

FILED
SEP 14 2001
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * *

In the Matter of the Accusation of) No. H-28938 LA
))
BAY RIDGE GROUP, INC., etc.,))
))
Respondent.))
_____))

DECISION AFTER DEFAULT

This Decision is being issued in accordance with the provisions of Section 11520 of the Government Code on evidence of compliance with Section 11505 of the Government Code and pursuant to the Order of Default filed on June 7, 2001, and the findings of fact set forth herein are based on one or more of the following: (1) Respondent's express admissions, (2) affidavits, and (3) other evidence.

FINDINGS OF FACT

1.

(a) On March 29, 2001, Thomas Mc Crady made the First Amended Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California. The First Amended Accusation was mailed, by certified mail, to Respondent's last known mailing address on file with the Department on March 29, 2001, and returned to the Department on April 11, 2001, stamped "Forwarding Order Expired". Additional attempts to serve Respondent BAY RIDGE GROUP in care of its agent for service of process were not responded to.

(b) On June 7, 2001, no Notice of Defense having been filed herein within the time prescribed by Section 11506 of the Government Code, Respondent's default was entered herein.

2.

Respondent BAY RIDGE GROUP, INC., dba "1" Capital Home Loans" and "Coles Loan Service" (hereinafter "Respondent BAY RIDGE"), 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 ("Code"), as a corporate real estate broker. Between on or about July 27, 1998, and June 7, 1999, Respondent BAY RIDGE was authorized to act by and through Respondent John Edward Gustavsen as the designated officer and broker responsible, pursuant to the provisions of Code Section 10159.2 for the supervision and control of the activities conducted on behalf of BAY RIDGE by BAY RIDGE's officers and employees. Respondent BAY RIDGE does not currently have a designated officer-broker on record with the Department.

3.

By Order of the Commissioner dated June 5, 2001, effective July 2, 2001, Respondent John Edward Gustavsen's petition to voluntarily surrender his real estate license and all rights attendant thereto was accepted.

4.

All further references to "Respondent", unless otherwise specified, include the party identified in Paragraph 2 above, and also include the employees, agents and real estate licensees employed by or associated with said party, who at all times material herein were engaged in the furtherance of the business or operations of said party and who were acting within the course and scope of their authority, agency or employment.

5.

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Section 10131(d), for another or others, for or in expectation of compensation. Said activity included the operation of a mortgage lending business with the public wherein Respondent solicited borrowers and lenders, negotiated loans, or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

6.

During the period between July 27, 1998, and April 30, 1999, and during the course of the mortgage loan activities described in Paragraph 5 above, Respondent received and disbursed funds, including funds in trust ("trust funds") from or on behalf of actual and prospective borrowers and lenders and thereafter made deposits and/or disbursements of such funds. From time to time herein mentioned, said trust funds were deposited into trust accounts maintained by Respondent at People's Bank of California, 12112 Valley View, Garden Grove, CA 92845. The accounts held were identified as follows:

1. 1st Capital Home Loans
Escrow Trust Account
#55-410435

This account, hereinafter referred to as "Trust Account #1", was used for the deposit and disbursement of funds in the origination and escrow of loans.

2. Cole's Loan Service
Client Trust Account
#55-41042-7

This account, hereinafter referred to as "Trust Account #2", was used for the deposit and disbursement of monthly collections from borrowers and payoffs to lenders in the loan servicing business.

AUDIT NO. LA 980564

7.

On or about May 10, 1999, the Department completed an audit of Respondent BAY RIDGE's books and records pertaining to the mortgage lending and loan servicing activities described in Paragraph 6 above covering a period from approximately July 27, 1998, to April 30, 1999. This examination, Audit No. 980564, revealed violations of the Code and of Title 10, Chapter 6 of the California Code of Regulations (hereinafter "Regulations"), as set forth below.

8.

