

FILED

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

January 23, 2012

4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By *S. Jones*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

12 MARGUERITE ANNE NOGOSEK,
13 MARGUERITE NOGOSEK, INC., CEDAR
14 MORTGAGE COMPANY, INC., and
15 KATHRYN HISERT,

Respondents.

No. H-10955 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

16
17 It is hereby stipulated by and between Respondents MARGUERITE ANNE NOGOSEK,
18 MARGUERITE NOGOSEK, INC., and CEDAR MORTGAGE COMPANY, INC., (hereafter
19 "NOGOSEK RESPONDENTS") only, acting by and through Steven L. Simas, Counsel for the
20 NOGOSEK RESPONDENTS, and the Complainant, acting by and through Kenneth C. Espell, Counsel
21 for the Department of Real Estate, (hereafter " Department") as follows for the purpose of settling and
22 disposing of the Accusation Filed on June 30, 2010, in this matter.

23 1. All issues which were to be contested and all evidence which was to be presented by
24 Complainant and NOGOSEK RESPONDENTS at a formal hearing on the Accusation, which
25 hearing was to be held in accordance with the provisions of the Administrative Procedure Act (hereafter
26 "APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of the
27 Stipulation and Agreement.

1 2. NOGOSEK RESPONDENTS have received, read and understand the
2 Statement to Respondent, the Discovery Provisions of the APA and the Accusations filed by the
3 Department in this proceeding.

4 3. On July 2, 2010, NOGOSEK RESPONDENTS filed a Notice of Defense
5 pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on
6 the allegations in the Accusation. NOGOSEK RESPONDENTS hereby freely and voluntarily
7 withdraw said Notice of Defense. NOGOSEK RESPONDENTS acknowledge they
8 understand that by withdrawing said Notice of Defense, NOGOSEK RESPONDENTS will
9 thereby waive their right to require the Commissioner to prove the allegations in the Accusation
10 at a contested hearing held in accordance with the provisions of the APA and that NOGOSEK
11 RESPONDENTS will waive other rights afforded to NOGOSEK RESPONDENTS in
12 connection with the hearing such as the right to present evidence in defense of the allegations in the
13 Accusation and the right to cross-examine witnesses.

14 4. This Stipulation is based on the factual allegations contained in the
15 Accusation. In the interest of expedience and economy, NOGOSEK RESPONDENTS choose
16 not to contest these factual allegations, but to remain silent and understand that, as a result
17 thereof, the factual statements contained in the Accusation will serve as the prima facie basis for the
18 "Determination of Issues" and "Order" set forth below. The Real Estate Commissioner shall not be
19 required to provide further evidence to prove such allegations.

20 5. This Stipulation and the NOGOSEK RESPONDENTS' decision not to
21 contest the Accusation are made for the purpose of reaching an agreed disposition of this
22 proceeding and are expressly limited to this proceeding and any other proceeding or case in
23 which the Department, the state or federal government, agency of the state, or an agency of
24 another state is involved.

25 6. It is understood by the parties that the Real Estate Commissioner may
26 adopt the Stipulation and Agreement as his decision in this matter, thereby imposing the penalty
27 and sanctions on NOGOSEK RESPONDENTS' real estate license and license rights as set

1 forth in the "Order" below. In the event that the Commissioner in his discretion does not
2 adopt the Stipulation and Agreement, it shall be void and of no effect, and the NOGOSEK
3 RESPONDENTS shall retain the right to a hearing and proceeding on the Accusation under
4 all the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

8 8. The NOGOSEK RESPONDENTS understand that by agreeing to this
9 Stipulation and Agreement, NOGOSEK RESPONDENTS agree to pay pursuant to Section
10 10148 of the California Business and Professions Code (hereafter "Code"), the cost of the
11 audit which resulted in the determination that Respondent committed the trust fund violation(s)
12 found in the Determination of Issues below. The amount of the costs to be paid is as follows:
13 CEDAR MORTGAGE COMPANY, INC., will pay audit costs of \$3,995.95. MARGUERITE
14 NOGOSEK, INC., will pay audit costs of \$4,665.98. Each of the NOGOSEK
15 RESPONDENTS is jointly and severally liable for the audit costs.

16 9. NOGOSEK RESPONDENTS further understand that by agreeing to this
17 Stipulation and Agreement in Settlement, the findings set forth below in the Determination of
18 Issues become final and the Commissioner may charge NOGOSEK RESPONDENTS for the
19 costs of any audit conducted pursuant to Section 10148 of the Code to determine if the trust
20 fund violation(s) found in the Determination of Issues, below, have been corrected. The
21 maximum costs of said audit shall not exceed \$8,661.93.

