rights under the Real
8 Estate Law (Part 1 of Division 4 of the Business and Professions
9 Code) (herein "the Code").

10 III

11 At all times herein mentioned herein Respondent
12 HILLTOP LENDING was and now is licensed by the Department of
13 Real Estate of the State of California (herein "the Department")
14 as a corporate real estate broker by and through Respondent
15 NGUYEN as designated officer-broker of HILLTOP LENDING to
16 qualify said corporation and to act for said corporation as a
17 real estate broker.

18 IV

19 At all times herein mentioned, Respondent NGUYEN was
20 and now is licensed by the Department as a real estate broker,
21 individually and as designated officer-broker of HILLTOP
22 LENDING. As said designated officer-broker, NGUYEN was at all
23 times mentioned herein responsible pursuant to Section 10159.2
24 of the Code for the supervision of the activities of the
25 officers, agents, real estate licensees and employees of HILLTOP
26 LENDING for which a license is required.

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V

Whenever reference is made in an allegation in this Accusation to an act or omission of HILLTOP LENDING, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with HILLTOP LENDING committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

VI

At all times herein mentioned herein Respondent HILLTOP FINANCIAL was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker, from October 27, 2005 through February 28, 2007 by and through Respondent KABA as designated officer-broker of HILLTOP FINANCIAL to qualify said corporation and to act for said corporation as a real estate broker.

VII

At all times herein mentioned, Respondent KABA was and now is licensed by the Department as a real estate broker, individually and, from October 27, 2005 through February 28, 2007, as designated officer-broker of HILLTOP FINANCIAL. As said designated officer-broker, KABA was at all times mentioned herein from October 27, 2005 through February 28, 2007, responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers,

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1 agents, real estate licensees and employees of HILLTOP FINANCIAL
2 for which a license is required.

3 VIII.

4 Whenever reference is made in an allegation in this
5 Accusation to an act or omission of HILLTOP FINANCIAL, such
6 allegation shall be deemed to mean that the officers, directors,
7 employees, agents and/or real estate licensees employed by or
8 associated with HILLTOP FINANCIAL committed such act or omission
9 while engaged in the furtherance of the business or operations
10 of such corporate Respondent and while acting within the course
11 and scope of their authority and employment.

12 IX

13 At all times mentioned herein between July 27, 2004
14 and January 27, 2006, and then after April 4, 2006, Respondent
15 COOK was licensed by the Department as a real estate
16 salesperson. At all times mentioned herein between January 28,
17 2006 and April 3, 2006, Respondent COOK's license as a real
18 estate salesperson was suspended pursuant to the provisions of
19 Business and Professions Code Section 10153.4(c). At no time
20 mentioned herein has Respondent COOK been licensed by the
21 Department as a real estate broker. At no time mentioned herein
22 was Respondent COOK licensed by the Department in the employ of
23 HILLTOP LENDING, HILLTOP FINANCIAL, NGUYEN or KABA.

24 X

25 At all times herein mentioned, Respondents, acting
26 jointly and in concert with one another, engaged in the business
27 of, acted in the capacity of, advertised, or assumed to act as

1 real estate brokers within the State of California within the
2 meaning of:

3 (a) The operation and conduct of a real estate resale
4 brokerage with the public wherein, on behalf of others, for
5 compensation or in expectation of compensation, Respondents sold
6 and offered to sell, bought and offered to buy, solicited
7 prospective sellers and purchasers of, solicited and obtained
8 listings of, and negotiated the purchase and sale of real
9 property; and

10 (b) Section 10131(d) of the Code, including the
11 operation and conduct of a mortgage loan brokerage with the
12 public wherein, on behalf of others, for compensation or in
13 expectation of compensation, Respondents solicited lenders and
14 borrowers for loans secured directly or collaterally by liens on
15 real property, and wherein Respondents arranged, negotiated,
16 processed, and consummated such loans.

17 XI

18 At all times mentioned herein between October 27, 2005
19 and June 21, 2006, in course of the acts and activities
20 described in Paragraph X, above, Respondents HILLTOP LENDING and
21 HILLTOP FINANCIAL:

22 (a) Used the fictitious business names "Connect
23 Realty" and "Connect Real Estate" without first obtaining a
24 license bearing either such fictitious business name; and

25 (b) Maintained a branch place of business at 2970
26 Hilltop Mall Suite 300, Richmond, California, without obtaining
27 a license for such branch office.