In the course of activities described in Paragraph 6 above, and during the examination period described in Paragraph 7, Respondent BAY RIDGE acted in violation of the Code and the Regulations in that:

- (a) Respondent failed to make available all records and documents in connection with BAY RIDGE's loan escrow and servicing activities. Bank statements, separate records, trust fund reconciliation reports, outstanding check reports, check registers, wire transfers and other records requested were not provided by the end of the audit, in violation of Code Section 10148.
- (b) There was a shortage of \$17,253.94 in Trust Account #1 (escrow account) as of April 30, 1999, in violation of Code Section 10145 and Regulation 2832.1.
- (c) Respondent Gustavsen, the designated officer-broker, was not a signatory on either of the trust accounts. Respondent did not designate in writing licensees authorized to make withdrawals from either account, and Shirley Elliot, an unbonded licensee not employed by Respondent, was authorized to make withdrawals from each trust account, in violation of Regulation 2834.
- (d) Respondent failed to maintain control records for Trust Account #1 (the escrow account) for the period January 1999 through April 1999, in violation of Regulation 2831.
- (e) For Trust Account #2 (loan servicing), Respondent failed to maintain separate records for each beneficiary for the period from July 1998 through April 30, 1999, in violation of Regulation 2831.1.
- (f) For Trust Account #1 (escrow account), Respondent did not reconcile the balance of the beneficiary records with the control records for the months of July 1998 and January through April of 1999. For Trust Account #2 (loan servicing), the reconciliation was not done for the months

of October 1998 and January through April 1999. These failures to reconcile are in violation of Regulation 2831.2.

- (g) Respondent did not notify the Department within 30 days that it had satisfied the threshold criteria set forth in Code Section 10232.
- (h) Respondent did not file trust fund status reports for either trust account with the Department within 30 days after the end of each quarter, in violation of Code Section 10232.25.
- (i) There was no written agreement between the broker and his licensee, Albert Ingallinera, in violation of Regulation 2726.

AUDIT NO. LA 990376

9.

On or about May 12, 2000, the Department completed a second audit of Respondent BAY RIDGE's books and records pertaining to the mortgage lending and loan servicing activities described in Paragraph 6 above, covering the same period from July 27, 1998, through April 30, 1999. This audit was based upon additional documents provided to the Department subsequent to the completion of Audit No. LA 980564. This audit found the following additional violations:

- (a) In addition to confirming the \$17,253.94 shortage in Trust Account #1, the additional records established a shortage of \$4,514.90 in Trust Account #2 due to seventeen (17) overdrawn accounts, in violation of Code Section 10145 and Regulation 2832.1.
- (b) There was no separate record for the beneficiary maintained for escrow number 8136, in violation of Code Section 10145 and Regulation 2831.1.

- (c) As to Trust Account #1, Respondent did not reconcile the balance of the beneficiary records with the control records for July 1998, and January 1999 through April 1999. As to Trust Account #2, the Respondent did not reconcile the beneficiary records with the control records for April 1999, in violation of Code Section 10145 and Regulation 2831.2.
- (d) Respondent continued to fail to make all records and documents for the period covered in the audits available to the Department. Separate records, trust fund reconciliation reports, wire transfers and other records requested were not provided by the end of the audit on May 12, 2000, in violation of Code Section 10148.

Each of the foregoing violations constitutes cause for the suspension or revocation of Respondent's real estate licenses and license rights under the provisions of Code Sections 10177(d) and 10177(g).

DETERMINATION OF ISSUES

1.

The acts and omissions of Respondent BAY RIDGE, as set forth in Paragraphs 8 and 9 above, are in violation of Code Sections 10148, 10232, 10232.25, 10177(g) and 10145, and Regulations 2832.1, 2834, 2831, 2831.1, 2831.2 and 2726 and are grounds for the suspension or revocation of the licenses and license rights of Respondent pursuant to Code Sections 10177(d) and 10177(g).

2.

