

FILED
 JAN 21 2009
 DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-27684 LA
MARIA EUGENIA SHAKIBAEI,)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On August 26, 1999, a Decision was rendered herein revoking Respondent's real estate salesperson license, but granting Respondent the right to apply for and be issued a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on September 15, 1999.

On September 27, 2007, Respondent petitioned for reinstatement of said real estate salesperson license and the Attorney General of the State of California has been given notice of the filing of said petition.

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///

1 I have considered the petition of Respondent and
2 the evidence and arguments in support thereof. Respondent
3 has demonstrated to my satisfaction that Respondent meets
4 the requirements of law for the issuance to Respondent of an
5 unrestricted real estate salesperson license and that it would
6 not be against the public interest to issue said license to
7 Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that an unrestricted
10 real estate salesperson license be issued to Respondent, if
11 Respondent satisfies the following conditions within nine (9)
12 months from the date of this Order:

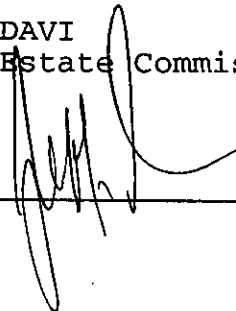
13 1. Submittal of a completed application and payment
14 of the fee for a real estate salesperson license.

15 2. Submittal of evidence satisfactory to the Real
16 Estate Commissioner that Respondent has since the most recent
17 issuance of an original or renewal real estate license, taken
18 and successfully completed the continuing education requirements
19 of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
20 of a real estate license.

21 This Order shall be effective immediately.

22 Dated: 1-14-09

23
24 JEFF DAVI
Real Estate Commissioner

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FILED
APR 28 2004
DEPARTMENT OF REAL ESTATE

By Jana B. Crane

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-27684 LA
NAHED BENYAMEIN,)
Respondent.)

ORDER DENYING RECONSIDERATION

On March 3, 2004, an Order Denying Reinstatement of License was signed in the above-entitled matter. Said Order was to become effective on March 29, 2004 and was stayed by separate Order to April 28, 2004 to allow Respondent to file a petition for reconsideration.

On April 12, 2004, Respondent petitioned for reconsideration of the Order of March 3, 2004.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of March 3, 2004, and reconsideration is hereby denied.

IT IS SO ORDERED April 28, 2004

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

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The Order of March 3, 2004, shall become effective at
12 o'clock noon on April 28, 2004.

DATED: March 19, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

By: *Dolores Ramos*
DOLORES RAMOS
Regional Manager

Sacks Day

FILED
MAR 9 2004
DEPARTMENT OF REAL ESTATE

By *James B. [Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-27684 LA
)
NAHED BENYAMEIN,)
)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On August 26, 1999, a Decision After Rejection was rendered herein revoking Respondent's real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on October 25, 1999.

On May 21, 2002, Respondent petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

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

8 I

9 In the Decision which revoked the real estate license
10 of Respondent there were Determination of Issues made that
11 there was cause to revoke Respondent's real estate license
12 pursuant to Business and Professions Code ("Code") Section
13 10177(j) for fraud or dishonest dealing in a transaction where
14 Respondent was acting as seller of her own property.
15

16 The underlying facts were as follows:

17 In or about 1995, Respondent helped the buyers of her
18 real property obtain fictitious gift letters. Respondent knew
19 that money for the down payment was not obtained from the
20 sources stated in the gift letters. In truth and in fact,
21 Respondent had provided the money to help the buyers with their
22 down payment.
23

24 ///

25 ///

26 ///

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1 Thereafter, Respondent signed a false declaration
2 certifying that she had no knowledge of any loans that had been
3 or would be made to the borrowers, and that she had not and
4 would not pay or reimburse the borrowers for any part of their
5 down payment or closing costs. The declaration was submitted
6 to the lender.
7

8 II

9 Respondent's petition for reinstatement of her
10 license is governed by the Criteria of Rehabilitation set forth
11 in the California Administrative Code, Section 2911, Title 10,
12 Chapter 6, California Code of Regulations ("Regulations").
13 Section 2911 provides as follows: "The following criteria have
14 been developed by the department pursuant to Section 482(a) of
15 the Business and Professions Code for the purpose of evaluating
16 the rehabilitation of an applicant for issuance or for
17 reinstatement of a license in considering whether or not to
18 deny the issuance or reinstatement on account of a crime or act
19 committed by the applicant."
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NOW, THEREFORE, IT IS ORDERED that Respondent's
petition for reinstatement of Respondent's salesperson license
is denied.

This Order shall become effective at 12 o'clock noon
on March 29, 2004.

DATED: March 3, 2004.

JOHN R. LIBERATOR
Chief Deputy Commissioner



cc: Nahed Benyamein
8196 E. Bailey Way
Anaheim Hills, CA 92808

FILED
FEB 09 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JOSE ANTONIO GRACIANO,) No. H-27684 LA
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 21, 1998, an Order was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on November 25, 1998, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent.

On December 22, 1999, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 salesperson license be issued to Respondent if Respondent
11 satisfies the following conditions within nine months from the
12 date of this Order:

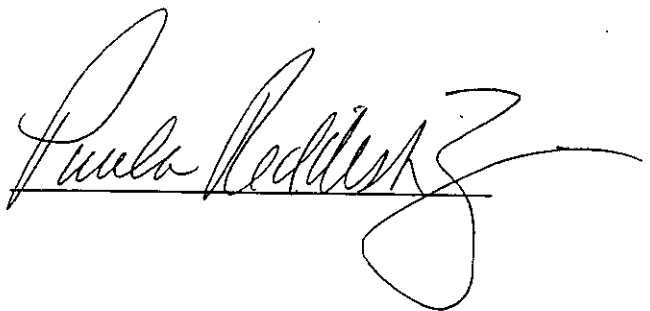
13 1. Submittal of a completed application and payment of
14 the fee for a real estate salesperson license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: DECEMBER 7, 2000

22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

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FILED

OCT 25 1999

DEPARTMENT OF REAL ESTATE

By *Janet [Signature]*

THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-27684 LA
CENTURY 21 ALLSTARS, INC. a)	L-1998050435
California corporate broker, dba)	
Century 21 Allstars, Inc., Escrow)	
Division; JOSEPH GARCIA)	
VILLAESCUSA, individually and as)	
designated officer of Century 21)	
Allstars, Inc.; NAHED BENYAMEIN;)	
ANTONIO MONTALVO; MARIA EUGENIA)	
SHAKIBAEI; and JOSE ANTONIO)	
GRACIANO,)	
Respondents.)	

DECISION AFTER RECONSIDERATION

On August 26, 1999, a Decision was rendered by the Acting Real Estate Commissioner which revoked the real estate salesperson license of respondent NAHED BENYAMEIN but granted her a right to apply for and be issued a restricted real estate salesperson license. Said Decision was to become effective on September 15, 1999 but is now to become effective on October 25, 1999.

1 On October 1, 1999, respondent petitioned for
2 reconsideration of said Decision. I have considered the
3 petition and letter submitted on October 1, 1999 by
4 respondent and have concluded that good cause has been
5 presented for reconsideration of the Decision of August 26,
6 1999 for the limited purpose of determining whether the
7 disciplinary action imposed should be reduced.

8 I have reconsidered said Decision and it is hereby
9 ordered that the disciplinary action therein imposed against
10 the real estate salesperson license of respondent NAHED
11 BENYAMEIN be modified as follows:

12 All licenses and license rights of Respondent NAHED
13 BENYAMEIN under Part 1 of Division 4 of the Business and
14 Professions Code are revoked; provided, however, a restricted
15 real estate salesperson license shall be issued to Respondent
16 NAHED BENYAMEIN pursuant to Section 10156.5 of the Code if
17 Respondent makes application therefor and pays to the
18 Department of Real Estate the appropriate fee for said
19 licenses within ninety (90) days from the effective date of
20 the Decision. The restricted license issued to Respondent
21 NAHED BENYAMEIN shall be subject to all of the provisions of
22 Section 10156.7 of the Business and Professions Code and to
23 the following limitations, conditions and restrictions
24 imposed under authority of Section 10156.6 of said Code. The
25 restricted license issued to Respondent NAHED BENYAMEIN shall
26 be subject to all of the provisions of Section 10156.7 of the
27 Business and Professions Code and to the following



1 limitations, conditions and restrictions imposed under
2 authority of Section 10156.6 of said Code:

3 (1) The restricted license may be suspended
4 prior to hearing by order of the Real Estate Commissioner in
5 the event of Respondent NAHED BENYAMEIN's conviction or plea
6 of nolo contendere to a crime which bears a significant
7 relation to Respondent's fitness or capacity as a real estate
8 licensee.

9 (2) The restricted license may be suspended
10 prior to hearing by Order of the Real Estate Commissioner on
11 evidence satisfactory to the Commissioner that Respondent
12 NAHED BENYAMEIN has, during the time he holds a restricted
13 license, violated provisions of the California Real Estate
14 Law, the Subdivided Lands Law, Regulations of the Real Estate
15 Commissioner, or the conditions attaching to these restricted
16 licenses.

17 (3) Respondent NAHED BENYAMEIN shall not be
18 eligible to apply for the issuance of an unrestricted real
19 estate license nor the removal of any of the conditions,
20 limitations or restrictions of a restricted license until one
21 (1) year has elapsed from the date of issuance of the
22 restricted license to Respondent.

23 (4) Respondent NAHED BENYAMEIN shall submit
24 with any application for license under an employing broker,
25 or any application for transfer to a new employing broker, a
26 statement signed by the prospective employing real estate
27 broker on a form approved by the Department of Real Estate



1 which shall certify:

2 (a) That the employing broker has read
3 the Decision of the Commissioner which
4 granted the right to a restricted license;
5 and

6 (b) That the employing broker will
7 exercise close supervision over the
8 performance by the restricted licensee
9 relating to activities for which a real
10 estate license is required.


11 (5) Respondent NAHED BENYAMEIN shall, within
12 six (6) months from the effective date of this Decision, take
13 and pass the Professional Responsibility Examination
14 administered by the Department including the payment of the
15 appropriate examination fee. If Respondent fails to satisfy
16 this condition, the Commissioner may order suspension of
17 Respondent's license until Respondent passes the examination.

18 (6) Respondent NAHED BENYAMEIN shall, within
19 nine (9) months from the effective date of this Decision,
20 present evidence satisfactory to the Real Estate Commissioner
21 that Respondent has, since the most recent issuance of an
22 original or renewal real estate license, taken and
23 successfully completed the continuing education requirements
24 of Article 2.5 of Chapter 3 of the Real Estate Law for
25 renewal of a real estate license. If Respondent fails to
26 satisfy this condition, the Commissioner may order the
27 suspension of the restricted license until the Respondent



1 presents such evidence. The Commissioner shall afford
2 Respondent the opportunity for a hearing pursuant to the
3 Administrative Procedure Act to present such evidence.
4

5 IT IS SO ORDERED October 25, 1999.

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7 JOHN R. LIBERATOR
8 Acting Real Estate Commissioner
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FILED
OCT 14 1999
DEPARTMENT OF REAL ESTATE
By: *[Signature]*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H-27684 LA
)	L-199805435
)	
NAHED BENYAMEIN, et al.,)	<u>ORDER STAYING</u>
)	
)	<u>EFFECTIVE DATE</u>
Respondents.)	

On August 26, 1999, a Decision was rendered in the above-entitled matter to become effective September 15, 1999. On September 14, 1999, the effective date of said Decision was stayed until October 15, 1999.

IT IS HEREBY ORDERED that the effective date of the Decision of August 26, 1999, is stayed for an additional period of 10 days.

The Decision of August 26, 1999, shall become effective at 12 o'clock noon on October 25, 1999.

DATED: October 14, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

By: *[Signature]*
RANDOLPH BENDIA
Regional Manager

By *Laura B. Alvarado*

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DEPARTMENT OF REAL ESTATE
 STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-27684 LA
CENTURY 21 ALLSTARS, INC.,)	L-199805435
a California corporate broker)	
dba Century 21 Allstars, Inc.,)	
Escrow Division; JOSEPH GARCIA)	
VILLAESCUSA, individually and as)	
designated officer of Century 21)	
21 Allstars,; NAHED BENYAMEIN;)	
ANTONIO MONTALVO, MARIA EUGENIA)	
SHAKIBAEI; and JOSE ANTONIO)	
GRACIANO,)	
)	
)	
)	
Respondents:)	

ORDER STAYING EFFECTIVE DATE

On August 26, 1999, a Decision was rendered in the above-entitled matter to become effective September 15, 1999.

IT IS HEREBY ORDERED that the effective date of the Decision of August 26, 1999, is stayed for a period of 30 days as to NAHED BENYAMEIN only.

/

1 The Decision of August 26, 1999, shall become
2 effective at 12 o'clock noon on October 15, 1999, as to NAHED
3 BENYAMEIN only.

4 DATED: 14 Sept. 99

5 JOHN R. LIBERATOR
6 Acting Real Estate Commissioner

7 By: *Randolph Brendia*
8 RANDOLPH BRENDIA
9 Regional Manager

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FILED

AUG 26 1999

DEPARTMENT OF REAL ESTATE

By Juan Benito

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-27684 LA
)	
CENTURY 21 ALLSTARS, INC. a)	L-1998050435
California corporate broker, dba)	
Century 21 Allstars, Inc., Escrow)	
Division; JOSEPH GARCIA)	
VILLAESCUSA, individually and as)	
designated officer of Century 21)	
Allstars, Inc.; NAHED BENYAMEIN;)	
ANTONIO MONTALVO; MARIA EUGENIA)	
SHAKIBAEI; and JOSE ANTONIO)	
GRACIANO,)	
)	
Respondents.)	

