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FILED  
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DEPARTMENT OF REAL ESTATE

By Jean Brunet

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-25520 LA
	)	
HOWARD MARK GERBER,	)	
	)	
	)	
Respondent.	)	

ORDER DENYING REINSTATEMENT OF LICENSE

On February 6, 1997, a Decision was rendered herein revoking the real estate broker license of Respondent.

On June 26, 2003, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

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

///

1 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d  
2 395).

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

8 Respondent has not engaged as a broker in the operation  
9 of a real estate brokerage business or otherwise acted in a  
10 licensed fiduciary capacity since the Decision in this matter.  
11 Therefore, Respondent has not established that he has complied  
12 with Section 2911 (k), Title 10, California Code of Regulations.  
13 Consequently, I am not satisfied that Respondent is sufficiently  
14 rehabilitated to receive an unrestricted real estate broker  
15 license. Additional time and evidence of correction as a  
16 restricted real estate broker is necessary to establish that  
17 Respondent is rehabilitated.

18 I am satisfied, therefore, that it will not be  
19 against the public interest to issue a restricted real estate  
20 broker license to Respondent.

21 NOW, THEREFORE, IT IS ORDERED that Respondent's  
22 petition for reinstatement of his real estate broker license is  
23 denied.

24 A restricted real estate broker license shall be issued  
25 to Respondent pursuant to Section 10156.5 of the Business and  
26 Professions Code, if Respondent satisfies the following  
27 conditions within nine (9) months from the date of this Order:

1                    1. Respondent shall take and pass the real estate  
2 broker license examination.

3                    2. Submittal of a completed application and payment of  
4 the fee for a real estate broker license.

5                    3. Submittal of evidence of having, since the most  
6 recent issuance of an original or renewal real estate license,  
7 taken and successfully completed the continuing education  
8 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
9 for renewal of a real estate license.

10                   The restricted license issued to Respondent shall be  
11 subject to all of the provisions of Section 10156.7 of the  
12 Business and Professions Code and to the following limitations,  
13 conditions and restrictions imposed under authority of Section  
14 10156.6 of that Code:

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

20                   B. The restricted license issued to Respondent may be  
21 suspended prior to hearing by Order of the Real Estate  
22 Commissioner on evidence satisfactory to the Commissioner that  
23 Respondent has violated provisions of the California Real Estate  
24 Law, the Subdivided Lands Law, Regulations of the Real Estate  
25 Commissioner or conditions attaching to the restricted license.


26                   C. Respondent shall not be eligible to apply for the  
27 issuance of an unrestricted real estate license nor the removal

1 of any of the limitations, conditions or restrictions of a  
2 restricted license until two (2) years have elapsed from the date  
3 of the issuance of the restricted license to respondent.

4 This Order shall become effective at 12 o'clock  
5 noon January 28, 2005.

6 DATED: 1-6-05

7 JEFF DAVI  
8 Real Estate Commissioner

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**FILED**  
FEB 11 1997  
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By C37

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-25520 LA
AMERICAN FAMILY FINANCIAL, INC.,	)	L-9605008
a corporation; HOWARD MARK GERBER,	)	
individually and as designated	)	
officer of American Family	)	
Financial, Inc., and Western	)	
American Mortgage, and as officer	)	
of Webb and Gordon, and dba American	)	
Family Financial and GFS Funding	)	
and formerly dba Surety Mortgage	)	
Company; PETER CARMELO SERBANTES;	)	
and RICHARD MALDONADO, JR.,	)	
	)	
Respondents.	)	

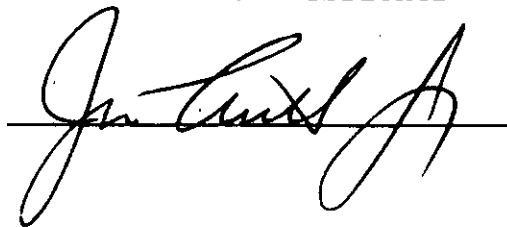
DECISION

The Proposed Decision dated January 16, 1997, 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.

