

FILED

October 12, 2012

BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By  _____

In the Consolidated Matters of:
In the Matter of the Accusation of

RANSOME CARL McKISSICK, Jr.,

Respondent.

NO. H-11145 SF
OAH No. 2011060560

In the Matter of the Accusation of

INFINITY FINANCIAL CONSULTANTS, INC.,
a California corporation,
FRED JAMES HAUPT, IV, THE AGENT
NETWORK, INC., a California corporation,
FRED W. DE LEON, and RANSOME CARL
McKISSICK, JR.,

Respondent.

NO. H-2432 FR
OAH No. 2011080492

In the Matter of the Statement of Issues of

RANSOME CARL McKISSICK, Jr.,

Respondent.

NO. H-11182 SF
OAH No. 2011090758

DECISION


The Proposed Decision dated September 26, 2012, 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 with the following corrections:

1. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 1, the Caption is revised to eliminate "Case No. H-11182 FR" so as to read, "Case No. H-11182 SF."

2. Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision on page 27, the ORDER at paragraph 5, to eliminate "Case No. H-11145 SF" so as to read, "Case No. H-2432 FR."

This Decision shall become effective at 12 o'clock noon on NOV 02 2012 2012.
IT IS SO ORDERED October 11, 2012.

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Consolidated Matters of the
Accusations Against:

RANSOME CARL MCKISSICK, JR.,

Respondent.

INFINITY FINANCIAL CONSULTANTS,
INC., a California Corporation; FRED
JAMES HAUPT IV; THE AGENT
NETWORK, INC., a California
Corporation; FRED W. DE LEON, and
RANSOME CARL MCKISSICK, JR.,

Respondents.

and the Statement of Issues Against:

RANSOME CARL MCKISSICK, JR.,

Respondent.

Case No. H-11145 SF
OAH No. 2011060560

Case No. H-2432 FR
OAH No. 2011080492

Case No. H-11182 ^{SF}~~FR~~
OAH No. 2011090758

AMENDED PROPOSED DECISION¹

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Fresno, California, on July 18 and 19, 2012.

Real Estate Counsel Michael B. Rich, Department of Real Estate (Department), represented E.J. Haberer, II and Tricia Sommers, Deputy Real Estate Commissioners of the State of California (complainant).

Respondent Ransome Carl McKissick, Jr. (McKissick) appeared and represented himself individually and on behalf of respondent The Agent Network, Inc. (The Agent).

¹ The Proposed Decision is amended to add Order No. 6, disposing of Case No. H-11182 FR, OAH No. 2011090758. There are no other changes.

Respondent Fred W. De Leon appeared and represented himself individually.

There was no appearance by or on behalf of the respondents Infinity Financial Consultants, Inc. (IFC), and/or Fred James Haupt, IV (Haupt), as to whom the matters proceeded by default.

Oral and documentary evidence was received. At the conclusion of the hearing, the parties offered oral closing arguments. The record was then closed. The matter was submitted for decision on July 20, 2012.

FACTUAL FINDINGS

Jurisdictional Findings

1. *Accusation in Case No. H-11145 SF (OAH No. 2011060560)* On November 12, 2009, complainant Sommers, in her official capacity only, signed the Accusation against all respondents, alleging that grounds existed to suspend or revoke all licenses and licensing rights based upon violations of the Business and Professions Code.² Specifically, complainant alleged multiple violations of section 10176, subdivisions (a) and (i), for making substantial misrepresentations and engaging in conduct constituting fraud or dishonest dealing; of section 10177, subdivisions (d), (g), (h), and (j), for willfully disregarding or violating rules and regulations of the Real Estate Law, negligence or incompetence, failure of broker licensee or designated corporate officer to exercise reasonable supervision and control of the activities of salespersons and/or the corporation, and engaging in any other conduct which constitutes fraud or dishonest dealing; of section 10148 for failing to maintain possession of transactional records for minimum of three years from closing date; and of section 10159.2 for failing to supervise and control corporate activities and employees.

Each of the named respondents is or was licensed by the Department as a broker or corporate broker. As more specifically described below, the facts underlying the

² Unless indicated otherwise, all references to statutes are to the California Business and Professions Code.

Section 10131, subdivision (d), provides that a “real estate broker . . . is a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others: . . . (d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.”

alleged violations involved broker transactions of soliciting borrowers, lenders or note owners in connection with loans secured directly or collaterally by liens on real property within the meaning of section 10131, subdivision (d), from November 2006 through November 2009.

2. *Notices of Defense:* Respondents de Leon, McKissick, and Haupt timely filed Notices of Defense to the Accusation in their individual capacities. In his notice of defense, respondent de Leon generally denied the allegations against him and raised numerous affirmative defenses discussed in Factual Finding 52 below. Notices of Defense were not filed by respondents IFC or The Agent.

3. *Accusation in Case No. H-2432 FR (OAH 2011080492):* On May 18, 2011, complainant Haberer, in his official capacity only, signed the Accusation and alleged that grounds exist under sections 490 and 10177, subdivision (b), to revoke or suspend respondent McKissick's broker license, based upon his misdemeanor convictions described in Factual Finding 55. Respondent McKissick timely filed his Notice of Defense.

4. *Statement of Issues in Case No. H-11182 FR (OAH No. 2011090758):* On August 2, 2011, complainant Sommers, in her official capacity only, signed the Statement of Issues and alleged that grounds exist under section 10177, subdivision (d), and California Code of Regulations, title 10 (hereafter 10 CCR), section 2746 to deny respondent McKissick's application to become the designated broker-officer of Back on Trak, Inc., based upon his misdemeanor convictions described in Factual Finding X. Respondent McKissick timely filed his Notice of Defense.

5. *Consolidation:* By Orders dated September 9 and November 23, 2011, these matters were consolidated for hearing.

6. *Default of Respondents IFC and Haupt:* At the hearing, there were no appearances by or on behalf of either respondent IFC or Haupt in Case No. H-11145 SF (OAH No. 2011060560). Based upon a finding that the Accusation and Notice of Hearing had been timely served on these respondents, the matter proceeded against them by default, pursuant to Government Code section 11520.

Respondents' Licensure and Employment

7. *Respondent McKissick:* Respondent McKissick was issued a salesperson license by the Department on December 18, 1999, and a broker license on January 23, 2001 (number B/01272079). During the times relevant to these matters, respondent McKissick's main office was located at 1593 Mission Springs Circle, San Jose, California 95131, and he had multiple branch licenses in Prunedale, East Palo Alto, San Jose (4 locations), and Fresno,³ California. As of April 5, 2010, respondent

³ 1284 North Helm Avenue from January 1, 2006 to March 14, 2007.

McKissick was issued a branch license at 1125 5th Street, Suite E, in Los Banos. Effective January 1, 2011, respondent McKissick's main office is located at 430 California Street, Suite 7, Santa Clara, California 95050.

Respondent McKissick has acted as a broker doing business as (DBA) various entities for which he was also the designated corporate officer. These included The Agent (from October 5, 2005 through October 4, 2009), and Mi Pueblo Funding and Mi Pueblo Funding and Realty Group, Inc. (Mi Pueblo) (from October 8, 2003 through March 13, 2007). As of June 14, 2012, a DBA as The REO Estates was added to his license.

In addition to his broker license, respondent McKissick was commissioned by the Secretary of State as a notary public. Respondent McKissick's broker license is current and will expire on January 22, 2013, unless renewed, revoked or suspended.