DECISION AFTER REJECTION

The matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on January 11, 12, 13, 14, 19, 20, and 21, 1999.

Sean Crahan, Counsel, represented the Complainant.

Respondents appeared and were represented by Michael A. Lanphere of Tredway, Lumsdiane & Doyle, LLP.

1 Evidence and written arguments were received and the
2 matter stood submitted on January 21, 1999.

3 On February 19, 1999, the Administrative Law Judge
4 submitted a Proposed Decision which I declined to adopt as the
5 decision of the Real Estate Commissioner. Pursuant to Section
6 11517(c) of the Government Code of the State of California,
7 Respondents were served with a copy of the Proposed Decision dated
8 February 19, 1999, and with Notice that the case would be decided
9 by me upon the record, including the transcripts of proceedings
10 held on January 11, 12, 13, 14, 19, 20, and 21, 1999, and upon any
11 written argument offered by the parties.

12 Argument dated July 9, 1999, was submitted by
13 Respondents. Argument dated July 20, 1999, was submitted by
14 Complainant.

15 I have given careful consideration to the record in this
16 case, the transcript of proceedings on January 11, 12, 13, 14, 19,
17 20, and 21, 1999 and Arguments submitted by Respondents and
18 Complainant.

19 The following shall constitute the Decision of the Real
20 Estate Commissioner in the above - entitled matter:

21 FINDINGS OF FACT

22 1.

23 The Complainant, Thomas McCrady, a Deputy Real Estate
24 Commissioner of the State of California, brought the Accusation in
25 his official capacity on May 11, 1998.

26 /

27 /



LICENSING

2.

CENTURY 21 ALLSTARS, INC. (hereafter respondent CAI), is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter cited as the Code). At all times herein mentioned, respondent CAI was licensed by the Department of Real Estate of the State of California (hereafter the Department) as a corporate real estate broker, individually, and doing business as Century 21 Allstars, Inc., Escrow Division.

3.

JOSEPH GARCIA VILLAESCUSA (hereafter respondent VILLAESCUSA) is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code").

(a) At all times mentioned herein, respondent VILLAESCUSA was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a real estate broker. Respondent VILLAESCUSA became designated officer of respondent CAI on January 1, 1996 and remained so until on or about March 22, 1998. Respondent VILLAESCUSA was not the designated officer of respondent CAI prior to January 1, 1996.

(b) At all times herein mentioned, respondent VILLAESCUSA directed and controlled the operations of CAI and its agents and employees.

(c) At all times mentioned herein, respondent VILLAESCUSA was and now is a 75% owner of respondent CAI.



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4.

' NAHED BENYAMEIN (hereafter respondent BENYAMEIN) is presently licensed and/or has license rights under the Real Estate Law.

(a) At all times herein mentioned, respondent BENYAMEIN was licensed by the Department as a real estate salesperson.

(b) Respondent BENYAMEIN was at all times herein mentioned in fact employed by respondent CAI but was licensed to broker Florence Christine H. Darnall (Darnall) from 7-1-93 to 7-30-96. Respondent BENYAMEIN became licensed to respondent CAI on or about 7-31-96.

5.

ANTONIO MONTALVO (hereafter respondent MONTALVO) is presently licensed and/or has license rights under the Real Estate Law.

(a) At all times mentioned herein, respondent MONTALVO was and now is licensed by the Department as a real estate salesperson.

(b) Respondent MONTALVO was at all times herein mentioned in fact employed by respondent CAI but was licensed to Darnall from 1-21-94 to 7-28-96. Respondent MONTALVO became licensed to respondent CAI on or about 7-29-96.

(c) Pursuant to stipulation, Respondent MONTALVO was dismissed from the instant proceedings.

6.

MARIA EUGENIA SHAKIBAEI is presently licensed and/or have license rights under the Real Estate Law.

1 (a) At all times mentioned herein, respondent SHAKIBAEI
2 was and now is licensed by the Department as real estate
3 salesperson.

4 (b) Respondent SHAKIBAEI was at all times herein
5 mentioned in fact employed by respondent CAI but was licensed to
6 Darnall from 1-21-94 to 7-28-96. Respondent SHAKIBAEI became
7 licensed to respondent CAI on or about 7-29-96.

8 7.

9 JOSE ANTONIO GRACIANO (hereafter respondent GRACIANO) is
10 presently licensed and/or has license rights under the Real Estate
11 Law.

12 (a) At all times mentioned herein, respondent GRACIANO
13 was and now is licensed by the Department as real estate
14 salesperson.

15 (b) Respondent GRACIANO was at all times herein
16 mentioned in fact employed by respondent CAI but was licensed to
17 Darnall from 12-27-93 to 2-12-96. Respondent GRACIANO was at no
18 time herein relevant licensed to respondent CAI.

19 (c) Pursuant to stipulation outside of the hearing,
20 Respondent MONTALVO was severed from the instant proceedings.

21 8.

22 Respondents BENYAMEIN and SHAKIBAEI in cooperation with
23 employees in CAI's Escrow Division, engaged in the below
24 transactions.

25 9.

26 It was stipulated that all loans in the below
27 transactions were processed in compliance with all applicable



1 FHA/HUD guidelines. Pursuant to a motion by Complainant, FHA/HUD
2 guidelines were and are officially noticed in this proceeding. In
3 substance, those regulations prohibit the seller or agents
4 brokering the transactions from providing the borrower's down
5 payment unless the price is reduced by that amount.¹ The
6 prohibition against sellers and agents from providing down
7 payments was confirmed by respondent's own witness, a mortgage
8 banker.

9 TRANSACTIONS

10 10.

11 14535 Dumont Avenue, Norwalk

12
13
14 ¹ With respect to gift letters, from the Mortgagees' Handbook
15 Application through Insurance (Single Family), page 2-19, FUNDS TO
16 CLOSE. The cash investment in the property must equal the
17 difference between the amount of the insured mortgage, excluding
18 any upfront MIP, and the total cost to acquire the property,
19 including prepaid expenses. ... All funds for the borrower's
20 investment in the property must be verified. Acceptable sources
21 of these funds include: A. Earnest money deposit...B. Savings
22 and checking accounts. ...C. Gift Funds. An outright gift of the
23 cash investment or of equity in the property is acceptable if the
24 donor is a relative of the borrower, the borrower's employer or
25 labor union, a charitable organization, a governmental agency or
26 public entity...to low- and moderate-income families or first time
27 homebuyers, or a close friend. A gift from any other source is
considered an inducement to purchase and requires a reduction to
the sales price. No repayment (of) the gift may be expected or
implied." Page 2.20 "The lender must document the transfer of the
funds from the donor's account to the borrowers account. This may
include...The file must also contain a gift letter, signed by the
donor and the borrower, stating no repayment is required and
showing the donor's name, address, telephone number and
relationship to the borrower ¶ Except for eligible donors as
described above, the donor of the gift or equity credit may not be
a person or entity with an interest in the sale of the property,
such as the seller, real estate agent or broker, builder or any
entity associated with them. Gifts or credits from these sources
must be treated as sales concessions, must be subtracted from the
sales price and may not be considered as assets to close...."



1 (a) On or about 9-30-95, Alejandro Valadez and Maria De
2 Jesus Valadez entered into a contract to purchase the real
3 property located at 14535 Dumont Avenue, Norwalk, California, from
4 respondent BENYAMEIN as seller. Respondents CAI and BENYAMEIN,
5 acting for or in expectation of compensation, represented the
6 purchaser.

7 (b) At the time escrow was opened at CAI on 10-3-95,
8 buyer deposited \$2,000 and was expected to deposit an additional
9 \$3,380, obtain a new first loan of \$136,000 for a total purchase
10 price of \$142,000.

11 (c) On or about 10-3-95, Alejandro Valadez, Maria De
12 Jesus Valadez and Hector Vega applied for a loan from NationsBanc
13 Mortgage Corporation (hereafter NationsBanc) to purchase Dumont.

14 (d) The money for the down payment on the purchase was
15 represented as gifts from Alejandro Valadez's wife, Maria Valadez,
16 and his father, Mariano Valadez.

17 (e) In fact, the gift letters were fictitious. The
18 buyers did not receive the funds as represented in the Gift
19 Letters. Maria Valadez did not give Alejandro Valadez any money
20 to purchase the property.

21 (f) The fact that the Gift Letters were a
22 misrepresentation was known to respondent BENYAMEIN, as she had
23 helped the buyers obtain the letters and knew the money was not
24 from the sources as stated in the Gift Letters. Respondent
25 BENYAMEIN learned from the loan officer that \$5,400 was needed to
26 close the Dumont sale.

27



1 (g) Respondent Benyamein gave \$5,400 to the purported
2 donor, Maria Valadez, who then deposited it into escrow.

3 (h) Respondent BENYAMEIN knew that the gift letter by
4 Maria Valadez representing she had given \$5,400 to Alejandro
5 Valadez was false. Respondent BENYAMEIN provided this money to the
6 donor to help the buyer with their down payment.

7 (i) The escrow for Dumont closed on November 16, 1995.

8 (j) As seller, Respondent BENYAMEIN signed the
9 Certification Addendum to HUD 1 Settlement Statement which states
10 in part:

11 I certify that I have no knowledge of any loans that have
12 been or will be made to the borrower(s), or loans that have
13 been or will be assumed by the borrower(s), for purposes of
14 financing this transaction, other than those described in the
15 sales contract...I certify that I have not and will not pay
16 or reimburse the borrower(s) for any part of the cash down
17 payment. I certify that I have not and will not pay or
18 reimburse the borrower(s) for any part of the borrower's
19 closing costs which have not been previously disclosed in the
20 sales contract (including any addenda).

21 This was a false declaration on a document material to the lender
22 and to HUD.

23 (k) The gift letter was relied on by the lender as
24 genuine. The Certification Addendum to HUD 1 Settlement Statement
25 was a document necessary to close this transaction. The lender
26 did not know that the gift letter was false or that respondent
27 BENYAMEIN provided the funds.

11.

5285 Clark Street, Lynwood

28 (a) On or about 3-18-95, Francisco Hernandez and Laura
29 Hernandez entered into a contract to purchase the real property
30 located at 5285 Clark Street, Lynwood from sellers Richard and

1 Theresa Chiesa. Respondents CAI and SHAKIBAEI, acting for or in
2 expectation of compensation, represented both the purchaser and
3 seller.

4 (b) At the time escrow was opened at CAI on 3-23-95,
5 buyer deposited \$1,000 and was expected to deposit an additional
6 \$2,750, obtain a new first loan of \$120,250 for a total purchase
7 price of \$124,000.

8 (c) On or about 4-17-95, Francisco Hernandez, Raul
9 Garfias and Mario Monroy applied for a loan from NationsBanc to
10 purchase Clark.

11 (d) The money for the down payment on the purchase was
12 represented as a gift from Francisco Hernandez' aunt, Maria
13 Monroy. Further, under a family agreement, Francisco Hernandez
14 agreed to be a gift donor to Maria Monroy, also known as Sonia
15 Pelayo, in her purchase of the property on Platt (see below).

16 (e) In fact, the gift letter was fictitious. Hernandez
17 did not receive the funds as represented in the Gift Letter.

18 (f) The fact that the Gift Letter was a
19 misrepresentation was known to SHAKIBAEI, as she had helped the
20 buyers obtain the letter and knew the money was not from the
21 source as stated in the Gift Letter.

22 (g) Hernandez deposited \$2,000 toward the purchase
23 price. Respondent SHAKIBAEI told Hernandez that a gift letter
24 from Maria Monroy was necessary to create the appearance that
25 Maria Monroy would give Hernandez \$5,000. Respondent SHAKIBAEI
26 provided the blank gift letter to Hernandez. The gift letter was
27 completed by persons unknown representing that Maria Monroy gave



1 \$5,000 to Hernandez and the gift letter was then submitted to the
2 lender. Maria Monroy in fact provided no money to Hernandez to
3 purchase Clark.

4 (h) Respondent SHAKIBAEI knew that the seller would
5 provide and did provide the funds to the donor to deposit for the
6 buyer. In all cases of gifted funds, the funds were provided to
7 the purported donors rather than the buyers. Respondent SHAKIBAEI
8 would, in this transaction and in all transactions herein, learn
9 from the loan officer how much money was needed for the buyer from
10 the "good faith estimate". Respondent SHAKIBAEI purchased the
11 cashier's check in the amount of \$5,000 from her checking account
12 with seller's funds, and referenced Maria Monroy's name on the
13 cashier's check. This cashier's check was then deposited into
14 escrow. Respondent SHAKIBAEI requested the escrow amendment which
15 released \$5,000 back to the seller on 4-6-95, prior to close.

16 (i) Escrow for Clark closed on 4-28-95. The lender
17 relied on the gift letter as genuine. Respondent SHAKIBAEI
18 received a commission of \$3,720 in the sale of Clark.

19 12.