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

ORDER

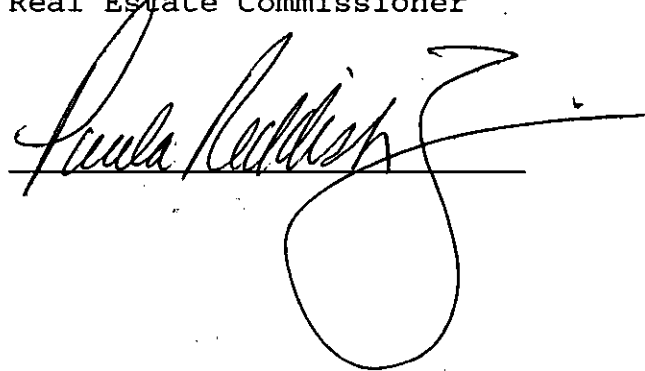
The licenses and license rights of BAY RIDGE GROUP, INC., under the provisions of the Real Estate Law are hereby revoked.

This Decision shall become effective at 12 o'clock noon on October 4, 2001.

IT IS SO ORDERED

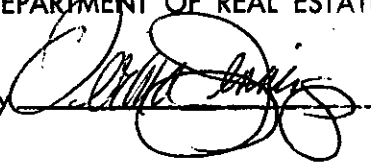
August 22, 2001

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish Zinnemann", is written over a horizontal line. The signature is highly cursive and extends significantly to the right of the line.

SACED
File

FILED
JUN 12 2001
DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H- 28938 LA
JOHN EDWARD GUSTAVSEN,)	L- 2001020403
)	
)	
Respondent.)	

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On March 29, 2001, an Amended Accusation was filed in this matter against Respondent JOHN EDWARD GUSTAVSEN.

On April 10, 2001, Respondent petitioned the Commissioner to voluntarily surrender his real estate broker license pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent JOHN EDWARD GUSTAVSEN's petition for voluntary surrender of his real estate broker license is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated April 10, 2001

1 (attached as Exhibit "A" hereto). Respondent's license
2 certificate(s) and pocket card(s) and any branch office license
3 certificate(s) shall be sent to the below listed address so that
4 they reach the Department on or before the effective date of this

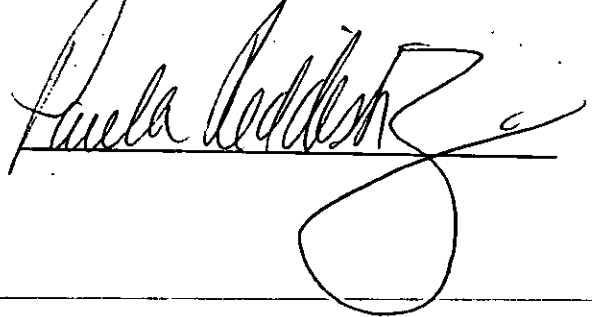
5 Order:

6 DEPARTMENT OF REAL ESTATE
7 Attn: Licensing Flag Section
8 P.O. Box 187000
9 Sacramento, CA 95818-7000

10 This Order shall become effective at 12 o'clock noon on
11 July 2, 2001.

12 DATED: June 5, 2001

13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H- 28938 LA
)	
JOHN EDWARD GUSTAVSEN,)	
)	
)	
)	
Respondent.)	

DECLARATION

My name is JOHN EDWARD GUSTAVSEN and I am currently licensed as a real estate broker and/or have license rights with respect to said license. I am represented by John K. Mitchell in this matter.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) I wish to voluntarily surrender my real estate license(s) issued by the Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

1 I understand that by so voluntarily surrendering my
2 license, that it can only be reinstated in accordance with the
3 provisions of Section 11522 of the Government Code. I also
4 understand that by so voluntarily surrendering my license, I
5 agree to the following:

6 The filing of this Declaration shall be deemed as my
7 petition for voluntary surrender. It shall also be deemed to be
8 an understanding and agreement by me that I waive all rights I
9 have to require the Commissioner to prove the allegations
10 contained in the Accusation filed in this matter at a hearing
11 held in accordance with the provisions of the Administrative
12 Procedure Act (Government Code Sections 11400 et seq.), and that
13 I also waive other rights afforded to me in connection with the
14 hearing such as the right to discovery, the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross-examine witnesses. I further agree that upon
17 acceptance by the Commissioner, as evidenced by an appropriate
18 order, all affidavits and all relevant evidence obtained by the

19 Department in this matter prior to the Commissioner's acceptance,
20 and all allegations contained in the Accusation filed in the
21 Department Case No. H-28938 LA, may be considered by the
22 Department to be true and correct for the purpose of deciding
23 whether or not to grant reinstatement of my license pursuant to
24 Government Code Section 11522.