8. *Respondent The Agent:* On October 5, 2005, The Agent was licensed by the Department as a corporate real estate broker, with respondent McKissick as its designated officer. On licensure, The Agent's main office was at 4320 Stevens Creek Boulevard, Suite 123, in San Jose, California. It subsequently changed to various locations in Sunnyvale, Santa Clara and Campbell, California.⁴

Between October 2005 and October 2009, The Agent had branch licenses in East Palo Alto, Fresno, Discovery Bay, Gilroy, Watsonville, and at five locations in San Jose. Its Fresno branch was licensed at 2008 North Fine Avenue, Suite 101 from February 28, 2006 through March 14, 2007. The Agent had DBAs as 1% Realty and Loans, One Percent Realty and Loans, 2nd Chance Financial and Second Chance Financial. Team Monterey Funding and Realty (Team Monterey), and Northern California Finance Group

Effective October 4, 2009, The Agent's license expired, as did respondent McKissick's status as its designated officer.

9. *Respondent IFC:* The Department issued a corporate broker license to respondent IFC on February 14, 2002, with respondent Haupt as its designated officer. Respondent IFC had its main office in Santa Maria (1513 Tiffany Park

⁴ Effective January 18, 2006, The Agent's main office was at 550 Lakeside Drive, Suite 7, Sunnyvale, California 94085. Effective June 22, 2007, The Agent's main office and mailing address changed to 830 Stewart Drive, Suite B307, Sunnyvale and again changed as of November 13, 2007 to 830 Stewart Drive, Suite B8, Sunnyvale. As of July 11, 2008, The Agent's main office and mailing address were changed to 430 California Street, #7, Santa Clara. On October 17, 2008, the mailing address changed to P.O. Box 1450, Campbell.

Circle), and 11 branch licenses in Roseville, Pleasanton, San Francisco, Hollister, Redwood City, Santa Barbara, Foster City, and Santa Maria. Respondent IFC operated under numerous DBAs (American Realty Services, Matrix One Mortgage, Infinity Group, Infinity Realty Group, Oak Tree Lending, and Tropical Sun Realty).

On May 6, 2005, respondent IFC received a California Finance Lender (CFL) license from the California Department of Corporations (DOC), at its Santa Maria address. As of September 12, 2008, IFC's CFL license was no longer listed on DOC's licensing website.

On January 31, 2006, respondent IFC added a DBA as "Mi Pueblo Funding" (Mi Pueblo). A new IFC branch license was issued this date for 55 West Shaw Avenue, Suite 218, Clovis, California 93612.

As of February 8, 2006, respondent IFC added respondent de Leon as an "additional officer."

As of December, 2006, new branch licenses were issued in Vacaville, Pleasanton, Stockton, Salinas, San Carlos, Santa Maria, Santa Barbara, and Fresno. During the same time, various branch offices and DBAs were cancelled.

As of April 5, 2007, IFC canceled its DBAs Mi Pueblo and American Realty Services.

As of February 4, 2008, respondent IFC's main office and mailing address changed to 2615 South Miller Street, Suite 103, Santa Maria.

As of December 17, 2008, respondents Haupt and de Leon were cancelled as, respectively, IFC's designated officer and additional officer.

Respondent IFC's license expired as of February 13, 2010.

10. *Respondent Haupt:* Respondent Haupt was issued a salesperson license by the Department on April 26, 1982, and a broker license on November 2, 1995. As a broker, respondent Haupt used the DBA Infinity Group (cancelled as of November 1, 2011). He was IFC's designated officer from February 14, 2002 through December 16, 2008. Respondent Haupt's main office and mailing address was 1513 Tiffany Park Circle in Santa Maria, and he held branch licenses in Foster City, Santa Barbara, San Jose.

Respondent Haupt's broker license expired as of November 1, 2011.

11. *Respondent de Leon's Licenses and Employment Contract with Respondent IFC:* Respondent de Leon was issued a salesperson license by the Department on May 9, 1980 and a broker license on January 20, 2005.

On February 15, 2005, respondent de Leon entered into an Employment Agreement with respondent IFC to “perform the services of Northern California Regional Production Manager and licensed real estate broker” for IFC. The Employment Agreement defined the services of Northern California Regional Production Manager to include “the Foster City and Redwood City offices only...” Respondent de Leon was also to perform as “California real estate broker for each of the aforementioned offices and to perform such other duties as may be assigned. . .” At the time of the Campbell property refinance discussed below, respondent IFC held branch license at the following Foster City address: 967 East Hillsdale Blvd.

On February 8, 2006, respondent de Leon was added as an “Additional Officer” for respondent IFC, and he held this position through December 16, 2008. As of November 13, 2006, respondent de Leon had a branch license issued to 2565 East Perrin, Suite 113, Fresno, which was cancelled effective January 14, 2009. The Department’s license history certification notes that the information about the Fresno branch license was “take from secondary records due to the non-availability of the primary document.” Respondent de Leon operated under the DBA New American Realty as of August 11, 2008.

Respondent de Leon’s broker license is current and will expire on January 19, 2013, unless renewed, revoked or suspended.

I. Accusation in Case No. H-11145 SF (OAH No. 2011060560)

12. This accusation arose out of several fraudulent transactions involving complaining witness Hyon Suk Yun and real property located at 1187 Emerson Avenue, Campbell, California (the Campbell property), with an escrow close date of November 22, 2006, and 1808 College Greens Drive, Los Banos (the Los Banos property), with an escrow closed date of January 25, 2007. E. Antonio Alfaro, also known as Manuel Antonio Alfaro, is an unlicensed individual who engaged in fraudulent broker transactions and other conduct involving Ms. Yun in conjunction with some or all of the named respondents as more specifically described below. Ms. Yun’s adult daughter, Deborah Yun, filed complaints with the Department and the Police Departments in Fresno and Los Banos, California. The complaint to the Department was assigned to Special Investigator Ernie Ruiz, who investigation expanded to subsequent cases of fraudulent notarization by respondent McKissick. In this capacity, Mr. Ruiz subpoenaed documents from respondents and various lending institutions and conducted interviews. Mr. Ruiz was never able to locate Mr. Alfaro and consequently did not interview him.

A. The Campbell Property

13. *Accusation:* Complainant alleged that respondents IFC and de Leon fraudulently induced World Savings Bank (World Savings), the predecessor in interest to Wachovia Mortgage, to make a loan to Ms. Yun in the amount of

\$485,000, to be secured by the Campbell property to refinance the previous note on the property that was in the names of Kil Song Yun and Hyon Suk Yun, as husband and wife. Respondents IFC and de Leon allegedly did so by falsely representing to the lender that that Ms. Yun, as borrower, held title to the Campbell property as her sole and separate property as a married woman, that she intended to occupy the Campbell property as her primary residence, that she was employed as a restaurant manager and that her monthly gross income was \$9,700.

Complainant further alleged that respondents IFC and de Leon induced World Savings to make this loan by submitting a "Uniform Residential Loan Application" (Application) that falsely represented that respondent de Leon had conducted a face-to-face interview with Ms. Yun and had verified the race, ethnicity and sex information put on the Application to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws.

Complainant alleged that respondent McKissick falsely notarized the November 15, 2006 inter-spousal grant deed. In doing so, he represented to World Savings that the grant deed had been properly witnessed and acknowledged by a commissioned notary public and that the inter-spousal grant deed of trust was valid and lawfully transferred all rights and title to the Campbell property to Hyon Suk Yun and qualified for recordation to provide constructive notice of these rights.