20 6225 Hoover Avenue, Los Angeles

21 (a) On or about 1-21-95, Bacilio Ortega, Gloria Ramirez
22 and Veronica Chavez entered into a contract to purchase the real
23 property located at 6225 Hoover Avenue, Los Angeles, California,
24 from seller Maria S. Lopez. Respondents CAI and SHAKIBAEI, acting
25 for or in expectation of compensation, represented
26 both the purchaser and the seller.

27



1 (b) At the time escrow was opened at CAI on 3-23-95,
2 buyer deposited \$1,000 and was expected to deposit an additional
3 \$2,450, obtain a new first loan of \$111,550 for a total purchase
4 price of \$115,000.

5 (c) On or about 2-23-95, Gloria Ramirez, Veronica
6 Chavez and Bacilio Ortega completed a loan application for the
7 above property with NationsBanc. Respondent SHAKIBAEI acted as
8 Spanish/English interpreter when buyers applied for the loan and
9 was thus fully aware of what was discussed with respect to the
10 loan applications.

11 (d) The money for the down payment on the purchase was
12 represented as a gift from Gloria Ramirez' sister, Patricia Perez,
13 and uncle, Raul Hernandez. Respondent SHAKIBAEI was present as
14 interpreter for buyers during the loan application process when
15 the loan officer informed buyers they needed to show money coming
16 from a relative. Patricia Perez, the donor, completed the gift
17 letter and delivered it to respondent SHAKIBAEI who then delivered
18 it. It became part of the loan file and was relied on by the
19 lender.

20 (e) In fact, the gift letters were fictitious. Gloria
21 Ramirez did not receive the funds as represented in the Gift
22 Letters.

23 (f) The fact that the Gift Letters were a
24 misrepresentation was known to respondent SHAKIBAEI, as she had
25 helped the buyers obtain the letters and knew the money was not
26 from the sources as stated in the Gift Letters.

27



1 (g) Respondent SHAKIBAEI, during negotiations for the
2 sale of Hoover, asked seller Maria S. Lopez to help to provide the
3 down payment to the buyer. Respondent SHAKIBAEI purchased the
4 \$5,000 cashier's check from her own checking account, with
5 seller's funds, referencing the donor Patricia Perez and
6 designated by respondent SHAKIBAEI for "Hoover". Respondent
7 SHAKIBAEI deposited this cashier's check into escrow. The
8 cashier's check was copied by escrow to the lender along with the
9 gift letter.

10 (h) To return this money to seller, respondent
11 SHAKIBAEI requested escrow to prepare the escrow amendment pre-
12 releasing the \$5,000 back to seller Lopez, which was released to
13 Lopez on 2-21-95.

14 (i) This pre-closing release, "pre-release", was part
15 of a regular plan, repeated in other transactions, described by
16 respondents to help the buyer with the down payment. In fact, it
17 was the means by which the provider of the buyer's down payments
18 were repaid prior to close of escrow. These "pre-releases" were
19 never copied to the lender.

20 (j) The escrow for Hoover closed on 3-13-95.
21 Respondent SHAKIBAEI received \$3,300 designated as a commission.

22 13.

23 14523 S. White Avenue, Compton

24 On or about 2-15-95, Juan J. Mota and Norberto Arreola
25 entered into a contract to purchase the real property located at
26 14523 S. White Avenue, Compton, California, from respondent
27 SHAKIBAEI. Respondents CAI and SHAKIBAEI, acting for or in

1 expectation of compensation, represented the buyer. Buyer Mota
2 put only \$500 down. Buyer Areola put nothing down.

3 (b) At the time escrow was opened at CAI on 2-17-95,
4 buyer deposited \$500 and was expected to deposit an additional
5 \$3,370, obtain a new first loan of \$125,130 for a total purchase
6 price of \$129,000.

7 (c) On or about 2-23-95, Juan Mota and Norberto Arreola
8 applied for a loan from NationsBanc to purchase White.

9 (d) The money for the down payment on the purchase was
10 represented as a gift of \$8,000 from Mota's sister, Enriqueta
11 Escobar.

12 (e) In fact, the gift letter was fictitious.

13 (f) The fact that the \$8,000 Gift Letter was a
14 misrepresentation was known to SHAKIBAEI. Respondent SHAKIBAEI,
15 as in other transactions described herein, learned from the loan
16 officer that \$8,000 was needed to close the White sale.
17 Respondent SHAKIBAEI then purchased the \$8,000 cashier's check,
18 referencing on said cashier's check the name Enriqueta Escobar
19 from her account.

20 (g) Pursuant to escrow instructions, \$6,000 was
21 released to Respondent SHAKIBAEI on 3-15-95.

22 (h) The escrow for White, conducted by respondent CAI,
23 closed on 3-24-95. As sellers, Respondent SHAKIBAEI and her
24 husband signed the Certification Addendum to HUD 1 Settlement
25 Statement which contained the same statement quoted in paragraph
26 10(j) above (Dumont property). This was a false declaration on a
27 document material to the lender and HUD.



12154 Cheshire Street, Norwalk.

(a) On or about 10-17-95, Abel Contreras, Evangelina Contreras, Guadalupe Herrera and Inocencio Contreras entered into a contract to purchase the real property located at 12154 Cheshire Street, Norwalk, California, from respondent SHAKIBAEI. Respondents CAI and SHAKIBAEI, acting for or in expectation of compensation, represented the buyer.

(b) At the time escrow was opened at CAI on 10-18-95, buyer deposited \$1,000 and was expected to deposit an additional \$2,780, obtain a new first loan of \$122,220 for a total purchase price of \$126,000. Contreras deposited \$1,000 toward the purchase of Cheshire.

(c) On or about 11-16-95, Abel Contreras, Evangelina Contreras, Guadalupe Herrera and Ricardo Ramos applied for a loan from NationsBanc to purchase Cheshire. Respondent SHAKIBAEI acted as translator when Abel Contreras applied for the loan.

(d) The down payment on the purchase was represented as a gift of \$7,500 from Abel Contreras "sister", Patricia Salazar. Neither Abel Contreras nor his wife, Evangelina, knew Patricia Salazar.

(e) In fact, the gift letter was fictitious. Abel Contreras did not receive the funds as represented in the Gift Letter.

(f) The fact that the Gift Letter was a misrepresentation was known to SHAKIBAEI, as she had helped the buyers obtain the letter and knew the money was not from the



1 sources as stated in the Gift Letter. Respondent SHAKIBAEI knew
2 at the outset that she was going to assist Contreras with the down
3 payment. Respondent SHAKIBAEI learned from the loan officer that
4 buyer would need an additional \$7,500 to close the purchase.
5 Respondent SHAKIBAEI provided \$7,500 to the gift donor, Patricia
6 Salazar, who then purchased the cashier's check which was
7 deposited in escrow and copied to the lender. Respondent
8 SHAKIBAEI, as seller, signed escrow commission instructions to pay
9 CAI \$7,560, which was paid to CAI at close. Respondent SHAKIBAEI
10 received \$2,430 designated as commission. Disposition of the
11 remaining \$5,130 is unknown.

12 (g) The escrow for Cheshire, conducted by respondent
13 CAI, closed on 11-29-95. Respondent SHAKIBAEI received \$1,215,
14 designated as commission, at the close.

15 15.

16 3910 Platt Avenue, Lynwood.

17 (a) On or about 6-19-95, Francisco and Sonia Pelayo
18 entered into a contract to purchase the real property located at
19 3910 Platt Avenue, Lynwood, California, from seller Ruby Jean
20 Hooks. The Pelayos deposited \$1,000 toward the purchase of Platt.
21 Respondents CAI and SHAKIBAEI, acting for or in expectation of
22 compensation, represented both the purchaser and the seller.

23 (b) At the time escrow was opened at CAI on 10-18-95,
24 buyer deposited \$1,000 and was expected to deposit an additional
25 \$3,020, obtain a new first loan of \$129,980 for a total purchase
26 price of \$134,000.

27



1 (c) On or about 6-26-95, Francisco and Sonia Pelayo,
2 Victor Granéro and Andres Ramirez applied for a loan from
3 NationsBanc to purchase Platt.

4 (d) The money for the down payment on the purchase was
5 represented as a gift of \$7,500 from Sonya Pelayo's brother in
6 law, Francisco Hernandez (purchaser of Clark, see above) to Sonia
7 Pelayo. Respondent SHAKIBAEI informed Sonia Pelayo that this gift
8 letter was necessary in order for Sonia Pelayo to qualify for the
9 loan.

10 (e) In fact, the gift letter was not true. Sonia Pelayo
11 did not receive the funds as represented in the Francisco
12 Hernandez Gift Letter.

13 (f) The fact that the Gift Letter was a
14 misrepresentation was known to SHAKIBAEI, as she had helped the
15 buyers obtain the letter. Respondent SHAKIBAEI purchased the
16 cashier's check of \$7,500 from her own account, referencing the
17 name of Francisco Hernandez on the cashier's check. That
18 cashier's check was deposited into escrow and copied to the lender
19 along with the Hernandez gift letter. Pursuant to an escrow
20 amendment reciting fictitious repairs, \$4,000 was paid to Norollah
21 Ghamari on 8-2-95 who then paid this money over to Respondent
22 SHAKIBAEI. While the testimony of respondent SHAKIBAEI is
23 unclear as to the source of funds she used to purchase the
24 cashier's check, it is clear that \$4,000 of it was her own funds
25 because she received that amount back from Ghamari.

26
27



1 (g) The escrow for Platt, conducted by respondent CAI,
2 closed on 8-2-95. Respondent SHAKIBAEI received compensation of
3 \$4,020 for the sale of Platt.

4 PRIOR DISCIPLINARY ACTION

5 (a) Effective March 24, 1998, in case H-26746 LA, the
6 real estate corporate broker license of respondent CENTURY 21
7 ALLSTARS, INC. was suspended for 90 days, stayed on terms and
8 conditions. The real estate broker license of respondent JOSEPH
9 GARCIA VILLAESCUSA was revoked with a right to a restricted real
10 estate broker license subject to terms and conditions for
11 violation of Code Sections 10130, 10137, 10177(g) and 10177(h),
12 effective March 24, 1998.

13 (b) In H-26742 LA before the Department, the corporate
14 real estate license of CENTURY 21 ALLSTARS, INC. was revoked with
15 a right to a restricted license and the broker license of JOSEPH
16 GARCIA VILLAESCUSA was revoked with a right to a restricted broker
17 license. After remand to consider the facts and discipline
18 ordered in H-26746 LA, the restricted licenses of respondents
19 CENTURY 21 ALLSTARS, INC. and JOSEPH GARCIA VILLAESCUSA were, in
20 addition, suspended for 100 days with provisions for a stay,
21 effective October 29, 1998.

22 DETERMINATION OF ISSUES

23 1.

24 (a) Respondents BENYAMEIN and SHAKIBAEI committed
25 dishonest dealing in soliciting sellers to provide the down
26 payments for the buyers, or, when acting as sellers, providing the
27 down payments themselves. Aggravating their conduct was their



1 concealment of the source of the down payments by inserting the
2 name of the "donor" on the cashier's checks. They knew that gift
3 letters from these "donors" would be executed, in the amounts of
4 the cashier's checks purchased.

5 (b) In executing the Certification Addendum to HUD-1
6 Settlement Statements in their respective transactions as sellers,
7 these constituted false declarations to HUD. Executing these
8 declarations leaves no doubt that these respondents knew that what
9 they were doing, soliciting sellers to provide or providing the
10 down payments, was at the very least, dishonest.

11 2.

12 The conduct or omissions of respondent BENYAMEIN set
13 forth in paragraph 10, above, subject her real estate license to
14 suspension or revocation under Business and Professions Code
15 Business and Professions Code (hereinafter referred to as the
16 "Code") Section 10177(j) for fraud or dishonest dealing in a
17 transaction where respondent was acting as seller of her own
18 property.

19 3.

20 The conduct or omissions of respondent SHAKIBAEI set
21 forth above subject her real estate license to suspension or
22 revocation under the following Code Sections

23 (a) Code Section 10176(a) for the making of substantial
24 misrepresentations to NationsBanc Mortgage Corporation, as set
25 forth in paragraphs 11, 12 and 15 in transactions in which
26 Respondent SHAKIBAEI was acting in the capacity for which a real
27 estate license was required.

1 (b) Code Section 10176(i) for fraud or dishonest
2 dealing toward NationsBanc Mortgage Corporation, in transactions
3 in which Respondent SHAKIBAEI was acting in the capacity for which
4 a real estate license was required, as set forth in paragraphs 11,
5 12 and 15, above.

6 (c) Code Section 10177(j) for fraud or dishonest
7 dealing in those transactions where respondent SHAKIBAEI was
8 acting as seller of her own properties, as set forth in paragraphs
9 13 and 14, above.

10 4.

11 Respondents raised issues of the statute of limitations,
12 res judicata and latches in pre-hearing motions. The ALJ denied
13 all those motions in an Order dated 12-21-98. The Order of the ALJ
14 was adopted on 1-7-99. Respondent in their arguments after non-
15 adoption of of the ALJ's Proposed Decision contained to raise
16 these arguments. Review of the record at this time does not
17 preclude review of these rulings by the ALJ by way of
18 reconsideration.

19 5.

20 (a) It was alleged in paragraph 22 of the Accusation
21 that respondents CAI and VILLAESCUSA failed to timely inform the
22 Department of the employment by CAI of respondents BENYAMEIN,
23 MONTALVO, SHAKIBAEI and GRACIANO, in violation of Regulation 2752
24 as found in Title 10, Chapter 6, California Code of Regulations
25 (hereafter Regulations).