22 DETERMINATION OF ISSUES

23 By reason of the foregoing stipulations, admissions and waivers and solely for
24 the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed
25 that the acts and omissions of the NOGOSEK RESPONDENTS described in the Accusation are
26 grounds for the suspension or revocation of the licenses and license rights of the NOGOSEK
27 RESPONDENTS under the provisions of Title 10 of the California Code of Regulations

1 (hereafter "Commissioner's Regulations") as follows:

2 As to MARGUERITE NOGOSEK, INC.:

3 (a) As to Paragraph 14(a) Section 2831(a) of the
4 Commissioner's Regulations;

5 (b) As to Paragraph 14(b) Section 2831.1 of the
6 Commissioner's Regulations;

7 (c) As to Paragraph 14(c) Section 2831.2 of the
8 Commissioner's Regulations;

9 (d) As to Paragraph 14(d) Section 2831(a)(6) of the
10 Commissioner's Regulations;

11 (e) As to Paragraph 14(e) Sections 10176(a) and 10176(b) of the
12 Code;

13 (f) As to Paragraph 14(f) of Section 10160 of the Code and Section
14 2753 of the Commissioner's Regulations;

15 (g) As to Paragraph 14(g) Section 10137 of the Code;

16 (h) As to Paragraph 14(h) Section 10161 of the Code AND Section 2752 of
17 the Commissioner's Regulations;

18 (i) As to Paragraph 21 Section 10177(g) of the Code;

19 As to MARGUERITE ANNE NOGOSEK:

20 (a) As to Paragraph 19 Section 2725 of the Commissioner's Regulations and
21 Sections 10159.2 and 10177(d) and (h) of the Code;

22 (b) As to Paragraph 21 Section 10177(g) of the Code;

23 As to CEDAR MORTGAGE COMPANY, INC.:

24 (a) As to Paragraph 26(a) Section 10232(e) of the Code;

25 (b) As to Paragraph 27 Sections 2726, 2753, and 2767 of the
26 Commissioner's Regulations and Sections 10232(e), 10232.4, 10240 and 10241 of the Code;

27 (c) As to Paragraph 28 Sections 10176(e) and 10177(d) of the Code;

1 (d) As to Paragraph 31, Section 2725 of the Commissioner's Regulations
2 and Sections 10159.2 and 10177(d) and (h) of the Code; and,

3 (e) As to Paragraph 33 Section 10177(g) of the Code.

4 ORDER

5 I

6 All licenses and licensing rights of MARGUERITE NOGOSEK, INC. under the Real
7 Estate Law are suspended for a period of sixty (60) days from the effective date of this order, provided
8 that:

9 1. Thirty (30) days shall be stayed for four (4) years upon the following terms and
10 conditions:

11 (a) MARGUERITE NOGOSEK, INC., shall obey all laws, rules and
12 regulations governing the rights, duties and responsibilities of a real estate licensee in the State of
13 California, and;

14 (b) That no final subsequent determination is made, after hearing or upon
15 stipulation that cause for disciplinary action occurred within four (4) years from the effective date of
16 that Order. Should such a determination be made, the Commissioner may in his discretion, vacate and
17 set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such
18 determination be made, the stay imposed herein shall become permanent.

19 2. The remaining thirty (30) days shall be stayed upon the condition that
20 MARGUERITE NOGOSEK, INC., petitions pursuant to Section 10175.2 of the Code and pays a
21 monetary penalty at a rate of \$100.00 for each day of the suspension for a total monetary penalty of
22 \$3,000.00:

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

26 (b) No further cause for disciplinary action against the Real Estate licenses of
27 MARGUERITE NOGOSEK, INC., occur within four (4) years from the effective date of the

1 decision in this matter; and,

2 (c) If MARGUERITE NOGOSEK, INC., fails to pay the monetary penalty as
3 provided above prior to the effective date of this Order, the stay shall be vacated as to that
4 Respondent and the order of suspension shall be immediately executed under Paragraph 1 of this
5 Order, in which event that MARGUERITE NOGOSEK, INC., shall not be entitled to any
6 repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms
7 the terms of this Order; and,

8 (d) If MARGUERITE NOGOSEK, INC pays the monetary penalty and other
9 monies due under this Stipulation and Agreement and if no further cause for disciplinary action against
10 MARGUERITE NOGOSEK, INC occurs within four (4) years from the effective date of this Order, the
11 entire stay hereby as to MARGUERITE NOGOSEK, INC only, shall become permanent.