This Decision shall become effective at 12 o'clock noon on March 4, 1997.

IT IS SO ORDERED 2-6-97

JIM ANTT, JR.  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation ) No. H-25520 LA  
of: )  
) OAH No. L-9605008  
AMERICAN FAMILY FINANCIAL, INC., )  
a corporation; )  
HOWARD MARK GERBER, )  
individually and as designated )  
officer of American Family )  
Financial, Inc., and Western )  
America Mortgage, and as officer )  
of Webb and Gordon, and )  
dba American Family Financial )  
and GFS Funding and formerly dba )  
Surety Mortgage Company, )  
PETER CARMELO SERBANTES, and )  
RICHARD MALDONADO, JR., )  
)  
Respondents. )  
\_\_\_\_\_ )

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on October 2, 1996.

Complainant was represented by Chris Leong, Staff Counsel.

Respondent Richard Maldonado Jr. appeared personally and represented himself.

Respondents Howard Mark Gerber ("respondent Gerber"), American Family Financial, Inc. ("respondent AFFI"), and Peter Carmelo Serbantes ("respondent Serbantes") did not appear at the hearing though they were properly served with all jurisdictional documents as required by Government Code sections 11505 and 11509.

Oral and documentary evidence was received and the matter was submitted. The Administrative Law Judge finds the following facts:

1. The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against respondents in his official capacity.

2. All Sections of Title 10, Chapter 6, California Code of Regulations, are hereinafter referred to as "Regulations."

3. At all times herein mentioned, respondent Gerber was and still is licensed by the Department of Real Estate of the State of California (hereinafter "Department") as a real estate broker.

4. At all times herein mentioned, respondent AFFI, was and still is licensed by the Department as a corporate real estate broker.

5. At all times mentioned herein, in Los Angeles County, California, respondents Gerber and AFFI engaged in the business of, acted in the capacity of, advertised or assumed to act as real estate brokers in the State of California, within the meaning of Sections 10131(d) of the Business and Professions Code (hereinafter "Code Section"), wherein they arranged, negotiated, processed, and consummated on behalf of others, loans secured by interest in real property for compensation or in expectations of compensation.

6. At all times relevant to the Accusation, Lisa Duran (hereinafter "Duran") and Soccorro Sochez (hereinafter "Sochez") were not licensed by the Department.

7. At all times before September 18, 1991, respondent Maldonado was not licensed by the Department. Since September 18, 1991, respondent Maldonado has been licensed by the Department as a real estate salesperson.

8. At all times before October 9, 1991, Serbantes was not licensed by the Department. Since October 9, 1991, respondent Serbantes has been licensed by the Department as a real estate salesperson.

9. In or about December 1990 through September 1991, respondents Gerber and AFFI employed and compensated Sochez, as their agent to solicit and negotiate loans secured by interest in real property for others including, but not limited to: J. & Y. Castaneda, G. & R. Guzman, M. & C. Botello, Alcola, Flores, Gonzalez, Siordia, Sanches, Bitton, Garcia, Ramirez, and Arellano.

10. In or about December 1990, through September 1991, respondents Gerber and AFFI employed and compensated respondent Maldonado as their agent to solicit and negotiate loans secured by interest in real property for others including, but not limited to: K. Briggs and J. & V. Chacon.

11. In or about December 1990 through September 1991, respondents Gerber and AFFI employed and compensated Serbantes as their agent to solicit and negotiate loans secured by interest in real property for others including, but not limited to: K. & C. Sirivisut, J. Ramirez, Lopes, and Avilla.

12. In or about December 1990 through September 1991, respondents Gerber and AFFI employed and compensated Duran as their agent to solicit and negotiate loans secured by interest in real property for others including, but not limited to: Vega.