26

27



1 (b) These persons became licensed to respondent CAI
2 from time to time in July, 1996, as found above in the Licensing
3 paragraphs.

4 (c) In a prior disciplinary action, case numbered
5 H-26742 LA, respondent CAI, and its prior designated officer
6 Florence Christine H. Darnall and respondent VILLAESCUSA were
7 found to have violated Regulation 2752, based on an audit of CAI's
8 licensed activities from 1-4-95 to 10-31-96 in that respondents
9 CAI and VILLAESCUSA failed to notify the department of the
10 employment of approximately 12 salespersons. Those salespersons
11 were not identified in either the Decision or in its audit report.

12 (d) Respondent VILLAESCUSA was not the designated
13 officer of respondent CAI prior to January 1, 1996.

14 (e) The disciplinary action imposed in H-26742 LA,
15 based in part on the failure to report the employment of 12
16 licensees, was based on violations during a time period which
17 brackets the time period alleged in the accusation filed in this
18 instant proceeding. Respondents have established good cause to
19 dismiss paragraph 22 of the instant accusation. Therefore, no
20 cause has been established to discipline the licenses of
21 respondents CAI and VILLAESCUSA under Code Section 10177(d) for
22 violation of Regulation 2752.

23 6.

24 Respondent raises the three year statute of limitations
25 set forth in Code Section 10101 as to the Clark, Hoover and White
26 transactions. As to the statute of limitations, all transactions
27 set forth were part of common scheme engaged in by respondent



1 SHAKIBAEI. All transactions had in common the purchase by
2 Respondent Shakibaei of the cashier's checks, referencing on those
3 checks the gift "donor" names and their subsequent deposit into
4 escrow for credit as buyer's down payment. Under Code Section
5 10101, the accusation must be filed within three years from the
6 "alleged grounds" for disciplinary action. The "alleged grounds"
7 implies a broader concept than the occurrence of "acts" or of
8 individual "transactions". The accusation was filed within the
9 three years after the close of the more recent of the
10 transactions. Therefore, the defense of the statute of
11 limitations cannot be sustained.

12 7.

13 Respondents raised the defense of laches based on the
14 fact that respondent CAI was subject to two or three separate
15 investigations, during which the Department was apprised of facts
16 which would raise suspicions of loan fraud taking place. The
17 prior investigations led to the disciplinary actions above set
18 forth which were largely for audit and licensing violations.
19 Suspicions of loan fraud alone are insufficient to file an
20 accusation. The investigation which lead to the current
21 accusation was on-going, performed by successive deputy real
22 estate commissioners culminating finally with Deputy Hatt who
23 undertook interviews with the various respondents. It is noted
24 that the transactions in the instant proceedings occurred after
25 the audit periods set forth in the prior investigations. Nor were
26 the instant transactions identified in the prior investigations.

27



1 Respondents claims of latches do not bar the Department's conduct
2 of the later investigation and resulting instant proceedings.

3 8.

4 (a) In the presentation of their claims of latches,
5 respondents called the Department Auditor with regard to
6 conversations she had with Respondent Villaescusa in or about
7 February, 1995. Respondent Villaescusa had told her that the
8 "pre-releases" were used for the purpose of helping the buyers
9 with their down payments. VILLAESCUSA mentioned this practice was
10 used particularly by respondents BENYAMEIN and SHAKIBAEI. While
11 this imputes "guilty knowledge", at the time of this interview, on
12 Respondent VILLAESCUSA, of the essential elements of the
13 fraudulent scheme which was ongoing, the investigation was then
14 incomplete. This defense cuts both ways.

15 9.

16 (a) While it is apparent respondent VILLAESCUSA knew
17 what respondent's BENYAMEIN and SHAKIBAEI were doing, at the time
18 of the transactions herein, which were subsequent to his interview
19 with the Department's auditor, respondent VILLAESCUSA was not the
20 designated officer of respondent CAI until January 1, 1996 and
21 thus had no duty of supervision during the times of the herein
22 transactions. His knowledge, alone, without involvement, is
23 insufficient to subject him to disciplinary action.

24 (b) The evidence established that respondent
25 VILLAESCUSA had no active involvement in the fraudulent parts of
26 the transactions. His only contact with the transactions was the
27 initialing of some of the escrow ledgers and the commission



1 disbursal statements.

2 (c) No evidence was presented to show that he counseled
3 or encouraged the fraudulent conduct.

4 (d) No cause has been established to subject respondent
5 VILLAESCUSA or CAI to disciplinary action.

6 10.

7 The candid interview and testimony of respondent's NAHED
8 BENYAMEIN and MARIA SHAKIBAEI justify the following Order.

9 ORDER

10 WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

11 1.

12 All licenses and license rights of Respondent NAHED
13 BENYAMEIN under Part 1 of Division 4 of the Business and
14 Professions Code are revoked; provided, however, a restricted real
15 estate salesperson license shall be issued to Respondent NAHED
16 BENYAMEIN pursuant to Section 10156.5 of the Code if Respondent
17 makes application therefor and pays to the Department of Real
18 Estate the appropriate fee for said licenses within ninety (90)
19 days from the effective date of the Decision. The restricted
20 license issued to Respondent NAHED BENYAMEIN shall be subject to
21 all of the provisions of Section 10156.7 of the Business and
22 Professions Code and to the following limitations, conditions and
23 restrictions imposed under authority of Section 10156.6 of said
24 Code. The restricted license issued to Respondent NAHED BENYAMEIN
25 shall be subject to all of the provisions of Section 10156.7 of
26 the Business and Professions Code and to the following
27 limitations, conditions and restrictions imposed under authority

modified

1 of Section 10156.6 of said Code:

2 (1) The restricted license may be suspended prior
3 to hearing by order of the Real Estate Commissioner in the event
4 of Respondent NAHED BENYAMEIN's conviction or plea of nolo
5 contendere to a crime which bears a significant relation to
6 Respondent's fitness or capacity as a real estate licensee.

7 (2) The restricted license may be suspended prior
8 to hearing by Order of the Real Estate Commissioner on evidence
9 satisfactory to the Commissioner that Respondent NAHED BENYAMEIN
10 has, during the time he holds a restricted license, violated
11 provisions of the California Real Estate Law, the Subdivided Lands
12 Law, Regulations of the Real Estate Commissioner, or the
13 conditions attaching to these restricted licenses.

14 (3) Respondent NAHED BENYAMEIN shall not be
15 eligible to apply for the issuance of an unrestricted real estate
16 license nor the removal of any of the conditions, limitations or
17 restrictions of a restricted license until three (3) years have
18 elapsed from the date of issuance of the restricted license to
19 Respondent.

20 (4) Respondent NAHED BENYAMEIN shall submit with
21 any application for license under an employing broker, or any
22 application for transfer to a new employing broker, a statement
23 signed by the prospective employing real estate broker on a form
24 approved by the Department of Real Estate which shall certify:

25 (a) That the employing broker has read the
26 Decision of the Commissioner which granted the
27 right to a restricted license; and

Modified

1 (b) That the employing broker will exercise
2 close supervision over the performance by the
3 restricted licensee relating to activities for
4 which a real estate license is required.

5 (5) Respondent NAHED BENYAMEIN shall, within six
6 (6) months from the effective date of this Decision, take and pass
7 the Professional Responsibility Examination administered by the
8 Department including the payment of the appropriate examination
9 fee. If Respondent fails to satisfy this condition, the
10 Commissioner may order suspension of Respondent's license until
11 Respondent passes the examination.

12 (6) Respondent NAHED BENYAMEIN shall, within nine
13 (9) months from the effective date of this Decision, present
14 evidence satisfactory to the Real Estate Commissioner that
15 Respondent has, since the most recent issuance of an original or
16 renewal real estate license, taken and successfully completed the
17 continuing education requirements of Article 2.5 of Chapter 3 of
18 the Real Estate Law for renewal of a real estate license. If
19 Respondent fails to satisfy this condition, the Commissioner may
20 order the suspension of the restricted license until the
21 Respondent presents such evidence. The Commissioner shall afford
22 Respondent the opportunity for a hearing pursuant to the
23 Administrative Procedure Act to present such evidence.

24 2.

25 All licenses and license rights of Respondent MARIA
26 EUGENIA SHAKIBAEI under Part 1 of Division 4 of the Business and
27 Professions Code are revoked; provided, however, a restricted real

Modified



1 estate salesperson license shall be issued to Respondent MARIA
2 EUGENIA SHAKIBAEI pursuant to Section 10156.5 of the Code if
3 Respondent makes application therefor and pays to the Department
4 of Real Estate the appropriate fee for said licenses within ninety
5 (90) days from the effective date of the Decision. The restricted
6 license issued to Respondent MARIA EUGENIA SHAKIBAEI shall be
7 subject to all of the provisions of Section 10156.7 of the
8 Business and Professions Code and to the following limitations,
9 conditions and restrictions imposed under authority of Section
10 10156.6 of said Code. The restricted license issued to Respondent
11 MARIA EUGENIA SHAKIBAEI shall be subject to all of the provisions
12 of Section 10156.7 of the Business and Professions Code and to the
13 following limitations, conditions and restrictions imposed under
14 authority of Section 10156.6 of said Code:

15 (1) The restricted license may be suspended prior
16 to hearing by order of the Real Estate Commissioner in the event
17 of Respondent MARIA EUGENIA SHAKIBAEI's conviction or plea of nolo
18 contendere to a crime which bears a significant relation to
19 Respondent's fitness or capacity as a real estate licensee.

20 (2) The restricted license may be suspended prior
21 to hearing by Order of the Real Estate Commissioner on evidence
22 satisfactory to the Commissioner that Respondent MARIA EUGENIA
23 SHAKIBAEI has, during the time he holds a restricted license,
24 violated provisions of the California Real Estate Law, the
25 Subdivided Lands Law, Regulations of the Real Estate Commissioner,
26 or the conditions attaching to these restricted licenses.

27 (3) Respondent MARIA EUGENIA SHAKIBAEI shall not



1 be eligible to apply for the issuance of an unrestricted real
2 estate license nor the removal of any of the conditions,
3 limitations or restrictions of a restricted license until three
4 (3) years have elapsed from the date of issuance of the restricted
5 license to Respondent.

6 (4) Respondent MARIA EUGENIA SHAKIBAEI shall
7 submit with any application for license under an employing broker,
8 or any application for transfer to a new employing broker, a
9 statement signed by the prospective employing real estate broker
10 on a form approved by the Department of Real Estate which shall
11 certify:

12 (a) That the employing broker has read the
13 Decision of the Commissioner which granted the
14 right to a restricted license; and

15 (b) That the employing broker will exercise
16 close supervision over the performance by the
17 restricted licensee relating to activities for
18 which a real estate license is required.

19 (5) Respondent MARIA EUGENIA SHAKIBAEI shall,
20 within six (6) months from the effective date of this Decision,
21 take and pass the Professional Responsibility Examination
22 administered by the Department including the payment of the
23 appropriate examination fee. If Respondent fails to satisfy this
24 condition, the Commissioner may order suspension of Respondent's
25 license until Respondent passes the examination.

26 (6) Respondent MARIA EUGENIA SHAKIBAEI shall,
27 within nine (9) months from the effective date of this Decision,



1 present evidence satisfactory to the Real Estate Commissioner that
2 Respondent has, since the most recent issuance of an original or
3 renewal real estate license, taken and successfully completed the
4 continuing education requirements of Article 2.5 of Chapter 3 of
5 the Real Estate Law for renewal of a real estate license. If
6 Respondent fails to satisfy this condition, the Commissioner may
7 order the suspension of the restricted license until the
8 Respondent presents such evidence. The Commissioner shall afford
9 Respondent the opportunity for a hearing pursuant to the
10 Administrative Procedure Act to present such evidence.

11 3.

12 The Accusation is dismissed as to respondents CENTURY 21
13 ALLSTARS, INC., JOSEPH GARCIA VILLAESCUSA and ANTONIO MONTALVO.

14 4.

15 The standard of proof applied was clear and convincing
16 proof to a reasonable certainty.

17
18 This Decision shall become effective at 12 o'clock noon
19 on September 15, 1999.

20 IT IS SO ORDERED Aug 26, 1999.

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23 JOHN R. LIBERATOR
24 Acting Real Estate Commissioner
25 By Robin T. Wilson, Chief Counsel

26 Robin S. Wilson
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Suits

By Laura B. Cron

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-27684 LA
CENTURY 21 ALLSTARS, INC.)	L-1998050435
a California corporate broker)	
dba Century 21 Allstars, Inc.,)	
Escrow Division; JOSEPH GARCIA)	
VILLAESCUSA, individually and as)	
designated officer of Century 21)	
Allstars, Inc.; NAHED BENYAMEIN;)	
MARIA EUGENIA SHAKIBAEI;)	
)	
Respondents.)	

NOTICE

TO: CENTURY 21 ALLSTARS, INC; JOSEPH GARCIA VILLAESCUSA;
NAHED BENYAMEIN; MARIA EUGENIA SHAKIBAEI;

and

MICHAEL A. LANPHERE and MARTIN DACK, their counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated February 19, 1999, of the Administrative Law
Judge is not adopted as the Decision of the Real Estate
Commissioner. A copy of the Proposed Decision dated February
19, 1999, is attached hereto for your information.