25 Respondent can signify acceptance and approval of the
26 terms and conditions of this Declaration by faxing a copy of its
27 signature page, as actually signed by Respondent, to the

1 Department at the following telephone, fax number: (213) 575-
 2 6917. Respondent agrees, acknowledges and understands that by
 3 electronically sending to the Department a fax copy of his or her
 4 actual signature as it appears on the Declaration, that receipt
 5 of the faxed copy by the Department shall be as binding on
 6 Respondent as if the Department had received the original signed
 7 Stipulation and Agreement.

8 I declare under penalty of perjury under the laws of
 9 the State of California that the above is true and correct and
 10 that I freely and voluntarily surrender my license and all
 11 license rights attached thereto.

12 4/10/01 Downey, CA John E. Gustavsen
 13 Date and Place JOHN EDWARD GUSTAVSEN

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*Sacto
Mary*

MARTHA J. ROSETT, Counsel(SBN 142072)
Department of Real Estate
320 West Fourth St., #350
Los Angeles, CA 90013

FILED
MAR 29 2001
DEPARTMENT OF REAL ESTATE

by Jana B. Orme

(213) 576-6982
(213) 576-6914

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	No. H- 28938 LA
BAY RIDGE GROUP, INC., dba,)	<u>FIRST AMENDED ACCUSATION</u>
"1 st Capital Home Loans," and)	
"Coles Loan Service;" and)	
JOHN EDWARD GUSTAVSEN,)	
individually and as designated)	
broker-officer of BAY RIDGE)	
GROUP, INC.,)	
Respondents.)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, does hereby amend the Accusation filed against BAY RIDGE GROUP, INC., and JOHN EDWARD GUSTAVSEN on January 25, 2001 as follows:

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against BAY RIDGE GROUP, INC., dba, "1st Capital Home Loans," and "Coles Loan Service;" and JOHN EDWARD GUSTAVSEN, individually and as designated broker-officer of BAY RIDGE GROUP, INC., hereinafter is informed and alleges as follows:

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1.

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

2.

At all material times herein, Respondent BAY RIDGE GROUP, INC., dba, "1st Capital Home Loans," and "Coles Loan Service," (hereinafter, "Respondent BAY RIDGE") was and now 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 (hereinafter "Code"), as a corporate real estate broker. Between on or about July 27, 1998 and June 7, 1999, Respondent BAY RIDGE was authorized to act by and through Respondent JOHN EDWARD GUSTAVSEN as the designated officer and broker responsible, pursuant to the provisions of Code Section 10159.2 for the supervision and control of the activities conducted on behalf of BAY RIDGE by BAY RIDGE's officers and employees. Respondent BAY RIDGE does not currently have a designated officer-broker on record with the Department.

3.

At all times material herein, Respondent JOHN EDWARD GUSTAVSEN was and now is presently licensed by the Department as a real estate broker. Between on or about July 27, 1998 and June 7, 1999, Respondent was the designated broker-officer of Respondent BAY RIDGE. As the designated broker-officer, Respondent GUSTAVSEN was responsible for the supervision and control of the activities conducted on behalf of BAY RIDGE by BAY

1 RIDGE's officers and employees as necessary to secure full
2 compliance with the Real Estate Law pursuant to Code Section
3 10159.

4 4.

5 All further references to "Respondents," unless
6 otherwise specified, include the parties identified in Paragraph
7 2 above, and also include the employees, agents and real estate
8 licensees employed by or associated with said parties, who at all
9 times material herein were engaged in the furtherance of the
10 business or operations of said parties and who were acting within
11 the course and scope of their authority, agency or employment.