Complainant alleged that respondent Haupt, as designated agent for IFC, failed to exercise reasonable supervision and control over its mortgage brokering real property sales activities and permitted or ratified the conduct of IFC.

14. Ms. Yun is a married woman from Korea in her late 50s who speaks some English but who is not fluent in speaking or reading English. She testified at the hearing through a certified Korean interpreter. Ms. Yun and her husband Kil Song Yun have been married for over 30 years, but have been separated for at least the last 10 years. Kil Song Yun owns a store and lives in Guam. He was not in California during the times described in the Accusation. Despite their separation, Ms. Yun and her husband have held property together, which they and their adult children hoped would be a source of retirement income for them.

15. Mr. and Ms. Yun jointly owned the Campbell property, which was used as a rental property. Ms. Yun lived in Fresno, where she owned and resided in a home at 2567 Waterford Avenue (Waterford property).⁵ Since 2004, Ms. Yun has worked as a waitress at the Japanese Kitchen (the restaurant) in Fresno. She does not drive and takes a bus to her job.

⁵ Mr. Alfaro was also involved in the refinancing the Waterford property. Although similar fraudulent conduct occurred, complainant noted that this was not included in the Accusation as it was outside the statute of limitations.

16. In approximately 2005, Ms. Yun met Mr. Alfaro at the restaurant where he would bring many employees or customers and pay their bills. He always asked to be seated in Ms. Yun's section. Mr. Alfaro told Ms. Yun that he was "the boss" at a loan company and that, if she knew anyone who wanted to refinance their homes, she should refer them to him.

17. *Mi Pueblo*: Mr. Alfaro provided Ms. Yun his business card. The card was for Mi Pueblo Funding Group, Inc. and showed E. Anthony Alfaro as the CEO and President of Mi Pueblo, located at 55 W. Shaw Avenue, Suite 218, Clovis, California 93612. This is the address of respondent IFC's branch office for Mi Pueblo. Ms. Yun never went to his Fresno office, because Mr. Alfaro told her it had been destroyed in a fire.

Several other business addresses for Mi Pueblo were listed on the back of this business card. These included a Los Banos office at 1808 College Greens Drive which Mr. Alfaro later fraudulently purchased using Ms. Yun's identity, and a Fresno Office at 2008 N. Fine Avenue., Suite 101, which was a licensed branch address of respondent The Agent from February 28, 2006 through March 14, 2007.

18. In 2006, Mr. Alfaro began asking Ms. Yun whether she had any properties to refinance. She told him that she had two such properties, the Waterford and Campbell properties. Mr. Alfaro initially told Ms. Yun that he could refinance these properties without charge, but later raised his fee to one percent. Ms. Yun eventually agreed to have Mr. Alfaro refinance her homes. Ms. Yun told Mr. Alfaro repeatedly that she only wanted a 30-year fixed rate mortgage that would lower her monthly payments. During this time period, Mr. Alfaro began taking Ms. Yun to dinner and giving her rides to work. A romantic relationship began between them which lasted approximately one year.

19. Before the refinance of the Campbell property, the monthly mortgage was \$1,883. Mr. Alfaro told Ms. Yun he would refinance the property for a 30-year fixed rate mortgage with a monthly mortgage payment of \$1,600.

20. *Uniform Residential Loan Application (Form 1003)*: To obtain the loan from World Savings, a Uniform Residential Loan Application (Form 1003) (Application) was completed for Ms. Yun. On its face, the Application indicates that it was completed by "Interviewer" respondent "FRED DELEON," via a face-to-face interview with Ms. Yun. The Application identifies the Interviewer's Employer as IFC and provides an address of 1291 E. Hillsdale Blvd. Foster City, California, with telephone numbers of (559) 297-0974 and (559) 287-8169. This address was not a licensed branch office of IFC until February 4, 2008 (cancelled December 17, 2008). The area code (559) relates to Fresno, California. The first of these telephone numbers corresponds to the Executive Suite telephone number printed on the "Mi Pueblo" business card given to Ms. Yun by Mr. Alfaro, showing him as its CEO and President.

21. Both Ms. Yun and respondent de Leon deny every having met each other before the hearing in this matter.

22. Two copies of the Application were in evidence. One copy is not signed by Ms. Yun but does contain the signature of "Fred Deleon" with no date. The other copy has a signature purporting to be that of Ms. Yun ("Hyon S. Yun"), dated June 13, 2006, and a signature of "Fred de Leon," dated June 21, 2006. The signature of Ms. Yun is contrary to her acknowledged signature as "Hyon Suk Yun." The signatures of respondent de Leon are discrepant in both the manner they are written (different use of lower and upper case and spacing between segments of last name) and in the handwriting. The IFC address and telephone numbers for Interviewer's Employer are the same.

23. Both Ms. Yun and respondent de Leon denied that these are their signatures on the Application. Ms. Yun denied seeing the Application and did not recall signing it. She cannot drive and never went to an office at the listed address in Foster City. Ms. Yun did not know who completed the Application for her. She was never told by Mr. Alfaro that he had a boss or someone who managed his work. To the contrary, Mr. Alfaro repeatedly "said he was the highest person and number one" in his loan office. He told her that he personally handled the refinance on the Campbell property.

Respondent de Leon provided various exemplars of his signature executed around this time period (e.g., bank statements, correspondence with the Department). As conceded by Mr. Ruiz and complainant's counsel, it cannot be determined whether the signature on this Application/Form 1003 is that of respondent de Leon, for the reasons outlined in Factual Finding 22. Mr. Ruiz testified that, in his experience, he has seen instances where brokers allow clericals to sign their names. Mr. Ruiz conceded that he had seen no evidence of an assistant for respondent de Leon who had permission to sign loan documents on his behalf.

24. Both versions of the Application contained information that was false. Ms. Yun's gross monthly income was listed as \$9,100, for her position as a "Restaurant Manager" at the Japanese Kitchen. Ms. Yun has been employed as a waitress at the restaurant for many years. At the time, she earned \$2,500 a month before taxes. Ms. Yun's husband has given her lump sums to pay property taxes and her daughter has contributed to her income as well, but this has never amounted to \$9,100 a month. The application falsely indicated that Ms. Yun intended to reside in the home as her primary residence. The Campbell property remained a rental property.

25. *Inter-spousal Grant Deed:* Prior to the refinance at issue, the Campbell property was held jointly by Mr. and Ms. Yun as husband and wife. In order to refinance it, Mr. Alfaro prepared an inter-spousal grant deed by which Kil Song Yun transferred all his rights to his wife Hyon Suk Yun, as her sole and separate property.

On November 15, 2006, respondent McKissick notarized the signatures of Hyon Suk Yun and Kil Son Yun on a Grant Deed by which "Hyon Suk Yun and Kil Son Yun, husband and wife as Community Property" granted the Campbell property to "Hyon Suk Yun, a married woman, as her sole and separate property." Respondent McKissick indicated that both parties were personally known to him or proved to him on the basis of satisfactory evidence to be the signatories to the Grant Deed. On November 22, 2006, at the request of New Century Title Company (New Century), this Grant Deed was recorded with the Santa Clara County Recorder.

26. *Promissory Note and Deed of Trust to World Savings:* On November 15, 2006, Ms. Yun signed a 30-year Adjustable Rate Mortgage/"Pick-a-Payment" Loan Note (Note) with World Saving, in the amount of \$475,000, secured by the Campbell property. She also signed a Deed of Trust to World Savings, securing the loan with the Campbell property, and signed her husband's signature to the Deed of Trust's "Borrower(s)' Spouse(s) or Domestic Partner(s)" waiver of interest form. Under the Note, the initial interest rate was 7.59 percent with a lifetime maximum interest rate cap of 12.250 percent. The escrow on this transaction closed on November 22, 2006. The initial monthly mortgage payments under this note were \$1,876.83.