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In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on January 11, 12, 13, 14, 19, 20 & 21, 1999, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of January 11, 12, 13, 14, 19, 20 & 21, 1999, at the Los Angeles Office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of complainant to be considered by me must be submitted within 15 days after receipt of the argument of respondent at the Los Angeles Office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: March 15, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

lbo

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. H-27684 LA
)	
CENTURY 21 ALLSTARS, INC. a)	OAH No. 1998050435
California corporate broker, dba)	
Century 21 Allstars, Inc., Escrow Division)	
JOSEPH GARCIA VILLAESCUSA,)	
Individually and as designated officer of)	
Century 21 Allstars, Inc.;)	
NAHED BENYAMEIN;)	
MARIA EUGENIA SHAKIBAEI,)	
)	
Respondents.)	
)	

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 11, 12, 13, 14, 19, 20 and 21, 1999.

Sean Crahan, Staff Counsel, represented the complainant.

Respondents appeared in person and were represented by Michael A. Lanphere and Martin Dack, Attorneys at Law.

Oral and documentary evidence and evidence by way of stipulation and official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, determines, and orders as follows:

PARTIES AND JURISDICTION

1.

The Complainant, Thomas Mc Crady, A Deputy Real Estate Commissioner of the State of California, brought the accusation, in his official capacity.

Century 21 Allstars, inc. (hereafter respondent CAI), is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter cited as the Code). At all times herein mentioned, respondent CAI was licensed by the Department of Real Estate of the State of California (hereafter the Department) as a corporate real estate broker, individually, and doing business as Century 21 Allstars, Inc., Escrow Division.

3.

Joseph Garcia Villaescusa (hereafter respondent Villaescusa) is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Code.

4.

(A) At all times mentioned herein, respondent Villaescusa was and now is licensed by the Department as designated office of respondent CAI.

(B) Pursuant to Code Section 10159.2, respondent Villaescusa was responsible for the supervision of the activities of officers, agents and employees of respondent CAI for which a real estate license was required.

(C) At all times herein mentioned, respondent Villaescusa directed and controlled the operations of CAI and its agents and employees.

(D) At all times mentioned herein, respondent Villaescusa was and now is the owner of respondent CAI.

5.

(A) Nahed Benyamein (hereafter respondent Benyamein) is presently licensed and has license rights under the Real Estate Law.

(B) At all times herein mentioned, respondent Benyamein was licensed by the Department as a real estate salesperson.

(C) Respondent Benyamein was at all times herein mentioned was employed by respondent CAI but was licensed to broker Florence Christine H. Darnall (Darnall) from 7-1-93 to 7-30-96. Respondent Benyamein became licensed to respondent CAI on or about 7-31-96 (month-day-year throughout decision).

6.

(A) Maria Eugenia Shakibaei (hereafter respondent Shakibaei) is presently licensed and has license rights under the Real Estate Law.

(B) At all times mentioned herein, respondent Shakibaei was and now is licensed by the Department as real estate salesperson.

(C) Respondent Shakibaei was at all times herein mentioned employed by respondent CAI but was licensed to Darnall from 1-21-94 to 7-28-96. Respondent Shakibaei became licensed to respondent CAI on or about 7-29-96.

7

(a) At the request of complainant and thereafter for good cause shown, Antonio Montalvo was dismissed, as respondent, from the accusation.

(b) By motion of complainant paragraphs 12 and 21 were stricken from the accusation and no Findings are made thereon.

8

All prehearing jurisdictional requirements have been met. Jurisdiction for this proceeding does exist.

FINDINGS OF FACT
RE:
ACCUSATION

9

14535 Dumont Avenue, Norwalk

(A) On 9-30-95, Alejandro Valadez and Maria De Jesus Martinez entered into a contract to purchase the real property located at 14533 Dumont Avenue, Norwalk, California, from respondent Benyamein as seller. Respondents CAI and Benyamein, acting for or in expectation of compensation, represented the purchaser. On 10-3-95, Alejandro Valadez, Maria De Jesus Valadez and Hector Vega completed a loan application for the above property with NatinsBanc Mortgage Corporation (hereafter NationsBanc).

(B) The money for the down payment on the purchase was represented as gifts from Alejandro Valadez's wife, Maria Valadez, and his father, Mariano Valadez. In fact, the gift letters were fictitious. The buyers did not receive the funds as represented in the Gift Letters. Maria Valadez did not give Alejandro Valadez any money to purchase the property. The escrow for his transaction was conducted by respondent CAI and closed 11-6-95.

(C) It was not established that the fact that the Gift Letters were a misrepresentation was known to respondent Benyamein and it was not established that said respondent helped the buyers obtain the letters. It was not established that said respondent knew the money was not from the sources as stated in the Gift Letters.

3

12106 Lowemont Street, Norwalk

(A) On or about 5-3-95, Edgar M. Cortes and Baltazar Aguiniga entered into a contract to purchase the real property located at 12106 Lowemont Street, Norwalk, California, from respondent Benyamein and Nashat Benyamein as sellers. Respondents CAI acting through its agent and acting for or in expectation of compensation, represented the purchaser. On or about 5-16-95, Edgar M. Cortes, Baltazar Aguiniga and Salvador Mora completed a loan application for the Lowemont property with NationsBanc.

(B) The money for the down payment on the purchase was represented as a gift from Edgar Cortez' cousin, Miguel Vargas. In fact, the gift letter was fictitious. Cortes did not receive the funds as represented in the Vargas Gift Letter. Baltazar Aguiniga and Salvador Mora were included in this transaction to qualify Cortes for the purchase but he did not contemplate living on the property. The escrow in this transaction was conducted by Teamwork escrow and closed on 5-26-95.

(C) It was not established that the fact that the Gift Letter was a misrepresentation was known to respondent Benyamein or that she helped the buyers obtain the letter or that she knew the money was not from the sources as sated in the Gift Letter.

5285 Clark Street, Lynwood

(A) On or about 3-18-95, Francisco Hernandez and Laura Hernandez entered into a contract to purchase the real property located at 5285 Clark Street, Lynwood from sellers Richard and Theresa Chiesa. Respondents CAI and Shakibaei, acting for or in expectation of compensation, represented the purchaser and the seller. On 4-17-95, Francisco Hernandez, Raul Garfias and Mario Monroy completed a loan application for said property with NationsBanc.

(B) The money for the down payment on the purchase was represented as a gift from Francisco Hernandez' "aunt", Maria Monroy. In fact, the Gift Letter was fictitious. Hernandez did not receive the funds as represented in the Gift Letter. Maria Monroy isn't Hernandez' aunt. She is his sister in law. The escrow for this transaction was conducted by respondent CAI and closed on 4-28-95.

(C) It was not established that the fact that the Gift Letter was a misrepresentation was known to respondent Shakibaei, or that she helped the buyers obtain the letter or that said respondent knew the money was not from the source as stated in the Gift Letter.

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13923 Longworth Avenue, Norwalk

(A) On 10-15-95, Ramon Acosta, Argelia Acosta and Mario Gomez entered into a contract to purchase the real property located at 13923 Longworth Avenue, Norwalk, from sellers Victorio Cruz and Francisco Padilla. Respondents CAI and Shakibaei, acting for or in expectation for compensation, represented the buyer. On 12-19-95, Ramon Acosta, Argelia Acosta and Mario Gomez completed a loan application for the said property with NationsBanc.

(B) The money for the down payment on the purchase was represented as gifts from Norma Avalos, the cousin of "Mrs. Ramon Acosta" and Maria del Carmen Montano, the aunt of Ramon Acosta. In fact, the Gift Letters were fictitious. The Acostas did not receive the funds as represented in the Gift Letters. They did receive, on loan, approximately \$2,000.00 from relatives. The escrow for this transaction was conducted by respondent CAI and closed on 1-5-96.

(C) It was not established that the fact that the Gift Letters were a misrepresentation was known to respondent Shakibaei or that she had helped the buyers obtain the letters or that she knew the money as not from the sources as stated in the Gift Letters.

6225 Hoover Avenue, Los Angeles

(A) On 1-21-95, Bacilio Ortega, Floria Ramirez and Veronica Chavez entered into a contract to purchase the real property located at 6225 Hoover Avenue, Los Angeles, California, from seller Maria S. Lopez. Respondents CAI and Shakibaei, acting or in expectation of compensation, represented the purchaser and the seller. On or about 2-23-95, Gloria Ramirez, Veronica Chavez and Tony Chavez completed a loan application for the above property with NationsBanc.

(B) The money for the down payment on the purchase was represented as a gift from Gloria Ramirez' sister, Patricia Perez, and Raul Hernandez. In fact, the letters were fictitious. The buyers did not receive the funds as represented in the Gift Letters. Bacilio Ortega was on the loan to qualify the purchasers. The escrow for this transaction was conducted by respondent CAI and closed on 3-13-95.

(C) It was not established that the fact that the Gift Letters were a misrepresentation was known to respondent Shakibaei or that she had helped the buyers obtain the letters or that she knew the money was not from the sources as stated in the Gift Letters.

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14523 South White Avenue, Compton

(A) On 2-15-95, Juan Mota and Norberto Arreola entered into a contract to purchase the real property located at 14523 S. White Avenue, Compton, California, from respondent Shakibaei. Respondents CAI and Shakibaei, acting for or in expectation of compensation, represented the buyer. On 2-23-95, Juan Mota and Norberto Arreola completed a loan application for the said property with NationsBanc.

(B) The money for the down payment on the purchase was represented as a gift from Mota's sister, Enriqueta Escobar. In fact, the Gift Letters was fictitious. Mota did not receive the funds as represented in the Gift Letter. The escrow for this transaction was conducted by respondent CAI and closed on 3-24-95.

(C) It was not established that the fact that the Gift Letter was a misrepresentation was known to respondent Shakibaei or that as she had helped the buyers obtain the letter or that said respondent knew the money was not from the source as stated in the Gift Letter.

12154 Cheshire Street, Norwalk

(A) On 10-17-95, Abel Contreras, Evangelina Contreras, Guadalupe Herrera and Inocencio Contreras entered into a contract to purchase the real property located at 12154 Cheshire Street, Norwalk, California, from respondent Shakibaei. Respondents CAI and Shakibaei, acting for or in expectation of compensation, represented the buyer. On 11-16-95, Abel Contreras, Evangelina Contreras, Guadalupe Herrera and Ricardo Ramos completed a loan application for the said property with NationsBank.

(B) The down payment on the purchase was represented as gift from Abel Contreras' "sister", Patricia Salazar. In fact, the Gift Letters was fictitious. Abel Contreras did not receive the funds as represented in the Gift Letter. Abel Contreras does not have a sister named Patricia Salazar. The escrow for this transaction was conducted by respondent CAI and closed on 11-29-95.

(C) The Gift Letter was a misrepresentation. It was not established that such fact was known to respondent Shakibaei or that she had helped the buyers obtain the letter or that she knew the money was not from the sources as stated in the Gift Letter.

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4323 W. 164th Street, Lawndale

(A) On 9-16-95, Benjamin and Maria Villalobos entered into a contract to purchase the real property located at 4325 W. 164th Street, Lawndale, California, from respondent Shakibaei. Respondents CAI and Shakibaei, acting for or in expectation of compensation, represented the buyer. On 10-5-95, Benjamin and Maria Villalobos, Roberto Ramirez and Armando Diaz completed a loan applications for said property with NationsBanc.

(B) The money for the down payment on the purchase was represented as gifts from Maria Villalobos' "brother", Anastacio Aguirre. In fact, the gift letter was not true. Maria Villalobos did not receive the funds as represented in the Gift Letter. Benjamin Villalobos does not know Anastacio Aguirre. The escrow for this transaction was conducted by respondent CAI and closed on 10-13-95.

(C) It was not established that the fact that the Gift Letter was a misrepresentation was known to respondent Shakibaei or that as she had helped the buyers obtain the letter or that she said respondent knew the money was not from the sources as stated in the Gift Letter.

3910 Platt Avenue, Lynwood

(A) On 6-19-95, Francisco and Sonia Pelayo entered into a contract to purchase the real property located 3910 Platt Avenue, Lynwood, California, from seller Ruby Jean Hooks. Respondents CAI and Shakibaei, acting for or in expectation of compensation, represented the purchaser and the seller. On 6-26-95, Francisco and Sonia Pelayo, Victor Granero and Andres Ramirez completed a loan application for said property with NationsBanc.

(B) The money for the down payment on the purchase was represented as a gift from Sonia Pelayo's brother in law, Francisco Hernandez. In fact, the gift letters were not true. Sonia Pelayo did not receive the funds as represented in the Francisco Hernandez Gift Letter. The escrow for this transaction was conducted by respondent CAI and closed on 8-2-95.

(C) It was not established that the fact that the Gift Letter was a misrepresentation was known to respondent Shakibaei or that she had helped the buyers obtain the letter.

9930 Rufus Avenue, Whittier

(A) On 7-31-95, Raul Chita and Julio Cesar Alvarez entered into a contract to purchase the real property located at 9930 Rufus avenue, Whittier, California from seller Stanley Edward Bean. Respondents CAI, Benyamein and another licensee acting for or in expectation of

compensation, represented the purchaser and the seller. On 8-22-95, Raul Chita and Julio Cesar Alvarez completed a loan application for the above property with NationsBanc.