12 5.

13 At all times material herein, Respondent engaged in the
14 business of, acted in the capacity of, advertised or assumed to
15 act as a real estate broker in the State of California, within
16 the meaning of Code Sections 10131(d), for another or others, for
17 or in expectation of compensation. Said activity included the
18 operation of a mortgage lending business with the public, wherein
19 Respondent solicited borrowers and lenders, negotiated loans, or
20 collected payments or performed services for borrowers or lenders
21 or note owners in connection with loans secured directly or
22 collaterally by liens on real property or on a business
23 opportunity.

24 6.

25 During the period between July 27, 1998 and April 30,
26 1999, and during the course of the mortgage loan activities
27 described in Paragraph 5 above, Respondents received and



1 disbursed funds, including funds in trust ("trust funds") from or
2 on behalf of actual and prospective borrowers and lenders and
3 thereafter made deposits and/or disbursements of such funds.
4 From time to time herein mentioned, said trust funds were
5 deposited into trust accounts maintained by Respondents at
6 People's Bank of California, 12112 Valley View, Garden Grove, CA
7 92845. The accounts held were identified as follows:

8 1. 1st Capital Home Loans

9 Escrow Trust Account

10 #55-410435

11 This account, hereinafter referred to as "Trust Account
12 #1," was used for the deposit and disbursement of funds in the
13 origination and escrow of loans.

14 2. Cole's Loan Service

15 Client Trust Account

16 #55-41042-7

17 This account, hereinafter referred to as "Trust Account
18 #2" was used for the deposit and disbursement of monthly
19 collections from borrowers and payoffs to lenders in the loan
20 servicing business.

21 AUDIT No. LA 980564

22 7.

23
24 On or about May 10, 1999, the Department completed an
25 audit of Respondent BAY RIDGE's books and records pertaining to
26 the mortgage lending and loan servicing activities described in
27 Paragraph 6 above, covering a period from approximately July 27,
1998 to April 30, 1999. This examination, Audit No. 980564,

1 revealed violations of the Business and Professions Code
2 (hereinafter, "Code") and of Title 10, Chapter 6 of the
3 California Code of Regulations (hereinafter, "Regulations"), as
4 set forth below.

5 8.

6 In the course of activities described in Paragraph 6
7 above, and during the examination period described in Paragraph
8 7, Respondents acted in violation of the Code and the Regulations
9 in that:

10 a) Respondents failed to make available all records and
11 documents in connection with BAY RIDGE's loan escrow and
12 servicing activities. Bank statements, separate records,
13 trust fund reconciliation reports, outstanding check
14 reports, check registers, wire transfers and other records
15 requested were not provided by the end of the audit, in
16 violation of Code Section 10148.

17 b) There was a shortage of \$17,253.94 in Trust Account #1
18 (escrow account) as of April 30, 1999, in violation of Code
19 Section 10145 and Regulation 2832.1.

20 c) Respondent GUSTAVSEN, the designated officer-broker,
21 was not a signatory on either of the trust accounts, the
22 Respondents did not designate in writing licensees
23 authorized to make withdrawals from either account, and
24 Shirley Elliot, an unbonded licensee not employed by
25 Respondents, was authorized to make withdrawals from each
26 trust account, in violation of Regulation 2834.

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d) Respondents failed to maintain control records for Trust Account #1 (the escrow account) for the period January 1999 through April 1999, in violation of Regulation 2831.

e) For Trust Account #2 (loan servicing), Respondents failed to maintain separate records for each beneficiary for the period from July 1998 through April 30, 1999, in violation of Regulation 2831.1.

f) For Trust Account #1 (escrow account), Respondents did not reconcile the balance of the beneficiary records with the control record for the months of July 1998 and January through April of 1999. For Trust Account #2 (loan servicing), the reconciliation was not done for the months of October 1998 and January through April 1999. These failures to reconcile are in violation of Regulation 2831.2.

g) Respondents did not notify the Department within 30 days that it had satisfied the threshold criteria set forth in Code Section 10232.

h) Respondents did not file trust fund status reports for either trust account with the Department within 30 days after the end of each quarter, in violation of Code Section 10232.25;

i) There was no written agreement between the broker and his licensee, Albert Ingallinera, in violation of Regulation 2726; and

j) Respondent GUSTAVSEN did not have written policies and procedures in place to supervise the employees of BAY RIDGE, in violation of Code Section 10159.2.