13. The activities of Sochez, Maldonado, Serbantes and Duran, set forth in Findings 9 through 12, are acts requiring a real estate license as described in Section 10131(d) of the Code. In employing and compensating Sochez, Maldonado, Serbantes and Duran, for said acts when they were not licensed by the Department, respondents AFFI and Gerber violated Section 10137 of the Code.

14. A. Respondent Maldonado, respondent Serbantes, Duran, and Sochez violated Section 10130 of the Code by engaging in the activities set forth in Findings 9 through 12, without being licensed as a real estate brokers or as a real estate salespersons employed by a broker.

B. Respondent Maldonado asserted at the hearing that he worked only as an interpreter for AFFI. This assertion is not credible as the documentary evidence proves otherwise. It should be noted however, that respondent Gerber was the responsible broker for AFFI and is charged with knowledge of departmental regulations and statutes governing the real estate industry. By hiring respondents Maldonado and Serbantes to engage in unlicensed real estate activities, Gerber not only took advantage of the public, but also took advantage of respondents Maldonado and Serbantes. Indeed, respondent Maldonado credibly asserted at the hearing that he merely sought employment and wanted to learn the real estate business. These circumstances should be considered when imposing discipline on respondent Maldonado and respondent Serbantes.

15. On or about October 10, 1991, the Department completed an audit of the activities of respondents AFFI and Gerber, for the period from September 1, 1990 through September 30, 1991. The results of that audit are set forth in Findings 16 and 17.

16. During 1990 and 1991, in connection with their real estate business activities, respondents AFFI and Gerber accepted or received funds in trust (hereinafter trust funds) from or on behalf of borrowers and thereafter made disbursements of such funds. These trust funds were maintained by AFFI and Gerber in one trust account and two general accounts. These three bank accounts mentioned above were maintained at great Western Bank, 15612 Ventura Boulevard, Encino, CA 91436. The accounts were: Account No. 435-808096-8, known as American Family Financial Trust Account (hereinafter "TA#1"); Account No. 435-806212-3, known as American Family Financial Trust Fund (hereinafter "A#2"); and Account No. 435-806211-5, known as American Family Financial (hereinafter "A#3").



17. In connection with those trust funds delineated in Finding 16, respondents AFFI and Gerber:

(a) Failed to provide the borrowers or principals with an accounting of the advanced fees received and disbursed. Also, the materials used to collect application and processing fees did not have a specific description of services rendered or to be rendered. Said conduct violated Section 10146 of the Code and Section 2972 of the Regulations.

(b) Although approximately 34% of all loans negotiated by AFFI did not close; there was no indication that AFFI refunded application and processing fees to the borrowers. Furthermore, trust funds were held in interest-bearing accounts that were not in the name of AFFI. Said conduct violated Section 10145 of the Code.

18. Respondents AFFI and Gerber violated Section 10145 of the Code and Section 2832.1 of the Regulations by disbursing or allowing the disbursement of funds from TA#1 without prior written consent of every principal who then was an owner of trust funds in said accounts wherein the disbursement reduced the balance of funds in the combined accounts, as of September 30, 1991, to an amount which was approximately \$462.65 less than the existing aggregate trust fund liability to all owners of said trust funds.

19. From September 1, 1990 to September 30, 1991, AFFI and Gerber failed to submit materials used for collecting processing and application fees collected in advanced to the Commissioner for approval before use or publication. Said conduct violated Section 10026 of the Code and Section 2970(a)(b) of the Regulations.

20. From September 1, 1990 to September 30, 1991, AFFI and Gerber failed to provide borrowers with mortgage loan disclosure statements. This includes loans obtained for: J. & Y. Castaneda, G. & R. Guzman, M. & C. Botello, Alcola, Flores, Gonzalez, Siordia, Sanches, Bitton, Garcia, Ramirez, Arellano, K. Briggs and J. & V. Chacon, K. & C. Sirivisut, J. Ramirez, Lopez, Avilla and Vega. Said conduct violated Section 10240 of the Code and Section 2840 of the Regulations.