(B) The down payment on the purchase was represented as a gift by letter from Raul Chita's uncle, Jose Mario Aparicio and Jesus Cornejo. In fact, the Gift Letter was fictitious. Raul Chita did not receive the funds as represented by that Gift Letter. Raul Chita and Julio Cesar Alvarez were used to qualify for the loan. Escrow for this transaction took place at Teamwork Escrow, Inc. and closed on or about 9-7-95.

(C) The Gift Letter was a misrepresentation. It was not established that the misrepresentation was known to respondent Benyamein or that she had helped the buyer obtain the letter and knew the money was not from the sources as stated.

19

It was not established with regard to the transactions set forth in Findings 9 through 18, or as to any other transaction or at any time or times:

(A) That respondents CAI, Villaescusa, Benyamein, Shakibaei, agreed to engage in the business of buying or selling real properties, as principals or agents for or in expectation of compensation, whereby buyers of real properties would borrow part or all of the down payments to purchase the properties, representing the down payments to be "gifts" and concealing from lenders that the down payments were borrowed, contrary to statements on buyers' loan applications to lenders that no part of their down payments were borrowed.

(B) That respondent Villaescusa advised licensees associated with respondent CAI in the manner and methods of creating fictitious down payments and deposits for buyers who did not have sufficient funds for the down payments or deposits with which to purchase real property.

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All factual allegations of the accusation not found or unfound herein are found and determined not to be established by the facts or the law and are, accordingly, unproved.

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SUPPLEMENTAL FINDINGS

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In large part, the transactions set forth in Findings 9 through 18 involved the purchase of homes by low-income people. Reasonable inferences from the whole of the evidence establish that the purchasers of said properties were satisfied ("happy") with the service rendered by respondents CAI, Benyamein and Shakibaei on the respective properties. The end result was that people with limited resources bought homes, are responsible, and continue to time make payments to the lender (NationsBanc), thus to the lender's benefit. Said owners, in large part, still refer prospective purchasers to said respondents.

22

Respondents Benyamein and Shakebaei have been long term licensees of the Department. Reasonable inferences from the whole of the evidence establish that said respondents have fulfilled the functions and duties of real estate salespersons over that period of time, and that said respondents are professionally and socially responsible.

23

Respondent Villaescusa has been active in the real estate business as a licensee for approximately fourteen years. He is, presently, the owner of CAI as well as it's designated officer. Over the last few years he has invested a considerable amount of his own funds to assure that CAI is in compliance with Departmental laws and regulations. As a result thereof CAI and respondent Villaescusa are presently operating in compliance with all laws, rules and regulations of the Department. Reasonable inferences from the whole of the evidence establish respondent Villaescusa to be professionally an socially responsible.

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CONCLUSIONS OF LAW

1

The conduct of respondent CAI and respondent Benyamein, or either of them, does not constitute a violation of Business and Professions Code (BPC) sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 9.

2

The conduct of respondent CAI and respondent Benyamein, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j) or any of them, by reason of Finding 10.

3

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 11.

4

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 12.

5

The conduct of respondent CAI and respondent Shakibaei, or either of them does not constitute a violation of BPC section 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason Findings 13.

6

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 14.

7

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 15.

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 16.

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason of Finding 17.

The conduct of respondent CAI and respondent Shakibaei, or either of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them, by reason Finding 18.

The conduct of respondents CAI, Villaescusa, Benyamein and Shakibaei, or any of them, does not constitute a violation of BPC sections 10176(a), 10176(i), 10177(d), 10177(g), or 10177(j), or any of them by reason Findings 19 and 20, separately and severally.


DETERMINATION OF ISSUES

No cause exists under the Real Estate law, or any section therein, for discipline of respondents CAI, Villaescusa, Benyamein and Shakibaei, or any of them, by reason of Conclusions of Law 1 through 11, separately and severally.

ORDER

The accusation is dismissed as to all respondents and in its entirety.

Dated: 19 February 1999


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:lp

not adopted

*Supp
Hwy*

Lana B. [Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
CENTURY 21 ALLSTARS, INC., a)	NO. H-27684 LA
California corporate broker, dba)	OAH NO. L-1998050435
Century 21 Allstars, Inc.,)	
Escrow Division; JOSEPH GARCIA)	
VILLAESCUSA, individually and)	
as designated officer of Century 21)	
Allstars, Inc.; NAHED BENYAMEIN;)	
ANTONIO MONTALVO; MARIA EUGENIA)	
SHAKIBAEI; and JOSE ANTONIO GRACIANO,)	
Respondents.)	

ORDER OF ADOPTION

The Rulings dated December 21, 1998, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Rulings of the Real Estate Commissioner in the above-entitled matter.

This Rulings shall become effective at 12 o'clock noon
on January 7, 1999.

IT IS SO ORDERED January 7, 1999.

JOHN R. LIBERATOR
Chief Deputy Commissioner

John R. Liberator

BY: **John R. Liberator**
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
of:

Century 21 Allstars, Inc. a California
corporate broker, dba Century 21
Allstars, Inc., Escrow Division;
Joseph Garcia Villaescusa, individual
and as designated officer of Century 21
Allstars, Inc.; Nahed Benyamein;
Antonio Montalvo; Maria Eugenia
Shakibaei; and Jose Antonio Garciano,

Respondents.

Case No. H-27684 LA
OAH No. L-1998050435

RULINGS RE: MOTION BY
RESPONDENTS TO DISMISS
ACCUSATION AND/OR IN THE
ALTERNATIVE TO EXCLUDE
CERTAIN CLAIMS AND
EVIDENCE OF THE DRE BASED
ON STATUTE OF LIMITATIONS
REQUIREMENTS OF BUSINESS
AND PROFESSIONS CODE
SECTION 10101; AND MOTION
BY RESPONDENTS TO DISMISS
THE ACCUSATION OF THE DRE
BASED ON THE DOCTRINES
OF RES JUDICATA AND
COLLATERAL ESTOPPEL

Respondents filed the above-captioned motions on December 18, 1998. Complainant filed its opposition thereto on December 18, 1998.

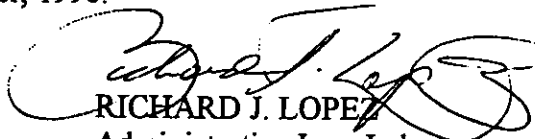
Said written argument and all supporting documents having been presented and considered, the Administrative Law Judge being fully advised, and good cause appearing therefor, the following rulings are hereby made:

1

Respondents' Motion to Dismiss the entire accusation before the court and/or in the alternative to exclude and restrict certain claims and evidence based on time deadlines in which to bring claims against licensees is hereby denied.

Respondents' Motion to Dismiss the DRE accusation in its entirety based on the doctrines of res judicata and collateral estoppel is hereby denied.

SO RULED this 21st day of December, 1998.


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:btm

1 Department of Real Estate
107 South Broadway, Room 8107
2 Los Angeles, California, 90012
3 (213) 897-3937

FILED
NOV - 5 1998
DEPARTMENT OF REAL ESTATE

By Lana B. Luna

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of) No. H-27684 LA
)
CENTURY 21 ALLSTARS, INC. a)
California corporate broker, dba) STIPULATION AND AGREEMENT
Century 21 Allstars, Inc., Escrow)
Division; JOSEPH GARCIA)
VILLAESCUSA, individually and as)
designated officer of Century 21)
Allstars, Inc.; NAHED BENYAMEIN;)
ANTONIO MONTALVO; MARIA EUGENIA)
SHAKIBAEI; and JOSE ANTONIO)
GRACIANO,)
)
Respondents.)

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It is hereby stipulated by and between JOSE ANTONIO GRACIANO (referred to as Respondent), acting by and through his attorney Steven F. Spierer, Esq. of Spierer, Woodward, Corbalis & Goldbert, and the Complainant, acting by and through Sean Crahan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on May 11, 1998, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at



1 a formal hearing on the Accusation, which hearing was to be held in
2 accordance with the provisions of the Administrative Procedure Act
3 (APA), shall instead and in place thereof be submitted solely on
4 the basis of the provisions of this Stipulation And Agreement
5 (hereafter Stipulation).

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

10 3. Respondent filed a Notice of Defense on May 26,
11 1998, pursuant to Section 11506 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondent hereby freely and voluntarily withdraws
14 said Notice of Defense. Respondent acknowledges that he
15 understands that by withdrawing said Notice of Defense, he will
16 thereby waive his right to require the Commissioner to prove the
17 allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that he will waive
19 other rights afforded to him in connection with the hearing such as
20 the right to present evidence in defense of the allegations in the
21 Accusation and the right to cross-examine witnesses.

22

23 4. This Stipulation and Agreement relates to the
24 factual allegations contained in paragraphs one (1), seven (7),
25 eight (8), twenty (20) and twentyone (21) in the Accusation filed
26 in this proceeding. Respondent chooses not to contest these
27 factual allegations and to remain silent and understands that, as a



1 result thereof, these factual allegations, without being admitted
2 or denied, will serve as a basis for the discipline stipulated to
3 herein. This Stipulation and Agreement and the findings based on
4 Respondent's decision not to contest the Accusation is hereby
5 expressly limited to this proceeding and made for the sole purpose
6 of reaching an agreed disposition of this proceeding, only.

7 Respondent's decision not to contest the factual allegations is
8 made solely for the purpose of effectuating this Stipulation and is
9 intended by Complainant and Respondent to be non-binding upon him
10 in any actions against Respondent by third parties and shall not be
11 deemed, used, or accepted as an acknowledgement or admission.

12 However, the results of this Stipulation may provide the basis for
13 establishing prior discipline, and the basis thereof, in any
14 subsequent proceeding by Complainant. The Real Estate Commissioner
15 shall not be required to provide further evidence to prove such
16 allegations.

17 5. It is understood by the parties that the Real Estate
18 Commissioner may adopt the Order in this Stipulation as his
19 decision and order in this matter thereby imposing the penalty and
20 sanctions on Respondent's real estate licenses and/or license
21 rights as set forth in the below Order. In the event that the
22 Commissioner in his discretion does not adopt the Stipulation, the
23 Stipulation And Agreement shall be void and of no effect, and
24 Respondent shall retain the right to a hearing and proceeding on
25 the Accusation under all the provisions of the APA and shall not be
26 bound by any admission or waiver made herein.

27 6. The Order or any subsequent Order of the Real Estate



1 Commissioner made pursuant to this Stipulation shall not constitute
2 an estoppel, merger or bar to any further administrative or civil
3 proceedings by the Department of Real Estate with respect to any
4 matters which were not specifically alleged to be causes for
5 accusation in this proceeding.

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations and waivers, made
8 solely for the purpose of settlement of the pending Accusation
9 without a hearing, it is stipulated and agreed that the following
10 Determination of Issues shall be made:

11 The conduct or omissions of Respondent JOSE ANTONIO
12 GRACIANO, as set forth in paragraphs one (1), seven (7), eight (8),
13 twenty (20) and twentyone (21) in the Accusation constitute cause
14 to suspend or revoke his real estate salesperson license and/or
15 license rights under the provisions of Code Sections 10176(g).

16 ORDER

17 WHEREFORE, THE FOLLOWING ORDER is hereby made:

18 All licenses and license rights of Respondent JOSE
19 ANTONIO GRACIANO under the Real Estate Law are revoked; provided,
20 however, a restricted real estate salesperson license shall be
21 issued to Respondent JOSE ANTONIO GRACIANO pursuant to Section
22 10156.5 of the Code if Respondent makes application therefor and
23 pays to the Department of Real Estate the appropriate fee for said
24 licenses within ninety (90) days from the effective date of the
25 Decision. The restricted license issued to Respondent JOSE ANTONIO
26 GRACIANO shall be subject to all of the provisions of Section
27 10156.7 of the Business and Professions Code and to the following

1 limitations, conditions and restrictions imposed under authority of
2 Section 10156.6 of said Code:

3 (1) The restricted license may be suspended prior
4 to hearing by order of the Real Estate Commissioner in the event of
5 Respondent JOSE ANTONIO GRACIANO's conviction or plea of nolo
6 contendere to a crime which bears a significant relation to
7 Respondent's fitness or capacity as a real estate licensee.

8 (2) The restricted license may be suspended prior
9 to hearing by Order of the Real Estate Commissioner on evidence
10 satisfactory to the Commissioner that Respondent JOSE ANTONIO
11 GRACIANO has violated provisions of the California Real Estate Law,
12 the Subdivided Lands Law, Regulations of the Real Estate
13 Commissioner, or the conditions attaching to these restricted
14 licenses.

15 (3) Respondent JOSE ANTONIO GRACIANO shall not be
16 eligible to apply for the issuance of an unrestricted real estate
17 license nor the removal of any of the conditions, limitations or
18 restrictions of a restricted license until one (1) year has elapsed
19 from the date of issuance of the restricted license to Respondent.

20 (4) Respondent JOSE ANTONIO GRACIANO shall submit
21 with any application for license under an employing broker, or any
22 application for transfer to a new employing broker, a statement
23 signed by the prospective employing real estate broker on a form
24 approved by the Department of Real Estate which shall certify:

25 (a) That the employing broker has read the
26 Decision of the Commissioner which granted the
27 right to a restricted license; and



1 (b) That the employing broker will exercise
2 close supervision over the performance by the
3 restricted licensee relating to activities for
4 which a real estate license is required.