1 Each of the foregoing violations constitute cause for
2 the suspension or revocation of Respondents' real estate licenses
3 and license rights under the provisions of Code Section
4 10177(d) and/or 10177(g).

5 AUDIT No. LA 990376

6 9.

7 On or about May 12, 2000, the Department completed a
8 second audit of Respondent BAY RIDGE's books and records
9 pertaining to the mortgage lending and loan servicing activities
10 described in Paragraph 6 above, covering a period. This audit
11 was based upon additional documents provided to the Department
12 subsequent to the completion of Audit No. LA 980564. This audit
13 found the following additional violations:

- 14 a) In addition to confirming the \$17,253.94 shortage in
15 Trust Account #1, the additional records provided
16 established a shortage of \$4,514.90 in Trust Account #2 due
17 to seventeen overdrawn accounts, in violation of Code
18 Section 10145 and Regulation 2832.1;
- 19 b) there was no separate record for the beneficiary
20 maintained for escrow number 8136, in violation of Code
21 Section 10145 and Regulation 2831.1;
- 22 c) As to Trust Account #1, Respondents did not reconciled
23 the balance of the beneficiary records with the control
24 records for July 1998, and January 1999 through April 1999.
25 As to Trust Account #2, the Respondents did not reconcile
26 the beneficiary records with the control record for April
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1999, in violation of Code Section 10145 and Regulation 2831.2;

d) Respondents continued to fail to make all records and documents for the period covered in the audits available to the Department. Separate records, trust fund reconciliation reports, wire transfers and other records requested were not provided by the end of the audit on May 12, 2000, in violation of Code Section 10148.

Each of the foregoing violations constitute cause for the suspension or revocation of Respondents' real estate licenses and license rights under the provisions of Code Section 10177(d) and/or 10177(g).

FAILURE TO SUPERVISE

10.

During the period between July 27, 1998 and April 30, 1999, Respondent GUSTAVSEN, as the designated broker-officer, was responsible for the supervision of the activities of Respondent BAY RIDGE. As the designated broker-officer, Respondent failed to exercise reasonable supervision over the activities, of his salespersons, in that he failed to establish rules, procedures and systems to review, oversee, inspect and manage the activities of the corporation requiring a real estate license, in violation of Code Section 10159.2 and Regulation 2725. Grounds therefore exist to discipline Respondent GUSTAVSEN's license and license rights pursuant to Code Section 10177(h).

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of JOHN EDWARD GUSTAVSEN and BAY RIDGE GROUP, INC., under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
29th day of March, 2001.

Thomas Mc Crady / by Paul Shapiro
Deputy Real Estate Commissioner

cc: JOHN EDWARD GUSTAVSEN
BAY RIDGE GROUP, INC.
Sacto.
Thomas Mc Crady
Audits
LK
John K. Mitchell, Esq.

*Sacto
Hoy*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
MAR 1 2001
DEPARTMENT OF REAL ESTATE
By Sandra B. Orme

In the Matter of the Accusation of) Case No. H-28938 LA
) OAH No. L-2001020403
BAY RIDGE GROUP INC., et al.,)
)
)
)
)
Respondent(s))

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 the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on APRIL 11 & 12, 2001, 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: March 1, 2001.