27. Respondent McKissick also notarized the signatures of Hyon Suk Yun and Kil Son Yun on the Deed of Trust.

28. Ms. Yun's testimony about these transactions is paraphrased in pertinent part as follows. Ms. Yun signed both the Note and the Deed on Trust on the signature pages, but was never shown any of the other pages. Mr. Alfaro told her to sign certain pages to obtain the 30-year fixed rate mortgage and she complied. She did complain to Mr. Alfaro about the amount of the loan, because he had promised to only charge her one percent. She then thought perhaps the amount was correct because she would only have to pay \$1,660 a month and this would never change. Ms. Yun did not understand the documents and was never provided any of the refinancing documents in the Korean language.

Ms. Yun signed her husband's signature "Kil Song Yun" on the Grant Deed and Deed of Trust, and indicated that she did so because she had a Power of Attorney (POA). Ms. Yun had not recorded this POA with County Recorder's Office. Ms. Yun believes that she showed the POA to Mr. Alfaro; however, she did not recall showing it to respondent McKissick. Ms. Yun changed the way she wrote the letter "S" on her husband's signature, because this is how her husband signs his name. Respondent McKissick and Mr. Alfaro were present when Ms. Yun signed these documents. She may have provided a copy of her husband's driver's license from Guam to respondent McKissick, but did not provide him any personal identification. She did not recall signing a Notary Journal.

29. *Respondent McKissick Notary Journal:* In response to a subpoena duces tecum (SDT), respondent McKissick provided Mr. Ruiz with a copy of portions of his Notary Journal for these transactions. This Notary Journal indicates that respondent McKissick notarized the Grant Deed and the Deed of Trust on August 9, 2006, after witnessing the signatures of both "Hyon Suk Yuk" (sic; Yun) and Kil Son Yun on the Grant Deed, and the signature of Kil Son Yun on the Deed of Trust. Under "Identification of Signer," respondent McKissick provided what purported to be California Driver's License numbers for both Hyon Suk Yun (Ca DL: D6219933 exp. 04-25-07) and Kil Son Yun (Ca DL: 1228084548 exp. 8-18-09).

30. As indicated in the testimony and declaration of Mr. Ruiz, the Department of Motor Vehicles (DMV) had no record of a driver's license issued to Kil Son Yun. Further, the driver's license number listed in the Notary Book did not conform to the letter/number combination used by DMV for such licenses. The driver's license number provided for Ms. Yun was the correct number for her California Identification (ID) card, but her driver's license had been revoked in 2004 for "lack of knowledge or skill."⁶

31. After the Campbell property was refinanced, Ms. Yun began noticing increasing monthly payments. After approximately one year, she discussed it with her daughter Deborah. Through a review of her credit report, they ultimately discovered that Ms. Yun's identity had been used to purchase the Los Banos property discussed below. By the time a complaint was filed with the Fresno Police, Deborah Yun indicated that the monthly mortgage on this property was "\$3,500.00+ depending on what the current adjustable interest rates declare." Eventually, after hiring an attorney, the Yuns were able to modify the loan on the Campbell property back to a fixed rate with affordable monthly rates.

32. *Respondent IFC's records:* In response to an SDT issued by Mr. Ruiz, on June 8, 2009, respondent Haupt filed a declaration stating that he no longer held any files or records for his company IFC. He asserted that these documents "were destroyed by the storage company because of lack of payment," and that IFC filed for bankruptcy and had been discharged. In addition regarding the Campbell property, respondent Haupt asserted that, to the best of his knowledge, "my Fresno Branch had handled these transactions with the supervising Broker Fred deLeon who was in charge of this Fresno Branch and was [IFC's] Corporate Officer." Respondent Haupt declared that he had spoken to respondent de Leon and asked him to contact Mr. Ruiz "to review these documents." He declared that the way IFC "was set up each Supervising Broker was to maintain their Branch records."

⁶ This testimony conflicts with New Century's documents which include a photocopy of Ms. Yun's DMV California Driver License. The license bears this number, with what appears to be an expiration date of June 27, 2009.

33. *Fees to IFC from Refinance:* As indicated in the HUD Settlement Statement, the mortgage broker fees paid to IFC from this loan were \$8,775.00 with an additional "Yield Spread Premium" to IFC in the amount of \$7,125. As reflected in World Savings' November 15, 2006 Good Faith Estimate of Settlement Costs, Ms. Yun as borrower paid the \$8,775 at closing and the balance was to be paid outside closing (POC) to IFC by the lender. IFC received a total of \$15,900 from the Campbell property refinance.

34. *Preferred Mortgage Broker Demand Statement:* On a date not established by the evidence but before the estimated closing date of November 1, 2006, a Preferred Mortgage Broker Demand Statement (PMB Demand) was prepared for World Savings regarding the Campbell property refinance. It was not established who prepared the PMB Demand.

The typewritten PMB Demand provided IFC's name and Mortgage Broker License Number (01330234), an address of 967 East Hillsdale Blvd., Foster City, and a PMB "Unique Agent Number" (1095844) that was linked to respondent "FRED DELEON." World Savings' Application/Commitment Recap also reflected IFC as the broker, with respondent "DELEON" as agent, 967 East Hillsdale Blvd., Foster City, with preferred broker number 1095844. The signature "Fred de Leon" on the PMB Demand was not similar to that shown on the handwriting exemplars provided by respondent de Leon.

Mr. Ruiz acknowledged that the PMB Demand provided a different address for respondent de Leon than that on the Application. Both addresses were licensed IFC branch addresses; however, the 1291 E. Hillsdale Blvd. address was not licensed until 2008. In Mr. Ruiz's experience, it is not uncommon for brokers to delay reporting their branch offices.

35. *Respondent de Leon's Testimony:* Respondent de Leon denied that he participated in any way or benefited from the Campbell property refinance. His testimony is paraphrased as relevant below.

IFC's owner and designated officer respondent Haupt was based in Santa Maria. Haupt had little oversight of any transactions in IFC's branches and relied on the branch managers/owners to do so. Respondents IFC and Haupt treated branch owners and branch managers differently. Branch owners were required to bear the expenses of their offices. Respondent de Leon was not a branch owner or shareholder of IFC. He was a salaried employee there to assist in the processing of loans and to manage the staff in Northern California. Some companies did not like respondent's Haupt's credit. As a result, IFC frequently used the resumes of corporate officers to enable it to broker loans with other organizations. Respondent de Leon later became a corporate officer and generated IFC business with World Savings, but he was never involved or implicated in any other IFC issues.

Respondent de Leon credibly denied that he had any direct or supervisory responsibility for the Campbell property loan transactions through Mr. Alfaro, Mi Pueblo, or IFC in Fresno. His employment agreement with IFC was strictly limited to Northern California Regional Production Manager to include "the Foster City and Redwood City offices only..." As an IFC employee, respondent de Leon was "stationed" at the 1291 East Hillsdale Blvd. address beginning in 2005. This branch was in existence and operating at the time even though it was apparently not licensed to IFC until several years later. To his knowledge, the 967 East Hillsdale Blvd. Foster City address was a real estate office and never a mortgage originating office for IFC. In his daily work, he was not really aware of this office.