5 (5) Respondent JOSE ANTONIO GRACIANO shall, within
6 six months from the effective date of this Decision, take and pass
7 the Professional Responsibility Examination administered by the
8 Department including the payment of the appropriate examination
9 fee. If Respondent fails to satisfy this condition, the
10 Commissioner may order suspension of Respondent's license until
11 Respondent passes the examination.

12 (5) Respondent JOSE ANTONIO GRACIANO shall, within
13 nine months from the effective date of this Decision, present
14 evidence satisfactory to the Real Estate Commissioner that
15 Respondent has, since the most recent issuance of an original or
16 renewal real estate license, taken and successfully completed the
17 continuing education requirements of Article 2.5 of Chapter 3 of
18 the Real Estate Law for renewal of a real estate license. If
19 Respondent fails to satisfy this condition, the Commissioner may
20 order the suspension of the restricted license until the Respondent
21 presents such evidence. The Commissioner shall afford Respondent
22 the opportunity for a hearing pursuant to the Administrative
23 Procedure Act to present such evidence.

24 * * * * *

25 I have read the Stipulation And Agreement In Settlement
26 And Order, and its terms are understood by me and are agreeable and
27 acceptable to me. I understand that I am waiving rights given to

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

9 DATED: 9/26/98

Jose Antonio Graciano
JOSE ANTONIO GRACIANO, Respondent.

10 DATED: 9/29/98

Steven F. Spierer
STEVEN F. SPIERER, ESQ. of
Spierer, Woodward, Corbalis &
Goldbert, Counsel for Respondent
Jose Antonio Graciano, approved as to
form.

14 DATED: 10-5-98

Sean Crahan
SEAN CRAHAN, Counsel for
Complainant.

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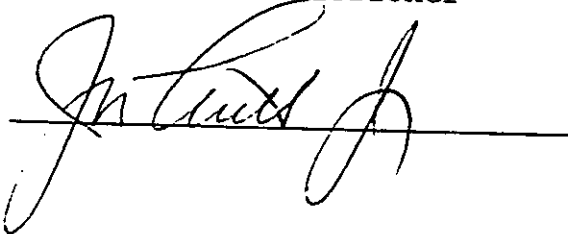
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The foregoing Stipulation And Agreement is hereby adopted
as my Decision and Order as to Respondent JOSE ANTONIO GRACIANO and
shall become effective at 12 o'clock noon on November 25
1998.

DATED: 10/21 1998.

JIM ANTT, JR.
Real Estate Commissioner



[Handwritten signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILE
JUN 24 1998
DEPARTMENT OF REAL EST/

In the Matter of the Accusation of) Case No. H-27684 LA
) OAH No. L-1998050435
CENTURY 21 ALLSTARS, INC.,)
et al.,)
_____ Respondents.)

By *Jaura B. [Signature]*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California, on JANUARY 11-25, 1999, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: JUN 24 1998

DEPARTMENT OF REAL ESTATE

By: *Sean Crahan*
SEAN CRAHAN, Counsel

cc:

Century 21 Allstars, Inc.
Joseph Garcia Villaescusa
Nahed Benyamein
Antonio Montalvo
Maria Eugenia Shakibaei
Jose Antonio Graciano
Michael Lanphere, Esq.
Steven F. Spierer, Esq.
Sacto.
OAH

Sect 17

Sean Crahan, Counsel
State Bar 49351
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAY 11 1998

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-27684 LA

CENTURY 21 ALLSTARS, INC. a)
California corporate broker, dba) A C C U S A T I O N
Century 21 Allstars, Inc., Escrow)
Division; JOSEPH GARCIA)
VILLAESCUSA, individually and as)
designated officer of Century 21)
Allstars, Inc.; NAHED BENYAMEIN;)
ANTONIO MONTALVO; MARIA EUGENIA)
SHAKIBAEI; and JOSE ANTONIO)
GRACIANO,)

Respondents.)

The Complainant, Thomas McCrady, a Deputy Real Estate
Commissioner of the State of California, for cause of accusation
against CENTURY 21 ALLSTARS, INC. a California corporate broker,
doing business as Century 21 Allstars, Inc., Escrow Division;
JOSEPH GARCIA VILLAESCUSA, individually and as designated officer
of Century 21 Allstars, Inc.; NAHED BENYAMEIN; ANTONIO MONTALVO;
MARIA EUGENIA SHAKIBAEI and JOSE ANTONIO GRACIANO, alleges as
follows:

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1.

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California, brings this Accusation, his official capacity.

LICENSING

2.

CENTURY 21 ALLSTARS, INC. (hereafter respondent CAI), is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter cited as the Code). At all times herein mentioned, respondent CAI was licensed by the Department of Real Estate of the State of California (hereafter the Department) as a corporate real estate broker, individually, and doing business as Century 21 Allstars, Inc., Escrow Division.

3.

JOSEPH GARCIA VILLAESCUSA (hereafter respondent VILLAESCUSA) is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (herein "the Code").

(a) At all times mentioned herein, respondent VILLAESCUSA was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a real estate broker, individually and as designated officer of respondent CAI until on or about March 22, 1998.

(b) Pursuant to Code Section 10159.2, respondent VILLAESCUSA was responsible for the supervision of the activities of officers, agents and employees of respondent CAI for which a

1 real estate license was required.

2 (c) At all times herein mentioned, respondent
3 VILLAESCUSA directed and controlled the operations of CAI and its
4 agents and employees.

5 (d) At all times mentioned herein, respondent
6 VILLAESCUSA was and now is the owner of respondent CAI.

7 4.

8 NAHED BENYAMEIN (hereafter respondent BENYAMEIN) is
9 presently licensed and/or has license rights under the Real Estate
10 Law.

11 (a) At all times herein mentioned, respondent BENYAMEIN
12 was licensed by the Department as a real estate salesperson.

13 (b) Respondent BENYAMEIN was at all times herein
14 mentioned in fact employed by respondent CAI but was licensed to
15 broker Florence Christine H. Darnall (Darnall) from 7-1-93 to
16 7-30-96. Respondent BENYAMEIN became licensed to respondent CAI
17 on or about 7-31-96.

18 5.

19 ANTONIO MONTALVO (hereafter respondent MONTALVO) is
20 presently licensed and/or has license rights under the Real Estate
21 Law.

22 (a) At all times mentioned herein, respondent MONTALVO
23 was and now is licensed by the Department as a real estate
24 salesperson.

25 (b) Respondent MONTALVO was at all times herein
26 mentioned in fact employed by respondent CAI but was licensed to
27 Darnall from 1-21-94 to 7-28-96. Respondent MONTALVO became



1 licensed to respondent CAI on or about 7-29-96.

2 6.

3 MARIA EUGENIA SHAKIBAEI is presently licensed and/or
4 have license rights under the Real Estate Law.

5 (a) At all times mentioned herein, respondent SHAKIBAEI
6 was and now is licensed by the Department as real estate
7 salesperson.

8 (b) Respondent SHAKIBAEI was at all times herein
9 mentioned in fact employed by respondent CAI but was licensed to
10 Darnall from 1-21-94 to 7-28-96. Respondent SHAKIBAEI became
11 licensed to respondent CAI on or about 7-29-96.

12 7.

13 JOSE ANTONIO GRACIANO (hereafter respondent GRACIANO) is
14 presently licensed and/or have license rights under the Real
15 Estate Law.

16 (a) At all times mentioned herein, respondent GRACIANO
17 was and now is licensed by the Department as real estate
18 salesperson.

19 (b) Respondent GRACIANO was at all times herein
20 mentioned in fact employed by respondent CAI but was licensed to
21 Darnall from 12-27-93 to 2-12-96. Respondent GRACIANO was at no
22 time herein relevant licensed to respondent CAI.

23 8.

24 CONSPIRACY

25 Respondents CAI, VILLAESCUSA, BENYAMEIN, MONTALVO,
26 SHAKIBAEI, and GRACIANO agreed to engage in the business of buying
27 or selling real properties, as principals or agents for or in



1 expectation of compensation, whereby buyers of real properties
2 would borrow part or all of the down payments to purchase the
3 properties, representing the down payments to be "gifts" and
4 concealing from lenders that the down payments were borrowed,
5 contrary to statements on buyers' loan applications to lenders
6 that no part of their down payments were borrowed. In fact, down
7 payments were borrowed from third parties, sellers, or
8 respondents. Pursuant to this agreement, respondents
9 VILLAESCUSA, BENYAMEIN, MONTALVO, SHAKIBAEI and GRACIANO, in
10 cooperation with other members of CAI, including employees in its
11 Escrow Division, and others, jointly and severally, engaged in the
12 below transactions.

13 9.

14 Respondent VILLAESCUSA advised licensees associated with
15 respondent CAI in the manner and methods of creating fictitious
16 down payments and deposits for buyers who did not have sufficient
17 funds for the down payments or deposits with which to purchase
18 real property. This would involve using the respondents' funds,
19 sellers' funds or moneys advanced by Villaescusa. The funds would
20 then be released through escrow prior to the actual closing,
21 sometimes under the guise of "repairs", "bonuses" or payments to
22 third parties.

23 TRANSACTIONS

24 10.

25 14535 Dumont Avenue, Norwalk

26 (a) On or about 9-30-95, Alejandro Valadez and Maria De
27 Jesus Martinez entered into a contract to purchase the real



1 property located at 14535 Dumont Avenue, Norwalk, California, from
2 respondent BENYAMEIN as seller. Respondents CAI and BENYAMEIN,
3 acting for or in expectation of compensation, represented the
4 purchaser.

5 (b) On or about 10-3-95, Alejandro Valadez, Maria De
6 Jesus Valadez and Hector Vega completed a loan application for the
7 above property with NationsBanc Mortgage Corporation (hereafter
8 NationsBanc).

9 (c) The money for the down payment on the purchase was
10 represented as gifts from Alejandro Valadez's wife, Maria Valadez,
11 and his father, Mariano Valadez.

12 (d) In fact, the gift letters were fictitious. The
13 buyers did not receive the funds as represented in the Gift
14 Letters. Maria Valadez did not give Alejandro Valadez any money
15 to purchase the property.

16 (e) The fact that the Gift Letters were a
17 misrepresentation was known to respondent BENYAMEIN, as she had
18 helped the buyers obtain the letters and knew the money was not
19 from the sources as stated in the Gift Letters.

20 (f) The escrow for this transaction was conducted by
21 respondent CAI and it closed 11-6-95.

22 11.

23 12106 Lowemont Street, Norwalk

24 (a) On or about 5-3-95, Edgar M. Cortes and Baltazar
25 Aguiniga entered into a contract to purchase the real property
26 located at 12106 Lowemont Street, Norwalk, California, from
27 respondent Benyamein, as seller. Respondents CAI and MONTALVO,



1 acting for or in expectation of compensation, represented the
2 purchaser.

3 (b) On or about 5-16-95, Edgar M. Cortes, Baltazar
4 Aguiniga and Salvador Mora completed a loan application for the
5 Lowemont property with NationsBanc.

6 (c) The money for the down payment on the purchase was
7 represented as a gift from Edgar Cortez' cousin, Miguel Vargas.

8 (d) In fact, the gift letter was fictitious. Cortes did
9 not receive the funds as represented in the Vargas Gift Letter.
10 The down payment was provided by respondent BENYAMEIN.

11 (e) Baltazar Aguiniga and Salvador Mora were included
12 in this transaction to qualify Cortes for the purchase but would
13 not be living in the property.

14 (f) The fact that the Gift Letter was a
15 misrepresentation was known to MONTALVO and BENYAMEIN, as they had
16 helped the buyers obtain the letter and knew the money was not
17 from the sources as stated in the Gift Letter. They were also
18 aware that Baltazar Aguiniga and Salvador Mora would not be living
19 at the Lowemont property.

20 (g) Respondent BENYAMEIN helped with the expenses of
21 the purchase by Cortes and the Gift Letter was to indicate the
22 funds came from someone other than the seller.

23 (h) The escrow in this transaction was conducted by
24 Teamwork escrow and closed on 5-26-95.

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12.

11821 Alclad, Whittier

(a) On or about 3-9-95, Raymundo Reyes, Salvador Reyes and Dora Jaimes entered into a contract to purchase the real property located at 11821 Alclad, Whittier, California from seller David Cruz Gonzalez. Respondents CAI and MONTALVO, acting for or in expectation of compensation, represented both the purchaser and the seller.

(b) On or about 2-27-95, Raymundo Reyes, Candida Mendez, Horacio Martinez and Dora Jaimes completed a loan application for the above property with NationsBanc.

(c) The money for the down payment on the purchase was represented as a gift from Raymundo Reyes and Candida Mendez's daughter, Ignacia Jaimes.

(d) In fact, the gift letter was fictitious. Raymundo Reyes and Candida Mendez did not receive the funds as represented in the Jaimes Gift Letter. The money was a loan from their daughters and has been repaid.

(e) The fact that the Gift Letter was a misrepresentation was known to MONTALVO, as he had helped the buyers obtain the letter and knew the money was not from the source as stated in the Gift Letter.

(f) The escrow for this transaction was conducted by respondent CAI and closed on or about 5-12-95

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13.

5285 Clark Street, Lynwood

(a) On or about 3-18-95, Francisco Hernandez and Laura Hernandez entered into a contract to purchase the real property located at 5285 Clark Street, Lynwood from sellers Richard and Theresa Chiesa. Respondents CAI and SHAKIBAEI, acting for or in expectation of compensation, represented both the purchaser and the seller.