1 XII

2 At all times mentioned herein between October 27, 2005
3 and January 27, 2006, and thereafter between April 4, 2006 and
4 June 21, 2006, in the course of the acts and activities
5 described in Paragraph XI, above, Respondents HILLTOP LENDING
6 and HILLTOP FINANCIAL employed and compensated Respondent COOK
7 to perform the acts and conduct the activities described in
8 Paragraph X, above, without registering COOK with the Department
9 in the employ of either HILLTOP LENDING or HILLTOP FINANCIAL.

10 XIII

11 At all times mentioned herein between January 27,
12 2006, and April 4, 2006, while Respondent COOK's license was
13 suspended pursuant to the provisions of Section 10153.4(c) of
14 the Code, in the course of the acts and activities described in
15 Paragraph XI, above, Respondents HILLTOP LENDING and HILLTOP
16 FINANCIAL employed and compensated Respondent COOK to perform
17 the acts and conduct the activities described in Paragraph X,
18 above, and Respondent COOK performed and conducted such acts and
19 activities, including but not limited to negotiating and
20 arranging the following transactions:

21 (a) The sale to Carolene Ross of real property at
22 1634 63rd Street, Berkeley, CA 94703 for \$725,000 and mortgage
23 loans for \$525,000 and \$200,000 to Ross from First NLC Financial
24 Services LLC to finance the purchase;

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1 (b) The sale to Andre Villeroy of real property at
2 792 6th St., Richmond, CA 94801 and mortgage loans in the amount
3 of \$352,000 and \$88,000 from WMC Mortgage to Villeroy to finance
4 the purchase of the property;

5 (c) The sale to Chyna Akilah of real property at 6666
6 Brann St., Oakland, CA 94605 and mortgage loans for \$448,000 and
7 \$112,000 Plaza Home Mortgage Inc. to Akilah to finance the
8 purchase of the real property;

9 (d) The sale to Jamal Mitchell of real property at
10 1622-1624 99th St., Oakland, CA 94603, and mortgage loans in the
11 sum of \$456,000 and \$114,000 to Mitchell from Argent Mortgage
12 Company, Inc., of Orange, California to finance the purchase;

13 (e) The sale to Marcus Shiref of real property at
14 18887 Bolder Avenue, Riverside, CA 92508 and mortgage loans for
15 \$392,000 and \$98,000 to Shiref from Wausau Mortgage Corp dba
16 Board Street to finance the purchase of said property;

17 (f) The sale to Nadia Zakiyyah of real property at
18 1632 88th Avenue, Oakland, CA 94621 and mortgage loans for
19 \$332,000 and \$83,000 to Zakiyyah from WMC Mortgage to finance
20 the purchase of said property;

21 (g) The sale to Khariman Iman of real property at
22 2591 Illinois Avenue East Palo Alto, CA 94303 for \$570,000;

23 (h) The sale to Helal Abbas of real property at 2005
24 90th Avenue, Oakland, CA 94603 for \$580,000 and mortgage loans
25 for \$464,000 and \$116,000 to Abbas from Fremont Investments and
26 Loan to finance the purchase;

27 ///

1 (i) The sale to Jason Lee of real property at 501
2 Crescent Avenue, San Francisco, California and mortgage loans
3 for \$683,960 and \$170,990 from Pro30 Funding to Jason Lee to
4 finance the purchase;

5 (j) The sale to Orlando Mixon of real property at
6 4824 Forecast Way, Stockton, CA 95206 for \$425,000.00; and

7 (k) The sale to Kimberly Anderson of real property at
8 2024 8th Avenue, Oakland, CA 94606 for \$525,000 and mortgage
9 loans of \$420,000 and \$105,000 to Anderson from Fremont
10 Investment and Loan to Anderson to finance the purchase of the
11 property.

12 XIV

13 At all times mentioned herein between January 27,
14 2006, and April 4, 2006, in the course of each and every
15 mortgage loan transaction described in Paragraph XIII, above,
16 Respondents HILLTOP LENDING and HILLTOP FINANCIAL failed to
17 comply with Section 10240 of the Code, in that Respondents:

18 (a) Failed to obtain the signature of the borrowers
19 on the statement required by Section 10240 (hereinafter "Written
20 Disclosure Statement");

21 (b) Failed to deliver a copy of the required Written
22 Disclosure Statement to the borrowers; and/or

23 (c) Failed to retain on file for a period of three
24 years a true and correct copy of the required Written Disclosure
25 Statement signed by the borrowers.