12 II

13 All licenses and licensing rights of MARGUERITE ANNE NOGOSEK under the Real
14 Estate Law are suspended for a period of sixty (60) days from the effective date of this order, provided
15 that:

16 1. Thirty (30) days shall be stayed for four (4) years upon the following terms and
17 conditions:

18 (a) MARGUERITE ANNE NOGOSEK shall obey all laws, rules and regulations
19 governing the rights, duties and responsibilities of a real estate licensee in the State of California;
20 and,

21 (b) That no final subsequent determination is made, after hearing or upon
22 stipulation that cause for disciplinary action occurred within four (4) years from the effective date of
23 that Order. Should such a determination be made, the Commissioner may in his discretion, vacate
24 and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such
25 determination be made, the stay imposed herein shall become permanent.

26 2. The remaining thirty (30) days shall be stayed upon the condition that
27 MARGUERITE ANNE NOGOSEK petitions pursuant to Section 10175.2 of the Code and pays a

1 monetary penalty at a rate of \$100.00 for each day of the suspension for a total monetary penalty of
2 \$3,000.00:

3 (a) Said payment shall be in the form of a cashier's check or certified check made
4 payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the
5 Department prior to the effective date of the Decision in this matter;

6 (b) No further cause for disciplinary action against the Real Estate licenses of
7 MARGUERITE ANNE NOGOSEK occur within four (4) years from the effective date of the decision in
8 this matter; and,

9 (c) If MARGUERITE ANNE NOGOSEK fails to pay the monetary penalty as
10 provided above prior to the effective date of this Order, the stay shall be vacated as to that
11 Respondent and the order of suspension shall be immediately executed under this Paragraph 1 of
12 this Order, in which event that MARGUERITE ANNE NOGOSEK shall not be entitled to any
13 repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms
14 of this Order; and,

15 (d) If MARGUERITE ANNE NOGOSEK pays the monetary penalty and
16 other monies due under this Stipulation and Agreement and if no further cause for disciplinary
17 action against MARGUERITE ANNE NOGOSEK occurs within four (4) years from the
18 effective date of this Order, the entire stay hereby as to MARGUERITE ANNE NOGOSEK
19 only, shall become permanent.

20 3. Respondent MARGUERITE ANNE NOGOSEK shall, within six (6)
21 months from the effective date of the decision, take and pass the Professional Responsibility
22 Examination administered by the Department, including the payment of the appropriate
23 examination fee. If Respondent MARGUERITE ANNE NOGOSEK fails to satisfy this
24 condition, the Commissioner may order the suspension of all licenses and licensing rights until
25 Respondent MARGUERITE ANNE NOGOSEK passes the examination.

26 4. Notwithstanding any other provision of this Order, all licenses and license
27 rights of Respondent MARGUERITE ANNE NOGOSEK are indefinitely suspended unless or

1 until she provides proof satisfactory to the Commissioner that she has taken and successfully
2 completed the continuing education course on trust fund accounting and handling specified in
3 Section 10170.5(a)(3) of the Code. Proof of satisfaction of this requirement includes evidence
4 that Respondent MARGUERITE ANNE NOGOSEK has successfully completed the trust fund
5 accounting and handling continuing education course within 120 days prior to the effective date
6 of Commissioner's Order.

7 5. MARGUERITE ANNE NOGOSEK shall notify the Commissioner in writing
8 within 72 hours of any arrest by sending a certified letter to the Commissioner at the
9 Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter
10 shall set forth the date of MARGUERITE ANNE NOGOSEK's arrest, the crime(s) for which
11 MARGUERITE ANNE NOGOSEK was arrested and the name and address of the arresting law
12 enforcement agency. MARGUERITE ANNE NOGOSEK's failure to timely file written notice
13 shall constitute an independent violation of the terms of this Stipulation and Agreement and shall
14 be grounds for the suspension or revocation of MARGUERITE ANNE NOGOSEK's licenses.

15 III

16 All licenses and licensing rights of CEDAR MORTGAGE COMPANY, INC., under the Real
17 Estate Law are suspended for a period of sixty (60) days from the effective date of this order, provided
18 that:

19 1. Thirty (30) days shall be stayed for four (4) years upon the following terms and
20 conditions:

21 (a) CEDAR MORTGAGE COMPANY, INC., shall obey all laws, rules and
22 regulations governing the rights, duties and responsibilities of a real estate licensee in the State of
23 California; and,

24 (b) That no final subsequent determination is made, after hearing or upon
25 stipulation that cause for disciplinary action occurred within four (4) years from the effective date of
26 that Order. Should such a determination be made, the Commissioner may in his discretion, vacate and
27 set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such

1 determination be made, the stay imposed herein shall become permanent.