(b) On or about 4-17-95, Francisco Hernandez, Raul Garfias and Mario Monroy completed a loan application for the above property with NationsBanc.

(c) The money for the down payment on the purchase was represented as a gift from Francisco Hernandez' aunt, Maria Monroy.

(d) In fact, the gift letter was fictitious. Hernandez did not receive the funds as represented in the Gift Letter. Maria Monroy is not Hernandez' aunt. She is his sister in law.

(e) The fact that the Gift Letter was a misrepresentation was known to SHAKIBAEI, as she had helped the buyers obtain the letter and knew the money was not from the source as stated in the Gift Letter.

(e) The escrow for this transaction was conducted by respondent CAI which closed on 4-28-95.

14.

13923 Longworth Avenue, Norwalk

(a) On or about 10-15-95, Ramon Acosta, Argelia Acosta and Mario Gomez entered into a contract to purchase the real

1 property located at 13923 Longworth Avenue, Norwalk from sellers
2 Victorio, Cruz and Francisco Padilla. Respondents CAI and
3 SHAKIBAEI, acting for or in expectation of compensation,
4 represented both the purchaser and the sellers.

5 (b) On or about 12-19-95, Ramon Acosta, Argelia Acosta
6 and Mario Gomez completed a loan application for the above
7 property with NationsBanc.

8 (c) The money for the down payment on the purchase was
9 represented as gifts from Norma Avalos, the cousin of "Mrs. Ramon
10 Acosta" and Maria del Carmen Montano, the aunt of Ramon Acosta.

11 (d) In fact, the gift letters were fictitious. The
12 Acostas did not receive the funds as represented in the Gift
13 Letters. They had no knowledge of the persons who allegedly gave
14 them the gift money.

15 (e) The fact that the Gift Letters were a
16 misrepresentation was known to SHAKIBAEI, as she had helped the
17 buyers obtain the letters and knew the money was not from the
18 sources as stated in the Gift Letters.

19 (f) The escrow for this transaction was conducted by
20 respondent CAI which closed on 1-5-96.

21 15.

22 6225 Hoover Avenue, Los Angeles

23 (a) On or about 1-21-95, Bacilio Ortega, Gloria Ramirez
24 and Veronica Chavez entered into a contract to purchase the real
25 property located at 6225 Hoover Avenue, Los Angeles, California,
26 from seller Maria S. Lopez. Respondents CAI and SHAKIBAEI, acting
27



1 for or in expectation of compensation, represented
2 both the purchaser and the seller.

3 (b) On or about 2-23-95, Gloria Ramirez, Veronica
4 Chavez and Bacilio Ortega completed a loan application for the
5 above property with NationsBanc.

6 (c) The money for the down payment on the purchase was
7 represented as a gift from Gloria Ramirez' sister, Patricia Perez,
8 and uncle, Raul Hernandez.

9 (d) In fact, the gift letters were fictitious. The
10 buyers did not receive the funds as represented in the Gift
11 Letters. Bacilio Ortega was on the loan to qualify the
12 purchasers. Ortega does not know where the funds for the down
13 payment came from.

14 (e) The fact that the Gift Letters were a
15 misrepresentation was known to SHAKIBAEI, as she had helped the
16 buyers obtain the letters and knew the money was not from the
17 sources as stated in the Gift Letters.

18 (f) The escrow for this transaction was conducted by
19 respondent CAI which closed on 3-13-95.

20 16.

21 14523 S. White Avenue, Compton

22 On or about 2-15-95, Juan J. Mota and Norberto Arreola
23 entered into a contract to purchase the real property located at
24 14523 S. White Avenue, Compton, California, from respondent
25 SHAKIBAEI. Respondents CAI and SHAKIBAEI, acting for or in
26 expectation of compensation, represented the buyer.

27



1 (b) On or about 2-23-95, Juan Mota and Norberto Arreola
2 completed a loan application for the above property with
3 NationsBanc.

4 (c) The money for the down payment on the purchase was
5 represented as a gift from Mota's sister, Enriqueta Escobar.

6 (d) In fact, the gift letters were fictitious. Mota did
7 not receive the funds as represented in the Gift Letter.

8 (e) The fact that the Gift Letter was a
9 misrepresentation was known to SHAKIBAEI, as she had helped the
10 buyers obtain the letter and knew the money was not from the
11 source as stated in the Gift Letter.

12 (f) The escrow for this transaction was conducted by
13 respondent CAI which closed on 3-24-95.

14 17.

15 12154 Cheshire Street, Norwalk.

16 (a) On or about 10-17-95, Abel Contreras, Evangelina
17 Contreras, Guadalupe Herrera and Inocencio Contreras entered into
18 a contract to purchase the real property located at 12154 Cheshire
19 Street, Norwalk, California, from respondent SHAKIBAEI.

20 Respondents CAI and SHAKIBAEI, acting for or in expectation of
21 compensation, represented the buyer.

22 (b) On or about 11-16-95, Abel Contreras, Evangelina
23 Contreras, Guadalupe Herrera and Ricardo Ramos completed a loan
24 application for the above property with NationsBanc.

25 (c) The down payment on the purchase was represented as
26 a gift from Abel Contreras sister, Patricia Salazar.

27



1 (d) In fact, the gift letters were fictitious. Abel
2 Contreras did not receive the funds as represented in the Gift
3 Letter. Abel Contreras does not have a sister named Patricia
4 Salazar.

5 (e) The fact that the Gift Letter was a
6 misrepresentation was known to SHAKIBAEI, as she had helped the
7 buyers obtain the letter and knew the money was not from the
8 sources as stated in the Gift Letter.

9 (f) The escrow for this transaction was conducted by
10 respondent CAI which closed on 11-29-95.

11 18.
12 4323 W. 164th Street, Lawndale.

13 (a) On or about 9-16-95, Benjamin and Maria Villalobos
14 entered into a contract to purchase the real property located at
15 4323 W. 164th Street, Lawndale, California, from respondent
16 SHAKIBAEI. Respondents CAI and SHAKIBAEI, acting for or in
17 expectation of compensation, represented the buyer.

18 (b) On or about 10-5-95, Benjamin and Maria Villalobos,
19 Roberto Ramirez and Armando Diaz completed a loan application for
20 the above property with NationsBanc.

21 (c) The money was the down payment on the purchase was
22 represented as gifts from Maria Villalobos' brother, Anastacio
23 Aguirre.

24 (d) In fact, the gift letter was not true. Maria
25 Villalobos did not receive the funds as represented in the
26 Anastacio Aguirre Gift Letter. Benjamin Villalobos does not know
27 Anastacio Aguirre.



1 (e) The fact that the Gift Letter was a
2 misrepresentation was known to SHAKIBAEI, as she had helped the
3 buyers obtain the letter and knew the money was not from the
4 sources as stated in the Gift Letter.

5 (f) The escrow for this transaction was conducted by
6 respondent CAI which closed on 10-13-95.

7 19.

8 3910 Platt Avenue, Lynwood.

9 (a) On or about 6-19-95, Francisco and Sonia Pelayo
10 entered into a contract to purchase the real property located at
11 3910 Platt Avenue, Lynwood, California, from seller Ruby Jean
12 Hooks. Respondents CAI and SHAKIBAEI, acting for or in
13 expectation of compensation, represented both the purchaser and
14 the seller.

15 (b) On or about 6-26-95, Francisco and Sonia Pelayo,
16 Victor Granero and Andres Ramirez completed a loan application for
17 the above property with NationsBanc.

18 (c) The money for the down payment on the purchase was
19 represented as a gift from Sonya Pelayo's brother in law,
20 Francisco Hernandez.

21 (d) In fact, the gift letters were not true. Sonia
22 Pelayo did not receive the funds as represented in the Francisco
23 Hernandez Gift Letter. She received \$5,000, not the \$7,500
24 represented in the Gift Letter.

25 (e) The fact that the Gift Letter was a
26 misrepresentation was known to SHAKIBAEI, as she had helped the
27 buyers obtain the letter.



1 (f) The escrow for this transaction was conducted by
2 respondent CAI which closed escrow on 8-2-95.

3 20.

4 9930 Rufus Avenue, Whittier.

5 (a) On or about 7-31-95, Raul Chita and Julio Cesar
6 Alvarez entered into a contract to purchase the real property
7 located at 9930 Rufus Avenue, Whittier, California, from seller
8 Stanley Edward Bean. Respondents CAI, BENYAMEIN and GRACIANO,
9 acting for or in expectation of compensation, represented both
10 purchaser and seller.

11 (b) On or about 8-22-95, Raul Chita and Julio Cesar
12 Alvarez completed a loan application for the above property with
13 NationsBanc.

14 (c) The down payment on the purchase was represented as
15 a gift from Raul Chita's uncle, Jose Mario Aparicio.

16 (d) In fact, the gift letter was fictitious. Raul
17 Chita did not receive the funds as represented in the Gift Letter.
18 Jose Mario Aparicio was the true purchaser of the property. Raul
19 Chita and Julio Cesar Alvarez were used to qualify for the loan.

20 (e) The fact that the Gift Letter was a
21 misrepresentation was known to respondents BENIAMEIN and GRACIANO,
22 as they had helped the buyer obtain the letters and knew the money
23 was not from the sources as stated.

24 (f) Escrow for this transaction took place at Teamwork
25 Escrow, Inc. and closed on or about 9-7-95.

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21.

1525 63rd Street, Long Beach.

(a) On or about 6-30-95, Jorge Estrada (Garcia) and Rafael Arevalo entered into a contract to purchase the real property located at 1525 63rd Street, Long Beach, California, from seller Gretchen Barth. Respondents CAI and GRACIANO, acting for or in expectation of compensation, represented both the purchasers and the seller.

(b) On or about 7-20-95, Jorge Estrada Garcia and Rafael Arevalo completed a loan application for the above property with NationsBanc.

(c) The down payment on the purchase was represented as a gift from Jorge Estrada's cousin, Maria Socorro Duarte.

(d) In fact, the gift letter was fictitious. Jorge Estrada did not receive the funds as represented in the Gift Letter. The money came from his cousin, Arvuro Marin. Maria Socorro Duarte is not Estrada's cousin, rather she is a friend of his mother. Maria Socorro Duarte loaned Estrada \$1,400.00, which has been paid back.

(e) The fact that the Gift Letter was a misrepresentation was known to Graciano, as he had helped the buyers obtain the letter and knew the money was not from the sources as stated in the Gift Letter.

(f) The escrow for this transaction was conducted by respondent CAI which closed on 8-3-95.

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22.

Respondents CAI and VILLAESCUSA failed to timely inform the Department of the employment by CAI of respondents BENYAMEIN, MONTALVO, SHAKIBAEI and GRACIANO, in violation of Regulation 2752 as found in Title 10, Chapter 6, California Code of Regulations (hereafter Regulations).

CAUSES FOR DISCIPLINARY ACTION

23.

The conduct or omissions of all respondents set forth above subject their real estate licenses to suspension or revocation under either or a combination of the following Code Sections:

- (a) Section 10176(a) for the making of substantial misrepresentations to NationsBanc Mortgage Corporation.
- (b) Section 10176(i) for fraud or dishonest dealing toward NationsBanc Mortgage Corporation.
- (c) Section 10177(d) for violation of Regulation 2752, as set forth in Paragraph 22 hereinabove.
- (d) Section 10177(g) for negligence in transactions for which a real estate license is required.
- (e) Section 10177(j) for fraud or dishonest dealing in those transactions where respondents were acting as sellers of their own properties.

PRIOR DISCIPLINARY ACTION

Effective March 24, 1998, in case H-26746 LA, the real estate corporate broker license of respondent CENTURY 21 ALLSTARS, INC. was suspended for 90 days, stayed on terms and conditions

1 under Code Section 10137. The real estate broker license of
2 respondent JOSEPH GARCIA VILLAESCUSA was revoked with a right to a
3 restricted real estate broker license subject to terms and
4 conditions for violation of Code Sections 10130, 10137, 10177(g)
5 and 10177(h).

6 Further proceedings are pending in H-26742 LA against
7 respondents CENTURY 21 ALLSTARS, INC. and JOSEPH GARCIA
8 VILLAESCUSA.

9
10 WHEREFORE, Complainant prays that a hearing be conducted
11 on the allegations of this Accusation and that upon proof thereof,
12 a decision be rendered imposing disciplinary action against all
13 licenses and license rights of respondents CENTURY 21 ALLSTARS,
14 INC. a California corporate broker, doing business as Century 21
15 Allstars, Inc., Escrow Division; JOSEPH GARCIA VILLAESCUSA,
16 individually and as designated officer of Century 21 Allstars,
17 Inc.; NAHED BENYAMEIN; ANTONIO MONTALVO; MARIA EUGENIA SHAKIBAEI
18 and JOSE ANTONIO GRACIANO under the Real Estate Law (Part 1 of
19 Division 4 of the Business and Professions Code) and for such
20 other and further relief as may be proper under other applicable
21 provisions of law.

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23 DATED: May 11, 1998.

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25 
26 Thomas McCrady
27 Deputy Real Estate Commissioner



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cc:
Century 21 Allstars, Inc.
Joseph Garcia Villaescusa
Nahed Benyamein
Antonio Montalvo
Maria Eugenia Shakibaei
Jose Antonio Graciano

Sacto

DH

SC/sc