21. As of September 30, 1991, respondents AFFI and Gerber failed to notify the Department that: Louis Paul Fossa, Gloria Baily, William Scott and Joseph W. Hier were no longer employed by AFFI. Said conduct violated Section 10161.8 of the Code.

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22. It was not established that as of September 30, 1991, AFFI and Gerber met the threshold loan criteria set forth in Section 10232 of the Code. The testimony of the auditor and his report indicated that said section may have been violated. This is insufficient proff. Therefore, it was not proven that AFFI had a duty to notify the Department that AFFI reached the threshold criteria as required by Section 10232 of the Code.

23. By failing to insure that AFFI was acting in compliance Real Estate Law, Gerber was in violation of Section 10159.2 and 10177(h) of the Code.

#### DETERMINATION OF ISSUES

##### I

Cause exists for suspension or revocation of the licenses and licensing rights of respondent American Family Financial, Inc., and respondent Howard Mark Gerber, under Business and Professions Code sections 10177(d) for the following conduct and violations of the Real Estate Law:

1. For employing and compensating Sochez, Maldonado, Serbantes and Duran, for performing acts requiring a real estate license, as set forth in Findings 9 through 14, in violation of Section 10137 of the Code.

2. For trust funds violations and collecting advanced fees without using approved materials, as set forth in Findings 14 through 23, in violation of Sections 10026, 10145 and 10146 of the Code and Sections 2832.1, 2970(a)(b), 2972 of the Regulations.

3. For failing to provide borrowers with mortgage loan disclosure statements as set forth in Finding 20, in violation of Section 10240 of the Code and Section 2840 of the Regulations.

4. For the conduct set forth in Finding 21, in violation of Section 10161.8 of the Code.

##### II

Cause exists for suspension or revocation of the licenses and licensing rights of respondent Howard Mark Gerber, under Business and Professions Code sections 10159.2 and 10177(h) for allowing respondent AFFI to violate Sections 10026, 10145, 10146, 10240, 10137, 10161.8, 10232(f) of the Code and Sections 2832.1, 2970(a)(b), 2972 and 2840 of the Regulations which constitutes failure by respondent Gerber to exercise reasonable supervision of the activities of respondent AFFI which required a real estate license.

III

Cause exists for suspension or revocation of the licenses and licensing rights of respondent Richard Maldonado Jr., under Business and professions Code section 10177(d), for violating section 10130, as set forth in Finding 10.

IV

Cause exists for suspension or revocation of the licenses and licensing rights of respondent Peter Carmelo Serbantes, under Business and professions Code section 10177(d), for violating section 10130, as set forth in Finding 11.

ORDER

I

The licenses and licensing rights previously issued to respondent American Family Financial, Inc., are hereby revoked.

II

The licenses and licensing rights previously issued to respondent Howard Mark Gerber, are hereby revoked.

III

Respondent Richard Maldonado Jr., is hereby reprovved. Inclusion of this Decision in the Department's public file shall be deemed publication of this reproval.

IV

Respondent Peter Carmelo Serbantes, is hereby reprovved. Inclusion of this Decision in the Department's public file shall be deemed publication of this reproval.

DATED: January 16, 1997

*Humberto Flores*

HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

5/16

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of ) Case No. H-25520 LA  
)  
AMERICAN FAMILY FINANCIAL, INC.; ) OAH No. L-9605008  
)  
HOWARD MARK GERBER; )  
)  
PETER CARMELO SERBANTES; and )  
)  
RICHARD MALDONADO, JR., )  
\_\_\_\_\_ )  
Respondent(s)

FILED  
MAY 16 1996  
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By CSB

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 314 W. First Street, Los Angeles, CA 90012 on WEDNESDAY, OCTOBER 2, 1996, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: May 16, 1996