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XV

1
2 During the three year period next preceding the filing
3 of this Accusation herein, in the course of the mortgage loan
4 activities described in Paragraph X, above, Respondent HILLTOP
5 LENDING:

6 (a) Used the fictitious business name "H.F.C Corp"
7 without first obtaining a license bearing such fictitious
8 business name;

9 (b) Maintained branch places of business at 3900
10 Newport Mall Road, Suite 205, Newark, CA 94560, 1350 Old
11 Bayshore, Suite 910, Burlingame, CA 94010, and 4005 Hacienda
12 Drive, Suite 420, Pleasanton, CA 94588, without obtaining a
13 license for such branch offices;

14 (c) Employed and/or compensated unlicensed persons
15 Robert Allen and Paul C. Castaldi to conduct the mortgage loan
16 activities described in Paragraph X, above; and

17 (d) Knowingly authorized, directed and aided in the
18 publication, advertisement and distribution of materially false
19 statements concerning such Respondent's business to the effect,
20 contrary to fact, that Respondent HILLTOP LENDING was or is
21 licensed by the California Department of Corporations as a
22 Consumer Finance Lender.

23 XVI

24 Between on or about September 14, 2006 and on or about
25 September 20, 2006, in the course of the mortgage loan brokerage
26 activities described in Paragraph X, above, Respondent HILLTOP
27 FINANCIAL solicited and obtained a \$412,800 loan from Wilmington

1 Finance Inc. to Dorothy Hicks to refinance an existing loan
2 encumbering real property at 2421 67th Avenue, Oakland, CA
3 94605, by representing Hicks' income to be \$6,500.00 per month
4 when such Respondent knew that Hicks' income was less than
5 \$2,700 per month.

6 XVII

7 Respondent NGUYEN failed to exercise reasonable
8 supervision over the acts of HILLTOP LENDING in such a manner as
9 to allow the acts and omissions on the part of HILLTOP LENDING
10 described above, to occur.

11 XVIII

12 Respondent KABA failed to exercise reasonable
13 supervision over the acts of HILLTOP FINANCIAL in such a manner
14 as to allow the acts and omissions on the part of HILLTOP
15 FINANCIAL described above, to occur.

16 XIX

17 The facts alleged above are grounds for the suspension
18 or revocation of the licenses and license rights of Respondents
19 under the following provisions of the Code and/or Chapter 6,
20 Title 10, California Code of Regulations (herein "the
21 Regulations"):

22 (a) As to Paragraph XI(a) and Respondents HILLTOP
23 FINANCIAL and HILLTOP LENDING under Section 10177(d) of the Code
24 in conjunction with Section 10159.5 of the Code and Section 2731
25 of the Regulations;

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1 (b) As to Paragraph XI(b) and Respondents HILLTOP
2 FINANCIAL and HILLTOP LENDING under Sections 10165 and 10177(d)
3 of the Code in conjunction with Section 10163 of the Code.

4 (c) As to Paragraph XII and Respondents HILLTOP
5 FINANCIAL and HILLTOP LENDING under Section 10177(d) of the Code
6 in conjunction with Section 10161.8(a) of the Code;

7 (d) As to Paragraph XIII and Respondents HILLTOP
8 FINANCIAL, HILLTOP LENDING and COOK under Section 10177(d) of
9 the Code in conjunction with Sections 10130 and 10137 of the
10 Code;

11 (e) As to Paragraph XIV and Respondents HILLTOP
12 FINANCIAL and HILLTOP LENDING under Section 10177(d) of the Code
13 in conjunction with Section 10240 of the Code;

14 (f) As to Paragraph XV(a) and Respondent HILLTOP
15 LENDING under Section 10177(d) of the Code in conjunction with
16 Section 10159.5 of the Code and Section 2731 of the Regulations;

17 (g) As to Paragraph XV(b) and Respondent HILLTOP
18 LENDING under Sections 10165 and 10177(d) of the Code in
19 conjunction with Section 10163 of the Code;

20 (h) As to Paragraph XV(c) and Respondent HILLTOP
21 LENDING under Section 10177(d) of the Code in conjunction with
22 Section 10137 of the Code;

23 (i) As to Paragraph XV(d) and Respondent HILLTOP
24 LENDING under Section 10177(c) of the Code;


25 (j) As to Paragraph XVI and Respondent HILLTOP
26 FINANCIAL under Sections 10176(a) and/or 10177(j) of the Code;

27 ///

1 (k) As to Paragraph XVII and Respondent NGUYEN under
2 Section 10177(g) and/or Section 10177(h) of the Code and Section
3 10159.2 of the Code in conjunction with Section 10177(d) of the
4 Code; and

5 (l) As to Paragraph XVIII and Respondent KABA under
6 Section 10177(g) and/or Section 10177(h) of the Code and Section
7 10159.2 of the Code in conjunction with Section 10177(d) of the
8 Code.

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

16
17 
18 E. J. HABERER II
Deputy Real Estate Commissioner

19 Dated at Oakland, California,
20 this 13th day of March, 2008.