DEPARTMENT OF REAL ESTATE
By: *Martha J. Rosett*
MARTHA J. ROSETT, Counsel

cc: Bay Ridge Group Inc.
John Edward Gustavsen
John K. Mitchell, Esq.
Sacto, OAH

Sachs
Jan

FILED
JAN 25 2001
DEPARTMENT OF REAL ESTATE

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013

(213) 576-6982
(213) 576-6914

By *Laura B. Dow*

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11	In the Matter of the Accusation of)	No. H- 28938	LA
12	BAY RIDGE GROUP, INC., dba,)	A C C U S A T I O N	
13	"1 st Capital Home Loans," and)		
14	"Coles Loan Service;" and)		
15	JOHN EDWARD GUSTAVSEN,)		
16	individually and as designated)		
17	broker-officer of BAY RIDGE)		
18	GROUP, INC.,)		
19	Respondents.)		

18
19 The Complainant, Thomas McCrady, a Deputy Real Estate
20 Commissioner of the State of California, for cause of Accusation
21 against BAY RIDGE GROUP, INC., dba, "1st Capital Home Loans," and
22 "Coles Loan Service;" and JOHN EDWARD GUSTAVSEN, individually and
23 as designated broker-officer of BAY RIDGE GROUP, INC.,
24 hereinafter is informed and alleges as follows:

25 1.

26 The Complainant, Thomas McCrady, a Deputy Real Estate
27 Commissioner of the State of California, makes this Accusation in

1 his official capacity.

2 2.

3 At all material times herein, Respondent BAY RIDGE
4 GROUP, INC., dba, "1st Capital Home Loans," and "Coles Loan
5 Service," (hereinafter, "Respondent BAY RIDGE") was and now is
6 presently licensed and/or has license rights under the Real
7 Estate Law, Part 1 of Division 4 of the California Business and
8 Professions Code (hereinafter "Code"), as a corporate real estate
9 broker. Between on or about July 27, 1998 and June 7, 1999,
10 Respondent BAY RIDGE was authorized to act by and through
11 Respondent JOHN EDWARD GUSTAVSEN as the designated officer and
12 broker responsible, pursuant to the provisions of Code Section
13 10159.2 for the supervision and control of the activities
14 conducted on behalf of BAY RIDGE by BAY RIDGE's officers and
15 employees. Respondent BAY RIDGE does not currently have a
16 designated officer-broker on record with the Department.

17 3.

18 At all times material herein, Respondent JOHN EDWARD
19 GUSTAVSEN was and now is presently licensed by the Department as
20 a real estate broker. Between on or about July 27, 1998 and June
21 7, 1999, Respondent was the designated broker-officer of
22 Respondent BAY RIDGE. As the designated broker-officer,
23 Respondent GUSTAVSEN was responsible for the supervision and
24 control of the activities conducted on behalf of BAY RIDGE by BAY
25 RIDGE's officers and employees as necessary to secure full
26 compliance with the Real Estate Law pursuant to Code Section
27 10159.



All further references to "Respondents," unless otherwise specified, include the parties identified in Paragraph 2 above, and also include the employees, agents and real estate licensees employed by or associated with said parties, who at all times material herein were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority, agency or employment.

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Sections 10131(d), for another or others, for or in expectation of compensation. Said activity included the operation of a mortgage lending business with the public, wherein Respondent solicited borrowers and lenders, negotiated loans, or collected payments or performed services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

AUDIT

During the period between July 27, 1998 and April 30, 1999, and during the course of the mortgage loan activities described in Paragraph 5 above, Respondents received and disbursed funds, including funds in trust ("trust funds") from or on behalf of actual and prospective borrowers and lenders and

1 thereafter made deposits and/or disbursements of such funds.
2 From time to time herein mentioned, said trust funds were
3 deposited into trust accounts maintained by Respondents at
4 People's Bank of California, 12112 Valley View, Garden Grove, CA
5 92845. The accounts held were identified as follows:

- 6 1. 1st Capital Home Loans
7 Escrow Trust Account
8 #55-410435

9 This account, hereinafter referred to as "Trust Account
10 #1," was used for the deposit and disbursement of funds in the
11 origination and escrow of loans.

- 12 2. Cole's Loan Service
13 Client Trust Account
14 #55-41042-7

15 This account, hereinafter referred to as "Trust Account
16 #2" was used for the deposit and disbursement of monthly
17 collections from borrowers and payoffs to lenders in the loan
18 servicing business.