By

Chris Leong  
CHRIS LEONG, Counsel

cc: American Family Financial, Inc.  
Howard Mark Gerber  
Peter Carmelo Serbantes  
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CHRISTOPHER K.D. LEONG, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, CA 90012  
(213) 897-3937

FILED  
AUG 10 1993

DEPARTMENT OF REAL ESTATE  
BY C. Cary

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-25520 LA
	)	
AMERICAN FAMILY FINANCIAL, INC.,	)	
a corporation;	)	<u>A C C U S A T I O N</u>
HOWARD MARK GERBER,	)	
individually and as designated	)	
officer of American Family	)	
Financial, Inc., and Western	)	
America Mortgage, and as officer	)	
of Webb and Gordon, and	)	
dba American Family Financial	)	
and GFS Funding and formerly dba	)	
Surety Mortgage Company,	)	
PETER CARMELO SERBANTES, and	)	
RICHARD MALDONADO, JR.,	)	
	)	
Respondents.	)	

The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against AMERICAN FAMILY FINANCIAL, INC., a corporation (hereinafter "AFFI"); HOWARD MARK GERBER, individually and as designated officer of American Family Financial, Inc., and Western America Mortgage and as officer of Webb and Gordon, and dba American Family Financial, and GFS Funding and formerly dba Surety

1 Mortgage Company (hereinafter "GERBER"), PETER CARMELO SERBANTES  
2 (hereinafter "SERBANTES") and RICHARD MALDONADO, JR. (hereinafter  
3 "MALDONADO") (hereinafter sometimes referred to as Respondents),  
4 is informed and alleges as follows:

5 1.

6 The Complainant, Steven J. Ellis, a Deputy Real Estate  
7 Commissioner of the State of California, makes this Accusation  
8 against Respondents in his official capacity.

9 2.

10 All Sections of Title 10, Chapter 6, California Code of  
11 Regulations, are hereinafter referred to as "Regulations".

12 3.

13 At all times herein mentioned, GERBER was and still  
14 is licensed by the Department of Real Estate of the State of  
15 California (hereinafter "Department") as a real estate  
16 broker.

17 4.

18 At all times herein mentioned, AFFI, was and still  
19 is licensed by the Department as a corporate real estate  
20 broker.

21 5.

22 At all times mentioned herein, in Los Angeles  
23 County, California, GERBER and AFFI engaged in the business  
24 of, acted in the capacity of, advertised or assumed to act as  
25 real estate brokers in the State of California, within the  
26 meaning of Sections 10131(d) of the Code, wherein they  
27 arranged, negotiated, processed, and consummated on behalf of

1 others, loans secured by interest in real property for  
2 compensation or in expectation of compensation.

3 6.

4 At all times mentioned herein, Lisa Duran  
5 (hereinafter "Duran") and Soccorro Sochez (hereinafter  
6 "Sochez") was not licensed by the Department.

7 7.

8 At all times before September 18, 1991, MALDONALDO  
9 was not licensed by the Department. Since September 18,  
10 1991, MALDONALDO has been licensed by the Department as a  
11 real estate salesperson.

12 8.

13 At all times before October 9, 1991, SERBANTES was  
14 not licensed by the Department. Since October 9, 1991,  
15 SERBANTES has been licensed by the Department as a real  
16 estate salesperson.

17 9.

18 In or about December 1990 through September 1991,  
19 GERBER and AFFI employed and compensated Sochez, as their  
20 agent to solicit for and negotiate loans secured by interest  
21 in real property for others including, but not limited to:  
22 J. & Y. Castaneda, G. & R. Guzman, M. & C. Botello, Alcola,  
23 Flores, Gonzalez, Siordia, Sanches, Bitton, Garcia, Ramirez,  
24 and Arellano.

25 10.

26 In or about December 1990 through September 1991,  
27 GERBER and AFFI employed and compensated MALDONALDO as their

1 agent to solicit for and negotiate loans secured by interest  
2 in real property for others including, but not limited to:  
3 K. Briggs and J. & V. Chacon.