Respondent de Leon denied that he had ever received or signed any of the loan applications for the Campbell property and asserted that any signatures bearing his name were made without his knowledge or consent. He denied that Mr. Alfaro had ever worked out of Foster City. He believed respondent Haupt had Mr. Alfaro working under IFC's CFL license, originating loans. Respondent Haupt gave respondent de Leon the impression that IFC could have substations for its CFL license and did not have to have a broker physically present and supervising staff.

Respondent de Leon explained how, in his opinion, his branch data was on Ms. Yun's Application/1003 form. IFC had purchased the Calyx.point program that allowed any of its 14 branches, including Mr. Alfaro/MiPueblo, to process loans and to insert branch data because it was not embedded in the forms. For this reason, Mr. Alfaro or anyone with access to the program could have put his name and address on the loan application. Because Mi Pueblo was not approved to broker loans for World Savings, it was easy to put the Hillsdale Blvd., Foster City branch addresses on the loan application using this system. This would enable Mr. Alfaro to have his loans approved through World Savings.⁷

Regarding general broker fees IFC received from loans, respondent Haupt would call respondent de Leon multiple times a day to get reports on the status of loan applications. Respondent de Leon also provided respondent Haupt with weekly "pipeline" reports of anticipated income that identified the loan originator. Regarding the specific fees IFC received from the Campbell property refinance, respondent de Leon described IFC's practice that all checks were sent to its main office in Santa Maria. Respondent Haupt would then pay the person entitled to the commission fees once the check was deposited. If Mr. Alfaro was owed fees, respondent Haupt would

⁷ Respondent de Leon also testified that, unlike other lenders, World Savings controlled the loan process from "A to Z" and that, while there was fraudulent information on Ms. Yun's application, World Savings did not properly underwrite this loan. This testimony was reflective of respondent de Leon's general opinion that, once the mortgage crisis hit, large lenders were not subject to the same type of scrutiny as small mortgage brokers.

pay him following this process. If a loan closed in respondent de Leon's branch, the check might be sent directly to him or to Santa Maria. In either case, respondent de Leon had to submit a voucher to Haupt indicating who should be paid commission. Respondent Haupt never contacted him to discuss who should receive a commission for the Campbell property transaction. Respondent de Leon's testimony that he did not receive broker fees from the Campbell transaction was corroborated by the loan file records submitted to the Department by New Century, as discussed in Factual Finding 36.

Respondent de Leon has worked in the mortgage industry consistently as a licensee for approximately 30 years, with no prior discipline. In approximately 2009, he moved to Santa Maria and tried unsuccessfully to start a company. At the present time, he works seasonally with the Santa Clara County parks and sells one to two houses a year.

36. *New Century Records:* New Century's November 29, 2006 Final Disbursement Report for the Campbell property refinance itemized various disbursements by checks dated November 22, 2006. These include: (1) a check (No. 1076883) made out to "Infinity Financial, 1291 E. Hillsdale Blvd., Foster City, CA" in the amount of \$15,900, and (2) a check made out to respondent McKissick in the amount of \$200.⁸

New Century's loan documents for the Campbell property also include: (1) a November 21, 2006 email from "kim sambrano [kimsmpueblo@sbcglobal.net] to escrow officer Charlene Brown, providing "the overnight information that I spoke to you about" with the Santa Maria address for respondent Haupt and a reference to "the check and final HUD;" (2) a November 22, 2006 letter from Ms. Brown to "Kim" at IFC's 1291 E. Hillsdale address enclosing documents and "Broker Check(s); (3) a GSO Shipping Air Bill dated November 22, 2006, for priority overnight delivery of a package addressed to Fred Haupt at 1513 Tiffany Park Circle, Santa Maria, CA; (4) a November 21, 2006 letter from Neal Jackson to Mi Pueblo Funding Group, at 8500 Lakeshore Drive, Chowchilla, California⁹ referencing an enclosed check in the amount of \$15,900 with a final HUD 1 for Ms. Yun's file; and (5) other emails to Ms. Browne from Kim Sambrano, Loan Processor, Mi Pueblo Funding with Fresno area code (559) telephone numbers.

⁸ On November 17, 2006, respondent McKissick submitted his invoice for \$300 for notarization fees regarding the Campbell property.

⁹ The property at this Chowchilla address was owned by Mr. Alfaro's former fiancée Maria Davalos. At Mr. Alfaro's request, respondent McKissick prepared loan documents to sell this property to Ms. Yun; however, appropriate financing could not be obtained and this effort was abandoned.

Respondent de Leon's name does not appear on any of the New Century documents that pertain to disbursement or receipt of brokers fees arising out of the Campbell property refinance.

37. *Respondent McKissick's Testimony:* Respondent McKissick's testimony about the Campbell property is paraphrased as relevant below. He met Mr. Alfaro in approximately 2002 when they were both life insurance agents. After respondent McKissick became a broker, Mr. Alfaro brought Spanish-speaking clients to him and was paid a referral fee. They later jointly started "Mi Pueblo" with respondent McKissick as broker/Chief Executive Officer and Mr. Alfaro as the Chief Financial Officer. The relationship became tumultuous due to Mr. Alfaro's temper and they went their separate ways. Mr. Alfaro stopped working under respondent McKissick's license in 2005 and went with IFC. Respondent McKissick then began The Agent. After this, respondent McKissick performed services for Mr. Alfaro and Mi Pueblo, helping with loans or as a mobile notary. Regarding the Campbell property transaction, respondent McKissick met Mr. Alfaro and Ms. "Susan" Yun at a Black Bear restaurant in Gilroy. He reviewed Ms. Yun's California ID card and notarized the documents. Ms. Yun explained that her husband was in Guam. Respondent McKissick believes he saw the POA before notarizing the Grant deed.

B. *Los Banos Property*

38. *Accusation:* Complainant alleged that respondents McKissick and The Agent fraudulently induced GMAC Mortgage (GMAC), to make a loan in the amount of \$440,000, to be secured by the Los Banos property, for purchase of this property by falsely using Ms. Yun identity as borrower and falsely representing that she intended to occupy the Los Banos property as her primary residence, and that she was employed as a restaurant manager. Complainant further alleged that respondents McKissick and The Agent fraudulently induced GMAC to make this loan by submitting a "Uniform Residential Loan Application" (Application) that falsely represented that respondent McKissick had conducted a face-to-face interview with Ms. Yun and had verified the race, ethnicity and sex information put on the Application to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. Complainant alleged that respondent McKissick, as designated agent for The Agent, failed to exercise reasonable supervision and control over its mortgage brokering real property sales activities and permitted or ratified the conduct of The Agent.

39. On January 16, 2007, respondent McKissick/The Agent Network, dba 1% Realty, prepared a Form 1003 Application for Ms. Yun to purchase the property at 1808 College Greens Drive, Los Banos, California. As indicated in Finding 17, Mr. Alfaro used this property as a business office for Mi Pueblo. It was owned by his former fiancée Maria Davalos.

On the Application, respondent McKissick falsely indicated that he conducted a face-to-face interview with Ms. Yun. The Application falsely stated that Ms. Yun would reside at the property as her primary residence and that she was a manager/supervisor at the Japanese Kitchen. The Application contained a signature purporting to be that of Ms. Yun dated January 16, 2007.

40. A signature purporting to be that of Ms. Yun was placed on a January 16, 2007, 30-year "Adjustable Rate Note" for the Los Banos Property in the amount of \$440,000. Under this Note, Ms. Yun would be charged an interest rate beginning at 8.25 percent, with a maximum interest rate cap of 13.25 percent. There was a prepayment penalty. Beginning monthly payments of \$1,925 were required.