2 2. The remaining thirty (30) days shall be stayed upon the condition that CEDAR
3 MORTGAGE COMPANY, INC., petitions pursuant to Section 10175.2 of the Code and pays a
4 monetary penalty at a rate of \$100.00 for each day of the suspension for a total monetary penalty of
5 \$3,000.00:

6 (a) Said payment shall be in the form of a cashier's check or certified check made,
7 payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the
8 Department prior to the effective date of the Decision in this matter;

9 (b) No further cause for disciplinary action against the Real Estate licenses of
10 CEDAR MORTGAGE COMPANY, INC., occur within four (4) years from the effective date of the
11 decision in this matter;

12 (c) If CEDAR MORTGAGE COMPANY, INC., fails to pay the monetary penalty
13 as provided above prior to the effective date of this Order, the stay shall be vacated as to that
14 Respondent and the order of suspension shall be immediately executed under this Paragraph 1 of
15 this Order, in which event that CEDAR MORTGAGE COMPANY, INC., shall not be entitled to any
16 repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms
17 of this Order; and,

18 (d) If CEDAR MORTGAGE COMPANY, INC., pays the monetary penalty and other
19 monies due under this Stipulation and Agreement and if no further cause for disciplinary action against CEDAR
20 MORTGAGE COMPANY, INC., occurs within four (4) years from the effective date of this Order, the entire
21 stay hereby as to CEDAR MORTGAGE COMPANY, INC., only, shall become permanent.

22 IV


23 1. The NOGOSEK RESPONDENTS understand that by agreeing to this
24 Stipulation and Agreement, the NOGOSEK RESPONDENTS agree to pay pursuant to Section
25 10148 of the Code the cost of the audit which resulted in the determination that NOGOSEK
26 RESPONDENTS committed the trust fund violation(s) found in the Determination of Issues, above.
27 The amount of the costs to be paid is as follows: CEDAR MORTGAGE COMPANY, INC. will

1 pay audit costs of \$3,995.95. MARGUERITE NOGOSEK, INC. will pay audit costs of
2 \$4,665.98. Each NOGOSEK RESPONDENT is jointly and severally liable for the audit costs. If
3 any NOGOSEK RESPONDENT fails to pay such cost within the sixty (60) days, the Commissioner
4 may in his discretion indefinitely suspend all license and licensing right of that Respondent under
5 the Real Estate Law until payment is made in full or until that Respondent enters into an agreement
6 satisfactory to the Commissioner to provide for payment. Upon payment in full, the indefinite
7 suspension provided in this paragraph shall be stayed.

8 2 The NOGOSEK RESPONDENTS shall, jointly and severally, pay the
9 Commissioner's costs, not to exceed \$8,661.93, of any audit conducted pursuant to Section
10 10148 of the Code to determine if Respondents have corrected the violations described in the
11 Determination of Issues, above, and any other violations found in the audit which led to this
12 disciplinary action.

13 3 All licenses and license rights of NOGOSEK RESPONDENTS are indefinitely
14 suspended unless or until NOGOSEK RESPONDENTS present evidence satisfactory to the Real
15 Estate Commissioner, via certification from a licensed CPA, the violations as set forth in the
16 Department's Accusation have been corrected. The certification shall be submitted to Kenneth
17 C. Espell, Real Estate Counsel II, California Department of Real Estate, Legal Section, P. O.
18 Box 187007, Sacramento, CA 95818-7007.

19
20 9/26/2011
21 _____
22 DATED

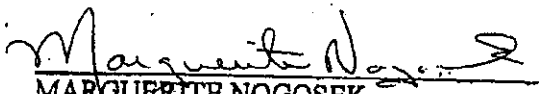
20 
21 _____
22 KENNETH C. ESPELL,
23 Real Estate Counsel II
24 DEPARTMENT OF REAL ESTATE

24 ***

25 I have read the Stipulation and Agreement and its terms are understood by me and are
26 agreeable and acceptable to me. I understand that I am waiving rights given to me by the California
27 Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509,

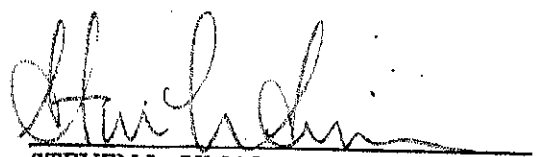
1 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those
2 rights, including the right of requiring the Commissioner to prove the allegations in the
3 Accusation at a hearing at which I would have the right to cross-examine witnesses against the
4 NOGOSEK RESPONDENTS and present evidence in defense and in mitigation of the charges.