4 11.

5 In or about December 1990 through September 1991,  
6 GERBER and AFFI employed and compensated SERBANTES as their  
7 agent to solicit for and negotiate loans secured by interest  
8 in real property for others including, but not limited to:  
9 K. & C. Sirivisut, J. Ramirez, Lopez, and Avilla.

10 12.

11 In or about December 1990 through September 1991,  
12 GERBER and AFFI employed and compensated Duran as their agent  
13 to solicit for and negotiate loans secured by interest in  
14 real property for others including, but not limited to:  
15 Vega.

16 13.

17 The activities of Sochez, MALDONALDO, SERBANTES and  
18 Duran, described above in Paragraphs 9 through 12, are acts  
19 requiring a real estate license as described in Section  
20 10131(d) of the Code. In employing and compensating Sochez,  
21 MALDONALDO, SERBANTES and Duran, for said acts when they were  
22 not licensed by the Department, AFFI and, GERBER violated  
23 Section 10137 of the Code.

24 14.

25 Sochez, MALDONALDO, SERBANTES and Duran, violated  
26 Section 10130 of the Code by engaging in the activities set  
27 forth in Paragraphs 9 through 12, without being licensed as a



1 real estate broker or as a real estate salesperson employed  
2 by a real estate broker.

3 15.

4 On or about October 10, 1991, the Department completed  
5 an audit of the activities of AFFI and GERBER, for the period  
6 from September 1, 1990 through September 30, 1991. The results  
7 of that audit are set forth in Paragraphs 16 and 17.

8 16.

9 During 1990 and 1991, in connection with their real  
10 estate business activities, AFFI and GERBER accepted or  
11 received funds in trust (hereinafter trust funds) from or on  
12 behalf of borrowers and thereafter made disbursements of such  
13 funds. These trust funds were maintained by AFFI and GERBER  
14 in one trust account and two general accounts. These three  
15 bank accounts mentioned above were maintained at Great  
16 Western Bank, 15612 Ventura Boulevard, Encino, CA 91436. The  
17 accounts were: Account No. 435-808096-8, known as American  
18 Family Financial Trust Account (hereinafter "TA#1"); Account  
19 No. 435-806212-3, known as American Family Financial Trust  
20 Fund (hereinafter "A#2"); and Account No. 435-806211-5, known  
21 as American Family Financial (hereinafter "A#3").

22 17.

23 In connection with those trust funds described in  
24 Paragraph 16, AFFI and GERBER:

25 (a) Failed to provide the borrowers or principals  
26 with an accounting of the advanced fees received and  
27 disbursed. Also, the materials used to collect application

1 and processing fees did not have a specific description of  
2 services rendered or to be rendered. Said conduct violated  
3 Section 10146 of the Code and Section 2972 of the  
4 Regulations.

5 (b) Although approximately 34% of all loans  
6 negotiated by AFFI did not close; there was no indication  
7 that AFFI refunded application and processing fees to the  
8 borrowers. Furthermore, trust funds were held in interest-  
9 bearing accounts that were not in the name of AFFI. Said  
10 conduct violated Section 10145 of the Code.

11 18.

12 AFFI and GERBER violated Section 10145 of the Code  
13 and Section 2832.1 of the Regulations by disbursing or  
14 allowing the disbursement of funds from TA#1 and TA#4  
15 combined without prior written consent of every principal who  
16 then was an owner of trust funds in said accounts wherein the  
17 disbursement reduced the balance of funds in the combined  
18 accounts, as of September 30, 1991, to an amount which was  
19 approximately \$462.65 less than the existing aggregate trust  
20 fund liability to all owners of said trust funds.

21 19.

22 From September 1, 1990 to September 30, 1991, AFFI  
23 and GERBER failed to submit materials used for collecting  
24 processing and application fees collected in advance to the  
25 Commissioner for approval before use or publication. Said  
26 conduct violated Section 10026 of the Code and Section  
27 2970(a)(b) of the Regulations.