A second 15-year Note, in the amount of \$110,000, at an interest rate of 12.375 percent, also bears the signature "Hyon Suk Yun."

41. *Deeds of Trust:* On January 16, 2007, primary and secondary Deeds of Trust to the Los Banos property were signed by an unknown individual using the name and signature "Hyon Suk Yun." These Deeds of Trust show Ms. Yun as borrower and Kay-Co. Investments, Inc., DBA Pro30 Funding, as lender, to secure loans in the respective amounts of \$440,000 and \$110,000.

On January 16, 2007, these Deeds of Trust were notarized by Selina Mary Bohanon, Commission No. 1672468, who attested in that Ms. Yun had personally appeared before her.

42. Escrow closed in late January 2007. The Agent received approximately \$1,768 in fees for this loan.

43. Ms. Yun testified that she never consented to purchase this property, had no knowledge of these notes, never received any bills, and never made any payments on a property she did not purchase. She had seen it once when Mr. Alfaro showed her his Los Banos office. As indicated in Finding 31, with diligent assistance of her daughter Deborah, Ms. Yun sought help to determine the reason her mortgage payments on the Campbell property were skyrocketing. Ms. Yun's credit report was reviewed and, for the first time, she learned of her alleged delinquencies relating to the Los Banos property.

44. On May 8, 2008, a Trustee's Deed Upon Sale of the Los Banos property was recorded, showing an unpaid debt of \$475,987.20. The property was purchased by GMAC Mortgage for \$252,000.

45. On July 11, 2008, GMAC notified Ms. Yun that, after investigation, it determined she had been the victim of identity theft regarding the Los Banos property, and that it would correct the credit record and loan servicing activities.

46. On July 30, 2009, Investigator Ruiz interviewed Ms. Bohanon about this transaction. She reported that her notary journal had been destroyed in a home fire in 2008 and that she had reported this loss to the Secretary of State. Ms. Bohanon denied personal or prior contact with respondent McKissick. She indicated that “the notarization was quick and the woman notarized was a ‘white woman’ of medium build.” She received \$250 for her notary services. Ms. Bohanon did not recall any other details. A claim had been made and paid out against her bond on this transaction.

Discussion

48. *Mi Pueblo*: Each of the respondents except Mr. de Leon was linked to Mi Pueblo and therefore to Mr. Alfaro during the time of the fraudulent transactions involving Ms. Yun. As indicated on his business card, Mr. Alfaro was the branch manager for IFC’s DBA Mi Pueblo, located at 55 West Shaw Avenue, Suite 218, in Clovis, California. Although there is no evidence of a formal employment connection between IFC and respondent McKissick, respondent McKissick used the DBAs Mi Pueblo Funding and Mi Pueblo Funding and Realty from January 1, 2006 through March 14, 2007, encompassing roughly the same period IFC used the DBA Mi Pueblo Funding. Respondent McKissick’s testimony that he had stopped operating as Mi Pueblo by September 2005 is contradicted by his March 8, 2007 Broker Change Application to cancel his Mi Pueblo DBA, which was operative through that date. IFC’s Mi Pueblo Funding DBA used as its branch address an address shared by The Agent, for whom respondent McKissick was designated officer, as well as an additional branch address for The Agent at 2008 North Fine Avenue, Ste. 101, in Fresno. None of these connections trace to respondent de Leon.

At the time of the fraudulent transactions involving Ms. Yun, World Savings and GMAC, respondents IFC, Haupt, McKissick and The Agent either had Mr. Alfaro working for them in an unlicensed capacity in violation of the Real Estate laws and regulations, or had Mr. Alfaro working under IFC’s CFL license, which purportedly allowed him to originate loans without a real estate license.

Under the California Finance Lenders Law, a licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a CFL license. (Fin. Code, § 22057.) A ‘mortgage loan originator’ is “an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.” (Fin. Code, § 22013, subd. (a).) A CFL licensee, such as respondents IFC/Haupt, which is engaged in the business of making or brokering residential mortgage loans, must ensure that every mortgage loan originator it employs or compensates has a current mortgage loan originator license from the DOC commissioner or “has first obtained a license endorsement from the Commissioner of Real Estate. . .” (Fin. Code, § 22100, subd. (b).) Respondents IFC

and Haupt never obtained a CLF license for IFC's Mi Pueblo branch office, and there is no evidence that Mr. Alfaro was ever licensed by DOC as a mortgage loan originator. In addition, the CFL license issued to IFC is at its Santa Maria office. Respondents IFC and Haupt failed to obtain a new branch office license to engage in business as a CLF in the name of Mi Pueblo in Fresno, as required by Finance Code section 22102, subdivisions (a) and (d).¹⁰

49. As set forth in the Factual Findings as a whole, it was established by clear and convincing evidence that respondents IFC, Haupt, McKissick and The Agent violated sections 10176, subdivisions (a) and (i), and 10177, subdivisions (g) and (j), in the Campbell and Los Banos property transactions by making substantial misrepresentations to Ms. Yun, to World Savings, and to GMAC Mortgage, by engaging in fraud or dishonest dealing, and by demonstrating negligence or incompetence in performing licensee duties.

50. It was established by clear and convincing evidence that respondents Haupt and McKissick violated section 10177, subdivision (h), and 10159.2, subdivision (a), by failing to exercise reasonable supervision over the activities of their salespersons, or, as the officer designated by a corporate broker licensee, over the activities of the corporation.

51. It was established by clear and convincing evidence that respondents IFC and Haupt violated section 10148, subdivision (a), by failing to maintain records.

52. In his Notice of Defense, respondent de Leon raised numerous affirmative defenses, including that his responsibility was limited to the IFC branch office located at 1291 E. Hillsdale Blvd. in Foster City and did not encompass any IFC branch office in Fresno; that his signature was forged on the Form 1003 loan application submitted to World Savings and that different versions of this forged signature appear on different documents submitted to World Savings; and that he had never met Hyon Suk Yun. Respondent de Leon's testimony denying involvement was credible. As set forth particularly in Factual Findings 22, 23, 35 and 36, there was not clear and convincing evidence to support a finding that respondent de Leon was actually involved in the Campbell property transaction.

II. Accusation in Case No. H-2432 FR (OAH 2011080492) and Statement of Issues in Case No. H-11182 FR (OAH No. 2011090758)

53. At the time of the facts alleged in these cases, respondent McKissick was a duly commissioned notary public under a commission issued by the California

¹⁰ "Branch office license" means a license to engage in business as a finance lender or broker at a location other than the location identified in a finance lender or broker license application or amended application. (Fin. Code, § 22012, subd. (a).)

Secretary of State, Commission No. 1513501. This Accusation and Statement of Issues arose out of similar facts relating to respondent McKissick's misdemeanor convictions for falsely notarizing documents.

54. *Respondent McKissick' New Corporation License Application:* On or about January 13, 2009, Back on Trak, Inc., registered as a licensed Real Estate Corporation with the Department. Back on Trak, Inc. is located at 2180 Story Road, #202, in San Jose, California.

On March 18, 2011, respondent McKissick submitted a Corporation License Application for Back on Trak, Inc., to substitute himself as its current designated broker-officer. Respondent McKissick signed an Officer Certification for this substitution and, in doing so, disclosed that he had been convicted as described in Factual Finding 55.