19 7.

20 On or about May 10, 1999, the Department completed an
21 audit of Respondent BY RIDGE's books and records pertaining to
22 the mortgage lending and loan servicing activities described in
23 Paragraph 6 above, covering a period from approximately July 27,
24 1998 to April 30, 1999. This examination, Audit No. 980564,
25 revealed violations of the Business and Professions Code
26 (hereinafter, "Code") and of Title 10, Chapter 6 of the
27

1 California Code of Regulations (hereinafter, "Regulations"), as
2 set forth below.

3 8.

4 In the course of activities described in Paragraph 6
5 above, and during the examination period described in Paragraph
6 7, Respondents acted in violation of the Code and the Regulations
7 in that:

8 a) Respondents failed to make available all records and
9 documents in connection with BAY RIDGE's loan escrow and
10 servicing activities. Bank statements, separate records,
11 trust fund reconciliation reports, outstanding check
12 reports, check registers, wire transfers and other records
13 requested were not provided by the end of the audit, in
14 violation of Code Section 10148.

15 b) There was a shortage of \$17,253.94 in Trust Account #1
16 (escrow account) as of April 30, 1999, in violation of Code
17 Section 10145 and Regulation 2832.1.

18 c) Respondent GUSTAVSEN, the designated officer-broker,
19 was not a signatory on either of the trust accounts, the
20 Respondents did not designate in writing licensees
21 authorized to make withdrawals from either account, and
22 Shirley Elliot, an unbonded licensee not employed by
23 Respondents, was authorized to make withdrawals from each
24 trust account, in violation of Regulation 2834.

25 d) Respondents failed to maintain control records for
26 Trust Account #1 (the escrow account) for the period January
27 1999 through April 1999, in violation of Regulation 2831.

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e) For Trust Account #2 (loan servicing), Respondents failed to maintain separate records for each beneficiary for the period from July 1998 through April 30, 1999, in violation of Regulation 2831.1.

f) For Trust Account #1, Respondents did not reconcile the balance of the beneficiary records with the control record for the months of July 1998 and January through April of 1999. For Trust Account #2, the reconciliation was not done for the months of October 1998 and January through April 1999. These failures to reconcile are in violation of Regulation 2831.2.

g) Respondents did not notify the Department within 30 days that it had satisfied the threshold criteria set forth in Code Section 10232.

h) Respondents did not file trust fund status reports for either trust account with the Department within 30 days after the end of each quarter, in violation of Code Section 10232.25;

i) There was no written agreement between the broker and his licensee, Albert Ingallinera, in violation of Regulation 2726; and

j) Respondent GUSTAVSEN did not have written policies and procedures in place to supervise the employees of BAY RIDGE, in violation of Code Section 10159.2.

Each of the foregoing violations constitute cause for the suspension or revocation of Respondents' real estate licenses

1 and license rights under the provisions of Code Section
2 10177(d)and/or 10177(g).

3 10.

4 During the period between July 27, 1998 and April 30,
5 1999, Respondent GUSTAVSEN, as the designated broker-officer, was
6 responsible for the supervision of the activities of Respondent
7 BAY RIDGE. As the designated broker-officer, Respondent failed
8 to exercise reasonable supervision over the activities, of his
9 salespersons, in that he failed to establish rules, procedures
10 and systems to review, oversee, inspect and manage the activities
11 of the corporation requiring a real estate license, in violation
12 of Code Section 10159.2 and Regulation 2725. Grounds therefore
13 exist to discipline Respondent GUSTAVSEN's license and license
14 rights pursuant to Code Section 10177(h).

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of JOHN EDWARD GUSTAVSEN and BAY RIDGE GROUP, INC., under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
this 25th day of January, 2001.


Deputy Real Estate Commissioner

cc: JOHN EDWARD GUSTAVSEN
BAY RIDGE GROUP, INC.
Sacto.
Thomas Mc Crady
Audits
RJ