5
6 9/23/11
7 DATED

8 
9 MARGUERITE NOGOSEK
10 Individually and on behalf of The
11 NOGOSEK RESPONDENTS

12 I have reviewed this Stipulation and Agreement and Order as to form and
13 content and have advised my client accordingly.

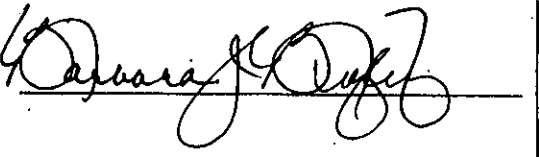
14 9/26/11
15 DATED

16 
17 STEVEN L. SIMAS, Esq.
18 Attorney for Respondent

19 ***

20 The foregoing Stipulation and Agreement is hereby adopted by me as my
21 Decision in this matter as to Respondents MARGUERITE ANNE NOGOSEK, MARGUERITE
22 NOGOSEK, INC., and CEDAR MORTGAGE COMPANY, INC., and shall become effective
23 FEB 13 2012
24 at 12 o'clock noon on _____

25 IT IS SO ORDERED this 1st Day of November, 2011.

26 BARBARA J. BIGBY
27 Acting Real Estate Commissioner


FILED

JUN 30 2010

DEPARTMENT OF REAL ESTATE

K. Henry

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789 -or-
6 (916) 227-0868 (Direct)

7
8
9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of)
14 MARGUERITE ANNE NOGOSEK) H-10955 SF
15 MARGUERITE NOGOSEK, INC.,) ACCUSATION
16 CEDAR MORTGAGE COMPANY, INC., and)
KATHRYN HISERT,)
Respondents.)

17 The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real
18 Estate Commissioner of the State of California, for cause of Accusation against MARGUERITE
19 ANNE NOGOSEK (herein "M NOGOSEK"), MARGUERITE NOGOSEK, INC., (hereinafter
20 "MNI"), CEDAR MORTGAGE COMPANY, INC., (hereinafter "Respondent "CMC"), and
21 KATHRYN HISERT ("HISERT") is informed and alleges as follows:

22 1

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

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

3

Respondent MNI is presently licensed and/or has license rights under the Code and is licensed by the Department of Real Estate (hereafter "the Department") as a corporate real estate broker and at all times relevant herein was doing business under the fictitious business names Integrity First Realty and/or Referral Realty.

4

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

5

At all times herein mentioned Respondent M NOGOSEK was and is the president and designated officer/broker of Respondent MNI. Pursuant to Sections 10159.2 and 10177(h) of the Code, as the designated officer/broker of Respondent MNI, Respondent M NOGOSEK was at all times mentioned herein responsible for the supervision of the activities of the officers, agents, real estate licensees and employees of Respondent MNI.

6

At all times herein mentioned, Respondent MNI engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(a) and 10131(b) of the Code including:

- (a) the operation and conduct of a mortgage loan brokerage business with the

1 public wherein Respondent MNI solicited lenders and borrowers for loans secured directly or
2 collaterally by liens on real property or a business opportunity, and wherein such loans were
3 arranged, negotiated, processed, and consummated by Respondent on behalf of others and
4 wherein promissory notes or interests therein were sold or purchased on behalf of another or
5 others for compensation or in expectation of compensation.

6 (b) the operation and conduct of property management activities wherein
7 Respondents leased or rented and offered to lease or rent, and placed for rent, and solicited
8 listings of places for rent, and solicited for prospective tenants of real property or improvements
9 thereon, and collected rents from real property or improvements thereon; and,

10 (c) the operation and conduct of a residential resale brokerage wherein
11 Respondents bought, sold, or offered to buy or sell, solicited or obtained listings of,
12 and negotiated the purchase, sale or exchange of real property or business opportunities.

13 Respondent CMC is presently licensed and/or has license rights under the Code and is licensed
14 by the Department of Real Estate (hereafter "the Department") as a corporate real estate broker.