55. *Respondent McKissick's Convictions:* On March 1, 2011, in Case No. C1081183, the Santa Clara County Superior Court convicted respondent McKissick of two misdemeanor violations of Government Code section 6203 (knowingly making false statements in a certificate or writing), based upon his plea of no contest.¹¹

Respondent McKissick and Mr. Alfaro were initially charged with four felony violations of: (1) Government Code section 8214.2, subdivision (a), which makes it a felony for "a notary public who knowingly and willfully with intent to defraud performs any notarial act in relation to a deed of trust on real property consisting of a single-family residence containing not more than four dwelling units, with knowledge that the deed of trust contains any false statements or is forged, in whole or in part,..." and (2) Penal Code 115, subdivision (a), which makes it a felony to "knowingly procure[] or offer[] any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States..." Mr. Alfaro was also charged with multiple counts of felony grand theft in violation of Penal Code sections 484/487(a).

¹¹ Government Code section 6203, subdivision (a), provides that "every officer authorized by law to make or give any certificate or other writing is guilty of a misdemeanor if he or she makes and delivers as true any certificate or writing containing statements which he or she knows to be false." As set forth in subdivision (c), the misdemeanor penalty "is not an exclusive remedy, and does not affect any other relief or remedy provided by law."

56. The conduct underlying these convictions was established by the testimony of Hyon Suk Yun, by the Investigative Report of Santa Clara District Attorney Investigator Valenzuela, and by respondent McKissick's own admissions.

On multiple occasions in 2006 and 2007, respondent McKissick notarized documents at Mr. Alfaro's request, without personally witnessing the signature of the individual whom he certified had appeared before him and signed the document. On these occasions, respondent McKissick used his notarial seal and acknowledgement.

57. *Interview of Mr. Alfaro by Investigator Valenzuela:* On June 29, 2010, Mr. Alfaro was interviewed by Santa Clara County District Attorney Investigator John Valenzuela regarding the refinance transactions for Eloy Espinoza and Juliana Velazquez. Mr. Alfaro represented that, in 2003, he had been the loan broker for the purchase of Mr. Espinoza's home and that respondent McKissick was the real estate agent. Mr. Alfaro agreed that in January 2006 he had brokered the refinancing of Mr. Espinoza's home, in which he received \$10,000 in fees and Mr. Espinoza received an equity check for \$90,000. Later, Mr. Espinoza returned the check to Mr. Alfaro to give back to the lender in order to lower his monthly mortgage. Mr. Alfaro admitted keeping the check and using the funds due to his own bad financial problems.

Mr. Alfaro also admitted that, in May 2006, he fraudulently brokered another loan on Mr. Espinoza's home. A Deed of Trust dated May 9, 2006 was prepared with Mr. Espinoza as the borrower and Vulcon Financial Corporation as the lender, with a note indicating that Mr. Espinoza owed \$544,000 on the property. The Deed of Trust was notarized by respondent McKissick. Mr. Alfaro told Investigator Valenzuela that respondent McKissick notarized the deed even though Mr. Espinoza was not present. Mr. Alfaro stated that McKissick "had trusted" him when he stated that Mr. Espinoza was in agreement.

Mr. Alfaro also admitted that he signed Juliana Velazquez's name to a June 4, 2007 Deed of Trust, notarized by respondent McKissick. Mr. Alfaro told Investigator Valenzuela that respondent McKissick notarized the deed even though Ms. Velazquez was not present. In this instance, Mr. Alfaro borrowed respondent McKissick's notary journal and he identified his signature by Ms. Velazquez's name. Mr. Alfaro stated that respondent McKissick "had nothing to do with either transaction" and was unaware of what Mr. Alfaro was doing.¹²

58. *Interview of Mr. Espinoza by Investigator Valenzuela:* On June 23, 2010, Investigator Valenzuela interviewed Eloy Espinoza, who confirmed that respondent McKissick was Mr. Alfaro's business partner at the time he initially purchased his home from them in 2003, through Mi Pueblo, and the refinancing activity in 2006 described above. As relevant to this case, Mr. Espinoza stated that

¹² It is unclear what happened to Mr. Alfaro. Investigator Valenzuela noted that he described himself as a sick man and was scheduled for [unspecified] surgery.

his signature on the May 9, 2006 Deed of Trust, recorded May 30, 2006, was forged. Mr. Espinoza's signature on this Deed of Trust was notarized by respondent McKissick, who stated that Mr. Espinoza appeared personally before him and endorsed the Deed of Trust. Mr. Espinoza denied that he had ever signed this document or appeared before respondent McKissick at that time. He confronted Mr. Alfaro who admitted he had forged the documents and gave him a promissory note for \$186,000. Mr. Espinoza never received any payments from Mr. Alfaro.

59. *Interview of Ms. Velazquez by Investigator Valenzuela:* On June 17, 2010, Juliana Velazquez was interviewed about the refinance of her home by Mr. Alfaro. As relevant to this case, Ms. Velazquez had previously refinanced her home twice through Mr. Alfaro. On her third refinance, she agreed to make her payments directly to Mr. Alfaro who would make loan payments on her behalf while he sought a lender. When she discovered the payments were not being made, Ms. Valenzuela contacted a Wells Fargo employee who asked about her recent refinance. When Ms. Velazquez denied any recent refinance, she was shown a photograph of and identified respondent McKissick as the notary on her second refinance. She denied seeing respondent McKissick since that time. At the time of this interview, her home was in the process of foreclosure.

60. *Kil Song Yun:* As set forth in Factual Findings 25 and 27, on or about November 15, 2006, respondent McKissick notarized an inter-spousal grant deed allegedly signed by Kil Song Yun as grantee, transferring all of his rights and interest to the Campbell property to his wife, Hyon Suk Yun as her sole and separate property. In fact, Kil Song Yun resided in Guam, did not appear before respondent McKissick or never consented to the execution of this deed.

61. *Respondent McKissick's Testimony:* Respondent McKissick admitted that he improperly notarized the documents discussed above. He accepted a plea bargain in return for a reduction of the charges from felonies to two misdemeanors. He was sentenced to two years informal probation, fines and a 45-day weekend work program, which he completed in August 2011. He paid his fines and fees of \$1,155 and was successful in his motion for early termination of probation. A copy of the order terminating probation was provided.

Respondent McKissick acknowledged wrongdoing and explained his conduct as a poor choice based upon his trust of Mr. Alfaro. In each instance where he notarized documents when the signatory was not present, Mr. Alfaro informed him that the individual had signed the documents and that the documents needed to be notarized quickly. He trusted Mr. Alfaro's representations and had previously performed notary services for some of these individuals. He acknowledged that he loaned his Notary Journal to Mr. Alfaro to get Ms. Velasquez's signature. He never had any malicious intent against any of these individuals and did not realize that the documents had been forged. He did not receive more than the usual fees for loan processing or notarizing. He acknowledged that he took no efforts to ascertain

whether Ms. Yun's POA had been recorded, and that he made no entry in his Notary Journal that Mr. Yun's signature had been signed by Ms. Yun pursuant to a POA. He acknowledged that he never met face-to-face with Ms. Yun for the Los Banos property application, but stated that the form was pre-checked in this way. He took no due diligence efforts to ensure that Ms. Yun was, in fact, the borrower on this property. He stated that his "only excuse was that I trusted someone I should not have trusted."

In addition to his convictions, respondent McKissick had been sued on several occasions relating to this conduct. He settled with Mr. Espinoza and Ms. Valesquez eventually dismissed him from the action. Both filed claims against and split his \$25,000 notary bond. He is no longer a notary.