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20.

From September 1, 1990 to September 30, 1991, AFFI and GERBER failed to provide borrowers with mortgage loan disclosure statements. This includes loans obtained for: J. & Y. Castaneda, G. & R. Guzman, M. & C. Botello, Alcola, Flores, Gonzalez, Siordia, Sanches, Bitton, Garcia, Ramirez, Arellano, K. Briggs and J. & V. Chacon, K. & C. Sirivisut, J. Ramirez, Lopez, Avilla and Vega. Said conduct violated Section 10240 of the Code and Section 2840 of the Regulations.

21.

As of September 30, 1991, AFFI and GERBER failed to notify the Department that: Louis Paul Fossa, Gloria Baily, William Scott and Joseph W. Hier were no longer employed by AFFI. Said conduct violated Section 10161.8 of the Code.

22.

As of September 30, 1991, AFFI and GERBER met the threshold criteria, but failed to notify the Department of this fact within thirty days. Said conduct violated Section 10232 of the Code.

23.

By failing to insure that AFFI was acting in compliance with Real Estate Law, GERBER was in violation of Section 10159.2 and 10177(h) of the Code.

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FIRST CAUSE OF ACCUSATION

(Violation by Respondents GERBER and AFFI of Section 10137  
of the Code)

24.

As a First Cause of Accusation, Complainant  
incorporates by this reference the Preamble and each of the  
allegations in Paragraphs 1 through 23, herein above.

25.

The conduct of Respondents GERBER and AFFI, in  
employing and compensating Sochez, MALDONALDO, SERBANTES and  
Duran, for performing acts requiring a real estate license,  
as described in Paragraphs 9 through 14, herein above,  
constitutes a violation of Section 10137 of the Code and is  
cause to suspend or revoke the real estate licenses and  
license rights of Respondents GERBER and AFFI.

SECOND CAUSE OF ACCUSATION

(Violation by Respondents MALDONALDO and SERBANTES of  
Section 10130 of the Code)

26.

As a Second Cause of Accusation, Complainant  
incorporates by this reference the Preamble and each of the  
allegations in Paragraphs 1 through 23, herein above.

27.

The conduct of Respondents MALDONALDO and  
SERBANTES, in performing acts requiring a real estate  
license, as described in Paragraphs 9 through 14, herein  
above, constitutes a violation of Section 10130 of the Code

1 and is cause to suspend or revoke the real estate licenses  
2 and license rights of Respondents MALDONALDO and SERBANTES,  
3 per Section 10177(d) of the Code.

4 THIRD CAUSE OF ACCUSATION

5 (Violation by Respondents GERBER and AFFI of Sections 10026,  
6 10145, 10146, and 10177(d) of the Code and Sections 2832.1  
7 2970(a)(b) and 2972 of the Regulations)

8 28.

9 As a Third Cause of Accusation, Complainant  
10 incorporates herein by this reference the Preamble and each  
11 of the allegations in Paragraphs 1 through 23, herein above.

12 29.

13 The conduct of Respondents GERBER and AFFI, in  
14 handling trust funds and collecting advanced fees without  
15 using approved materials, as alleged in Paragraphs 14 through  
16 23, constitutes violations under Sections 10026, 10145 and  
17 10146 of the Code and Sections 2832.1, 2970(a)(b), 2972 of  
18 the Regulations. Said conduct is cause pursuant to Section  
19 10177(d) of the Code for the suspension or revocation of all  
20 licenses and license rights of Respondents GERBER and AFFI  
21 under Real Estate Law.

22 FOURTH CAUSE OF ACCUSATION

23 (Violation by Respondents GERBER and AFFI of Section 10240  
24 of the Code and Section 2840 of the Regulations)

25 30.

26 As a Fourth Cause of Accusation, Complainant  
27 incorporates herein by this reference the Preamble and each

1 of the allegations in Paragraphs 1 through 23, herein above.

2 31.

3 The conduct of Respondents GERBER and AFFI, as  
4 alleged in Paragraph 20, constitutes violation under Section  
5 10240 of the Code and Section 2840 of the Regulations. Said  
6 conduct is cause for the suspension or revocation of all  
7 licenses and license rights of Respondents GERBER and AFFI,  
8 under Real Estate Law, pursuant to Section 10177(d) of the  
9 Code.

10 FIFTH CAUSE OF ACCUSATION

11 (Violation by Respondents GERBER and AFFI of Section  
12 10161.8 of the Code)

13 32.

14 As a Fifth Cause of Accusation, Complainant  
15 incorporates herein by this reference the Preamble and each  
16 of the allegations in Paragraphs 1 through 23, herein above.

17 33.

18 The conduct of Respondents GERBER and AFFI, as  
19 alleged in Paragraph 21, constitutes violation under Section  
20 10161.8 of the Code. Said conduct is cause for the  
21 suspension or revocation of all licenses and license rights  
22 of Respondents GERBER and AFFI under Real Estate Law,  
23 pursuant to Section 10161.8 of the Code.

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SIXTH CAUSE OF ACCUSATION

(Violation by Respondents GERBER and AFFI of Section 10232(f) of the Code)

34.

As a Sixth Cause of Accusation, Complainant incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 23, herein above.

35.

The conduct of Respondents GERBER and AFFI, as alleged in Paragraph 22, constitutes violation under Section 10232(f) of the Code. Said conduct is cause for the suspension or revocation of all licenses and license rights of Respondents GERBER and AFFI, under Real Estate Law, pursuant to Section 10232(f) of the Code.

SEVENTH CAUSE OF ACCUSATION

(Violation by Respondent GERBER of Section 10177(h) of the Code)

36.

As a Seventh Cause of Accusation, Complainant incorporates herein by this reference the Preamble and each of the allegations in Paragraphs 1 through 15, herein above.

37.

The conduct of Respondent GERBER, in allowing Respondent AFFI to violate Sections 10026, 10145, 10146, 10240, 10137, 10161.8, 10232(f) of the Code and Sections 2832.1, 2970(a) (b), 2972 and 2840 of the Regulations, as described herein above, constitutes a failure by Respondent

1 GERBER to exercise reasonable supervision of the activities  
2 of Respondent AFFI which required a real estate license.  
3 Said conduct is cause for the suspension or revocation of all  
4 licenses and license rights of Respondent GERBER, under Real  
5 Estate Law, pursuant to Section 10159.2 and 10177(h) of the  
6 Code.

7 WHEREFORE, Complainant prays that a hearing be  
8 conducted on the allegations of this Accusation and that upon  
9 proof thereof, a decision be rendered imposing disciplinary  
10 action against all licenses and license rights of Respondents  
11 AMERICAN FAMILY FINANCIAL, INC., a corporation; HOWARD MARK  
12 GERBER, individually and as designated officer of American  
13 Family Financial, Inc., and Western America Mortgage and as  
14 officer of Webb and Gordon, and dba American Family  
15 Financial, and GFS Funding and formerly dba Surety Mortgage  
16 Company; PETER CARMELO SERBANTES and RICHARD MALDONADO, JR.,  
17 under the Real Estate Law (Part 1 of Division 4 of the  
18 Business and Professions Code) and for such other and further  
19 relief as may be proper under other applicable provisions of  
20 law.

21 Dated at Los Angeles, California  
22 this 10th day of August, 1993.

23 STEVEN J. ELLIS  
24 Deputy Real Estate Commissioner

25 cc: Howard Mark Gerber  
26 American Family Financial Inc.  
27 Peter Carmelo Serbantes  
Richard Maldonado, Jr.  
Sacto  
MJ  
Audit Section

ckdl