15 7

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

22 8

23 At all times herein mentioned, Respondent M NOGOSEK was and is the
24 designated officer/broker of Respondent CMC. Pursuant to Sections 10159.2 and 10177(h) of
25 the Code, as the designated officer/broker of Respondent CMC, Respondent M NOGOSEK was
26 at all times mentioned herein responsible for the supervision of the activities of the officers,
27 agents, real estate licensees and employees of Respondent CMC.

At all times herein mentioned, Respondent CMC engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(a) and 10131(b) of the Code including the operation and conduct of a mortgage loan brokerage business with the public wherein Respondent CMC solicited private money lenders and private borrowers for loans secured directly or collaterally by liens on real property or a business opportunity, and wherein such loans were arranged, negotiated, processed, and consummated by Respondent on behalf of others and wherein promissory notes or interests therein were sold or purchased on behalf of another or others for compensation or in expectation of compensation.

FIRST CAUSE OF ACTION
The NMI Audit

10

Each and every allegation in Paragraphs 1 through 6, inclusive, above, is incorporated by this reference as if fully set forth herein.

11

Beginning on January 21, 2009 and continuing intermittently until February 4, 2009, an audit was conducted at MNI's main office located at 3190 S. Bascom Avenue, Suite 100, San Jose, California and the Oakland District Office of the Department of Real Estate, 1515 Clay Street, Suite 702, Oakland, California wherein the auditor examined records for the period January 1, 2007 to December 31, 2008 (the audit period).

12

In so acting as real estate brokers, Respondents accepted or received funds in trust (herein "trust funds") from or on behalf of lenders, investors, borrowers and others in connection with the mortgage loan brokerage activities described in Paragraph 6, above, and thereafter from time to time made disbursements of the trust funds.

///

1
2 The aforementioned trust funds accepted or received by Respondents were
3 deposited or caused to be deposited by Respondents into one or more bank accounts (herein
4 "trust fund accounts") maintained by Respondents for the handling of trust funds, including but
5 not necessarily limited to, the following accounts maintained by Respondents at the Bank of the
6 West, 1999 S Bascom Avenue, Campbell, CA 95008:

7 (a) Marguerite Nogosek, Inc. dba Referral Realty, account number 031-
8 013961 ("Trust #1").

9
10 In the course of the activities described in Paragraph 6, above, for the audit
11 period Respondent MNI:

12 (a) Failed to maintain control records and/or produce a control record for
13 Trust #1 as required by Section 2831(a) of the Regulations;

14 (b) Failed to provide or maintain separate beneficiary records for at least one
15 of the beneficiaries, Linda Cerates, of Trust #1 as required by Section 2831.1 of
16 the Regulations;

17 (c) For the period January 1, 2007 through December 31, 2008, MNI failed
18 to perform and/or maintain evidence that MNI performed monthly
19 reconciliations that compared the total balance of all beneficiary or transaction
20 records with the balance of the record of all trust funds received and disbursed
21 as required by Section 2831.2 of the Regulations;

22 (d) Failed to maintain a record of all trust funds received not placed in
23 broker's trust account to keep track of earnest money deposits received from
24 prospective buyers that were made payable to title companies as required by
25 Sections 2831(a)(6) of the Regulations;

26 (e) In connection with an August 13, 2007, purchase of a property located at
27 2503 Kingwood Drive, Santa Clara, California, MNI salesperson HISERT,

1 who represented the buyers offered to purchase the property and represented that
2 the buyers had provided HISERT with a \$5,000 earnest money deposit toward
3 the purchase price of the property. Within 3 days after acceptance of their offer,
4 buyers were to make an additional deposit with the escrow holder of \$10,000.
5 The \$5,000 earnest money deposit should have been given to HISERT on August
6 13, 2007. MNI did not maintain a record of all trust funds received not placed in
7 broker's trust account. However, a deposit check in the amount of \$15,000 with
8 the date August 20, 2007 was received as the deposit of the purchase of the
9 property. No check for the \$5,000 earnest money deposit was ever received by
10 HISERT as represented in the purchase offer all in violation of Section 10176(a)
11 and 10176(b) of the Code;

12 (f) Failed to maintain possession at MNI's main office, and failed to
13 make available for inspection upon the auditor's request, the real estate
14 salesperson license for one Steven D. Lawson, license number 01130492,
15 as required by Section 2753 of the Regulations and Section 10160 of the
16 Code;

17 (g) Paid compensation in the amount of \$16,441.50 to Rowland Dow, a
18 real estate salesperson who represented a buyer in a real estate sales transaction
19 at the time when Dow was licensed to another corporation, Cedar Mortgage
20 Company, Inc., in violation of Section 10137 of the Code; and,

21 (h) Failed to notify the Department that salespersons Paul J. Nogosek, (DRE
22 salesperson license 01830688) and Brian C. Nall, (DRE salesperson license
23 number 01346039) were employed by MNI during the audit period in violation
24 of Section 2752 of the Regulations and Section 10161 of the Code.

25 15

26 The acts and/or omissions of MNI as alleged above violate Sections 2752, 2753,
27 2831(a) 2831(a)(6), 2831.1, and 2831.2 of the Regulations and Sections 10137, 10160, 10161,
10176(a) and 10176(b) of the Code.

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The acts and/or omissions of MNI and/or M NOGOSEK and/or HISERT alleged above are grounds for discipline under Sections 10176(e) and 10177(d) of the Code.

SECOND CAUSE OF ACTION
As against RESPONDENT M NOGOSEK
Failure to Supervise NMI

17

Each and every allegation in Paragraphs 1, 3 through 6, and 10 through 16, inclusive, above, is incorporated by this reference as if fully set forth herein.

18

At all times herein mention, M NOGOSEK, as the designated broker officer of MNI, was responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. M NOGOSEK failed to exercise reasonable supervision and control over the mortgage brokerage activities of MNI. In particular, M NOGOSEK permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to occur, and failed to take reasonable steps, including, but not limited to, the supervision of employees and the implementation of polices, rules, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

19

The above acts and/or omissions of M NOGOSEK violated Section 2725 of the Regulations and Section 10159.2 of the Code and are grounds for disciplinary action under the provisions of Section 10177(d) and (h) of the Code.

THIRD CAUSE OF ACTION
Negligence and/or Incompetence
As Against MNI and/or M NOGOSEK

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Each and every allegation in Paragraphs 1 and 6 through 19, inclusive, above are incorporated by this reference as if fully set forth herein.

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The acts and omissions of MNI and/or M NOGOSEK as described in paragraphs 8 through 13, above, jointly and severally, constitute negligence or incompetence in performing acts requiring a real estate license and are cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of MNI and/or M NOGOSEK.

FOURTH CAUSE OF ACTION
Negligence and/or Incompetence
As Against HISERT

22

Each and every allegation in Paragraphs 1 through 6, above are incorporated by this reference as if fully set forth herein.

23

The acts and omissions of as described in paragraph 14(f), above, constitute negligence or incompetence in performing acts requiring a real estate license, and are cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of HISERT.

FIFTH CAUSE OF ACTION
The Cedar Mortgage Audit

24

Each and every allegation in Paragraphs 1, and 7 through 9, above, are incorporated by this reference as if fully set forth herein.

25

Beginning on January 21, 2009 and continuing intermittently until February 4, 2009, an audit was conducted at CMC's main office located at 3190 S. Bascom Avenue, Suite 100, San Jose, California wherein the auditor examined records for the period January 1, 2007 to December 31, 2008 (the audit period).

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In the course of the activities described in Paragraph 9, above, for the audit period Respondent CMC:

(a) For the 12-month period of January 2007 through December 2007, CMC negotiated 14 loans secured directly or indirectly by liens on real property in an aggregate amount of \$2,308,500.00 in private money loans thus triggering the threshold reporting requirements contained in Section 10232(e) of the Code. However, CMC failed to notify the Department in writing within 30 days of meeting the threshold criteria as required by Section 10232(e) of the Code;

(b) Failed to provide or maintain evidence that Respondent provided a Lender/Purchaser Disclosure Statements to the investor in at least two closed loan transactions as required by Section 10232.4 of the Code:

Investor Name	Borrower Name	Loan Amount	Date Closed
Robert Wood	Sherry J. Duarte	\$70,000.00	03/16/2007
Caffaney Properties LP	Kathleen and Harmon Smith	\$150,000.00	05/29/2007

(c) Failed to obtain or maintain evidence in at least three loan transactions that Respondent obtained the signature of the lender on a Lender/Purchaser Disclosure Statements as required by Section 10232.4 of the Code:

Investor Name	Borrower Name	Loan Amount	Date Closed
J.A. Geraci	Jorge B. Ascencio	\$47,500.00	03/16/2007
PLS Mortgage Services Corporation	Julian L. Collett	\$300,000.00	06/19/2007
Thomas R. Chandler	Sylvia Lopez	\$60,000	10/03/2008

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(d) In at least four closed loan transactions, files failed to maintain a Mortgage Loan Disclosure Statement (MLDS) or Good Faith Estimate as required by Sections 10240 and 10241 of the Code:

Investor Name	Loan Amount	Date Closed
Kathleen and Harmon Smith	\$150,000.00	05/29/2007
Alex Pavlovsky	\$165,000.00	09/09/2008
Sylvia Lopez	\$60,000.00	10/03/2007
Laurita J. Hernandez	760,000.00	04/13/2007

(e) In at least two closed loan transactions, failed to maintain true and correct copies of the MLDS as signed by borrower as required by Sections 10240 and 10241 of the Code:

Investor Name	Loan Amount	Date Closed
Jorge B. Ascencio	\$47,500.00	05/15/2007
Mathew and Jennifer Everett	\$478,000.00	11/13/2008

(f) In at least three closed transactions, failed to include accurate broker compensation disclosures as required by Sections 10240 and 10241 of the Code;

Borrower Name	Loan Amount	Date Closed	Commission Disclosed on MLDS	Commission Reported on the Hud-1 Statement
Donald and Terry Myers	\$133,000.00	03/24/2008	\$4,140.00	\$4,653.00
Chris Jost and Virginia Vaughn	\$548,000.00	10/17/2008	\$7,000.00	\$9,814.50
Mathew and Jennifer Everett	\$478,000.00	11/13/2008	\$10,895.00	\$12,755.00

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1 (g) Failed to provide the revised MLDS (DRE Form 883 (Rev 8/08)) for
2 disclosures issued to borrowers after August 1, 2008 as required by
3 Sections 10240 and 10241 of the Code;

4 (h) Failed to maintain possession at CMC's main office and failed to
5 make available for inspection upon the auditor's request the real estate
6 salesperson license for Daniel T. Burke, license number 00808433 as
7 required by Section 2753 of the Regulations;

8 (i) Failed to maintain a broker-salesperson agreement with John A. Nogosek
9 as required by Section 2767 of the Regulations; and,

10 (j) For at least six salespersons, (Michael P. Reen, Michele M. Reen, Scott
11 R. Hill, Daniel T. Burke, Charla R. Fernandez and Thomas Kaiser), failed to
12 maintain a broker-salesperson agreement which included language addressing the
13 material aspects of the relationship between the parties with respect to the
14 supervision of licensed activities as required by Section 2726 of the Regulations.

15 27

16 The acts and/or omissions of CMC as alleged above violate Sections 2726, 2753,
17 2767 and Sections 10232(e), 10232.4, 10240 and 10241 of the Code.

18 28

19 The acts and/or omissions of CMC alleged above are grounds for discipline under
20 Sections 10176(e) and 10177(d) of the Code.

21 SIXTH CAUSE OF ACTION

22 As against RESPONDENT M NOGOSEK
23 Failure to Supervise CMC

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25 Each and every allegation in Paragraphs 1, 7 through 9 and 24 through 28,
26 inclusive, above, is incorporated by this reference as if fully set forth herein.

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At all times herein mention, M NOGOSEK was responsible, as the designated broker officer of CMC, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. M NOGOSEK failed to exercise reasonable supervision and control over the mortgage brokerage activities of CMC. In particular, M NOGOSEK permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to occur, and failed to take reasonable steps, including, but not limited to, the supervision of employees and the implementation of polices, rules, procedures and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

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The above acts and/or omissions of M NOGOSEK violate Section 2725 of the Regulations and Section 10159.2 of the Code and are grounds for disciplinary action under the provisions of Section 10177(d) and (h) of the Code.

SEVENTH CAUSE OF ACTION
Negligence and/or Incompetence
As Against CMC and/or M NOGOSEK

32

Each and every allegation in Paragraphs 1 through 13, inclusive, above are incorporated by this reference as if fully set forth herein.

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The acts and omissions of CMC and/or M NOGOSEK as described in Paragraphs 8 through 13, above, jointly and severally, constitute negligence or incompetence in performing acts requiring a real estate license, and are cause under Section 10177(g) of the Code for suspension or revocation of all licenses and license rights of CMC and/or M NOGOSEK.

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1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
3 action against all licenses and license rights of Respondents MARGUERITE ANNE NOGOSEK,
4 MARGUERITE NOGOSEK, INC., CEDAR MORTGAGE COMPANY, INC., and KATHRYN
5 HISERT under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code)
6 and for such other and further relief as may be proper under other applicable provisions of law.
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10 _____
11 E. J. HABERER II
12 Deputy Real Estate Commissioner

13 Dated at Oakland, California
14 this 29th day of June, 2010.
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