Currently, respondent McKissick has a paralegal certificate from an on-line school and is enrolled on-line at Taft Law School. He is engaged in a new business as a Low-Cost Legal, LLC, a bankruptcy petition preparer (lowcostbkparalegal.com). He does his real estate "all by the book."

62. Respondent McKissick is an intelligent man who served in the Navy as an officer and later earned a degree as a mechanical engineer. His testimony that he was not aware of the fraudulent activities and that his only error was in erroneously placing trust in Mr. Alfaro based upon their past relationship was not credible. He ignored fiduciary obligations and did not engage in due diligence. Respondent McKissick's convictions are directly related to real estate loan transactions. The underlying conduct was egregious and demonstrated a lack of honesty and integrity. As such, these convictions are substantially related to the qualifications, functions and duties of a real estate broker.

As indicated in the Santa Clara County Superior Court Minute Order terminating his probation effective July 13, 2012, respondent McKissick has not had any significant time to demonstrate rehabilitation. It is well-established that when a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion..." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, an insufficient period of time has passed for respondent McKissick to demonstrate rehabilitation.

LEGAL CONCLUSIONS

1. *Burden and Standard of Proof*: The term "burden of proof" means "the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the trier of fact or the court . . . ¶ Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence" (Evid. Code, § 115.)

In an Accusation seeking to revoke, suspend, or otherwise discipline respondents' professional licenses, the agency has the burden of proof to establish the allegations in the Accusation by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App. 3d 853, 856.) As set forth below, complainant has met its burden of proof in Case Number H-11145 SF (OAH No. 2011060560) regarding respondents IFC, Haupt, McKissick, and The Agent. It did not meet its burden of proof regarding respondent de Leon. Complainant met its burden of proof regarding respondent McKissick in Case Number H-2432 FR (OAH No. 2011080492).

Where the Department denies an application for licensure, the burden of proof is on the applicant to establish qualification for licensure, including any affirmative defense of rehabilitation, by a preponderance of the evidence. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238; *Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) As set forth below, respondent McKissick has not met his burden of proof in Case Number H-11182 FR.

2. Section 10176 provides that the commissioner may temporarily suspend or permanently revoke a real estate license at any time where the licensee performs or attempts to perform certain acts, including the following: "(a) Making any substantial misrepresentation. . . [and] (i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing. . ."

3. Section 10177¹³ provides that the commissioner may suspend or revoke the license of a real estate licensee, deny the issuance of a license to an applicant, or suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following, including:

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, . . .

[¶] . . . [¶]

(d) Willfully disregarded or violated the Real Estate Law . . . or the rules and regulations of the commissioner

¹³ Section 10177 was repealed and replaced effective July 1, 2012. There are no changes in the subdivisions at issue in this case.

for the administration and enforcement of the Real Estate Law. . .

[¶] . . . [¶]

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

[¶] . . . [¶]

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

[¶] . . . [¶]

4. Pursuant to section 10159.2, subdivision (a), the officer designated by a corporate broker licensee pursuant to Section 10211 "shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required." (see also, 10 CCR 2725.)

5. Pursuant to section 10148, subdivision (a), a licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business

hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

6. As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause is established to revoke the licenses and licensing rights of respondents IFC, Haupt, McKissick and The Agent, based upon violations of sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d), (g), and (j).

7. As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause is not established to revoke the licenses and licensing rights of respondent de Leon based upon alleged violations of sections 10176, subdivisions (a) and (i), and 10177, subdivisions (d), (g), and (j).

8. As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause is established to revoke the licenses and licensing rights of respondents Haupt and McKissick for violations of section 10177, subdivision (h), and 10159.2, subdivision (a), failing to exercise reasonable supervision over the activities of their salespersons, or, as the officer designated by a corporate broker licensee, over the activities of the corporation.

9. As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause is established to revoke the licenses and licensing rights of respondents IFC and Haupt for violations of section 10148, subdivision (a), by failing to maintain records.

10. Section 480, subdivision (a), provides that a board may deny a license on the grounds that the applicant has: (1) been convicted of a crime; (2) done "any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another;" or (3) "done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license." Section 7069, subdivision (a), provides that "an applicant, and each officer, director, partner, manager, associate, and responsible managing employee thereof, shall not have committed acts or crimes that are grounds for denial of licensure under Section 480."

11. Section 490, subdivision (a), provides that a board may suspend or revoke a license "on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

12. As set forth in 10 CCR section 2746, subdivision (a)(4), a corporate real estate broker must disclose background information regarding its officers and all persons owning or controlling more than ten percent of its shares, including whether such person has "been convicted of a crime which is substantially related to the

qualifications, functions or duties of a licensee of the Department as specified in Section 2910 of these Regulations (excluding drunk driving, reckless driving and speeding violations).” Whenever there is a change in the persons whose background statements are required, the required background information must be supplied within 30 days. (10 CCR §2746, subd. (c).)

13. *Substantially related convictions:* As set forth in the Factual Findings as a whole and particularly in Factual Findings 53 through 62, respondent McKissick’s convictions are substantially related to the qualifications, functions or duties of a licensee within the meaning of sections 480 and 490, and of 10 CCR 2910, subdivision (a), subsections (2), (4), (8), and (10), because they involved, respectively: “counterfeiting, forging or altering of an instrument or the uttering of a false statement;” “the employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end;” “doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another;” and “conduct which demonstrates a pattern of repeated and willful disregard of law.”

14. As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause is established under sections 480 and 10177, subdivision (b), to deny respondent McKissick’s application to be the designated officer for Back on Trak, Inc.

15. As set forth in the Factual Findings and Legal Conclusions as a whole, legal cause is established under sections 10177, subdivision (b), and 490 to revoke respondent McKissick’s broker license, based upon his substantially related convictions.

16. As set forth in the Factual Findings and Legal Conclusions as a whole, it would be contrary to the public interest to allow respondents IFC, Haupt, McKissick, and The Agent to continue licensed activity with or without restrictions. Respondent McKissick did not meet his burden of establishing sufficient rehabilitation from the conduct that led to his convictions to justify the issuance of a restricted license.

ORDER

1. *Respondent McKissick:* All licenses and licensing rights of respondent Ransome Carl McKissick, Jr. under the Real Estate Law are REVOKED.

2. *Respondent The Agent Network, Inc.:* All licenses and licensing rights of respondent The Agent Network, Inc. under the Real Estate Law are REVOKED.

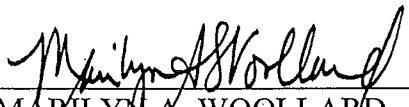
3. *Respondent Infinity Financial Consultants, Inc.:* All licenses and licensing rights of respondent Infinity Financial Consultants, Inc. under the Real Estate Law are REVOKED.

4. *Respondent Fred James Haupt IV:* All licenses and licensing rights of respondent Fred James Haupt IV under the Real Estate Law are REVOKED.

5. *Respondent Fred W. de Leon:* The Accusation in Case No. ^{H-2432 FR} H-11145 SF, OAH No. 2011060560 against respondent Fred W. de Leon is hereby DISMISSED.

6. *Application of Respondent McKissick:* Respondent McKissick's appeal of the Department's denial of his Application to become the designated broker-officer of Back on Trak, Inc., in Case No. H-11182 FR, OAH No. 2011090758, is DENIED. The Department's denial of respondent McKissick's application for a corporate officer license is AFFIRMED.

DATED: September 26, 2012



MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings