

1 has undergone sufficient rehabilitation to warrant the
2 reinstatement of Respondent's real estate broker license,
3 in that:

4
5 I

6 In the Decision which revoked Respondent's real estate
7 broker license, there were determination of issues made that
8 there was cause to revoke Respondent's license for numerous
9 violations of the Real Estate Law found during an examination
10 of Respondent's books and records, and pursuant to Business and
11 Professions Code ("Code") Section 10177.5, due to a civil
12 judgment against Respondent, based upon misrepresentation for
13 acts which required a real estate license.

14 II

15 The burden of proving rehabilitation rests with the
16 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).
17 A petitioner is required to show greater proof of honesty and
18 integrity than an applicant for first-time licensure. The proof
19 must be sufficient to overcome the prior adverse judgment on the
20 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
21 395).

22 The Department has developed criteria in Title 10,
23 Chapter 6, California Code of Regulations ("Regulation") 2911
24 to assist in evaluating the rehabilitation of an applicant for
25 reinstatement of a license. Among the criteria relevant in this
26 proceeding are:

27 2911(k) - Respondent has not shown that he has
corrected business practices resulting in injury to others

1 or with the potential to cause such injury.

2 As part of the petition application process, an audit
3 examination was conducted of Respondent's books and records.
4 The audit covered the period of time from September 1, 2004 to
5 August 31, 2007 and revealed numerous violations of the Real
6 Estate Law including, trust fund handling, recordkeeping and
7 disclosures violations.

8 2911(n)(2) - Respondent has not provided proof from
9 others of a change in attitude from that which existed at the
10 time of the conduct in question.

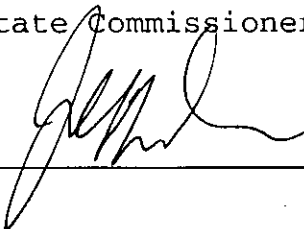
11 Given the fact that Respondent has not established
12 that Respondent has complied with Regulation 2911(k) and
13 2911(n)(2), I am not satisfied that Respondent is sufficiently
14 rehabilitated to receive an unrestricted real estate broker
15 license.

16 NOW, THEREFORE, IT IS ORDERED that Respondent's
17 petition for reinstatement of Respondent's real estate broker
18 license is denied.

19 This Order shall become effective at 12 o'clock noon
20 AUG - 6 2008
21 on _____.

22 DATED: 7-8-08

23 JEFF DAVI
24 Real Estate Commissioner

25 
26 _____
27

By Luvi B. Crahan

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DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

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|--------------------------------------|----------------|
| In the Matter of the Accusation of) | No. H-27205 LA |
| CLYDE GAILE SPARROW,) | L-1997060403 |
| individually and dba) | |
| First Choice Real Estate And) | |
| Investments, Home Loans) | |
| Unlimited and Metropolitan) | |
| Funding Group,) | |
| Respondent.) | |

DECISION AFTER NON-ADOPTION

The matter came on for hearing before Denny R. Davis, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on May 27 and 28, 1998 and on January 28, 1999.

Sean Crahan, Counsel, represented the Complainant.

Respondent appeared and was represented by Rose Pothier, Esq. of Pothier and Associates.

Evidence and written arguments were received and the matter stood submitted on January 28, 1999.

1 Professions Code, hereinafter referred to as the "Code"). At all
2 times mentioned herein, Respondent was and still is licensed by the
3 Department as a real estate broker both individually and doing
4 business as First Choice Real Estate And Investments, Home Loans
5 Unlimited and Metropolitan Funding Group.

6 3.

7 (a) At times herein mentioned, Respondent was engaged in
8 the real estate resale brokerage business as defined by Code
9 Section 10131(a) in that Respondent, for or in expectation of
10 compensation, solicited and negotiated with buyers and sellers of
11 real estate.

12 (b) At times herein mentioned, Respondent was engaged in
13 the mortgage loan brokerage business as defined by Code Section
14 10131(d) in that Respondent, for or in expectation of compensation,
15 solicited and negotiated with borrowers for loans from third-party
16 lenders secured by real property (secured loans).

17 (c) In connection with the above set forth activities,
18 Respondent conducted escrows.

19 4.

20 From time to time between January 21, 1997, through
21 February 13, 1997, a representative of the Department attempted to
22 complete an examination of the books and records of Respondent with
23 respect to his activities requiring a real estate license for the
24 period from January 1, 1996 through December 31, 1996. That audit
25 determined, and it was established at the hearing, that Respondent
26 was operating in violation of the following Code Sections and
27 Regulations from Chapter 6, Title 10, California Code of



1 Regulations (Regulations) as set forth in the following paragraphs.

2 (a) In conducting mortgage loan brokerage, Respondent,
3 doing business as Home Loans Unlimited, received funds from lenders
4 to be disbursed through escrow to borrowers (trust funds). These
5 trust funds were deposited in an account at Bank of America known
6 as the Home Loans Unlimited Escrow Division Trust Account
7 (hereafter TA 1).

8 (b) In conducting real estate resales, Respondent, doing
9 business as First Choice Real Estate And Investments, received
10 funds from and on behalf of purchasers to be disbursed through
11 escrow to sellers. These trust funds were deposited in an account
12 at Bank of America, known as the First Choice Real Estate And
13 Investments Escrow Account (hereafter TA 2).

14 (c) Respondent failed to maintain columnar records
15 showing trust funds received and disbursed for either TA 1 or TA 2
16 in violation of Regulation 2831.

17 (d) Respondent failed to maintain separate records for
18 either TA 1 or TA 2 in violation of Regulation 2831.1.

19 (e) Respondent failed to monthly reconcile his control
20 records with his separate records, for either TA 1 or TA 2 in
21 violation of Regulation 2831.2.

22 (f) Respondent was requested and subpoenaed to produce
23 bank statements, deposit tickets, canceled checks, columnar records
24 and separate records for TA 1 and TA 2. Respondent failed to
25 produce those records in violation of Code Section 10148.

26 (g) For the escrow trust account, Respondent kept one
27 copy of the check foils and receipts in the escrow files.



1 Respondent kept a second copy of the check foils randomly in a box.
2 Respondent testified he had no system in place to record the
3 receipt and disbursal of trust funds. In the conduct of escrows,
4 this is a grossly negligent practice.

5 5.

6 On or about September 30, 1996, Teka Smith obtained a
7 judgment in the Compton Municipal Court, case number 96S02313,
8 against Respondent for \$3,908.00 plus \$40.00 costs. Respondent
9 appealed to the Compton Superior Court and a trial de novo was set
10 for November 26, 1996. Respondent failed to appear at the trial de
11 novo. The judgment of the Municipal Court was sustained. Said
12 judgment became final. The facts leading up to the judgment set
13 forth herein are the following.

14 6.

15 On or about August 6, 1996, Teka Smith (hereafter Smith)
16 became a borrower on a loan secured by the Marburn property from
17 lender Fremont Investment and Loan. This loan was negotiated and
18 escrowed by Respondent doing business as Home Loans Unlimited
19 (HLU). Respondent was acting for or in expectation of
20 compensation. Smith dealt exclusively with Sally Aguilera,
21 Respondent's escrow officer, in the negotiation of the terms and
22 costs of the loan with Smith. The loan closed on August 6, 1996
23 and Respondent, doing business as Home Loans Unlimited, received a
24 loan origination fee of \$3,720.

25 7.

26 Respondent employed Sally Aguilera, also known as Arasell
27 Correa, (hereafter Aguilera) as an escrow officer. Aguilera, also



1 known as Arasell Correa, was at no time herein licensed by the
2 Department as a real estate broker or salesperson. Aguilera was
3 compensated by salary, not by commission. Aguilera negotiated the
4 terms of a loan with Smith secured by the Marburn property.

5 8.

6 Respondent's name was signed on the Smith loan
7 application representing that Respondent had conducted a "face to
8 face" interview with borrower when in fact he had no such interview
9 with Teka Smith. Respondent denied signing his name to that loan
10 application nor authorizing Aguilera to sign his name. Respondent
11 testified he discovered this forgery only when he came to the
12 Department to examine its files in preparation for this hearing.
13 Respondent had no contact with Smith until after the loan funded
14 and Smith came to Respondent's office to clear up the funding
15 errors and attempted to obtain her loan proceeds.

16 9.

17 During the course of the loan, Smith and Aguilera agreed
18 to lower costs and loan origination fees. When the loan closed,
19 the closing statements showed that Smith was charged the fees and
20 costs without the agreed reductions and that \$1,458 was paid to an
21 insurance carrier and that she had been paid \$1,555.91.

22 10.

23 In fact, Smith did not receive her \$1,555.91 nor did the
24 insurance carrier receive its \$1,458. Because the insurance
25 carrier threatened to cancel the policy, Smith paid the insurance
26 premium from her own funds. Smith sued Respondent in the Compton
27 Municipal Court on a small claims matter.



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11.

At the close of the loan escrow on August 6, 1996, Respondent falsely represented to Teka Smith, and also to lender Fremont, that \$1,458 had been paid to an insurance carrier when in fact no payment had been made.

12.

Smith received notice from her insurance agent of the carrier's intent to cancel her insurance and had to pay this premium from her own funds to avoid cancellation. Teka Smith had to sue Respondent for this amount in addition to the cost reductions and her proceeds.

13.

After Smith obtained the small claims judgment, Respondent appealed this judgment but failed to appear at the scheduled trial de novo. The Superior Court Appellate Department sustained the judgment of the Compton Municipal Court in favor of Smith.

14.

After Smith obtained the judgment, Smith made a number of calls to Respondent's office in an attempt to collect the judgment without success. Respondent had on one occasion instructed Aguilera not to discuss the matter with Smith. Smith had to resort to a writ of attachment to collect approximately \$3,000 of the judgment. Smith had further unproductive contacts with Respondent regarding collection of the judgment.

15.

Respondent paid the balance of the judgment a month

1 before the hearing. The circumstances surrounding Respondent's
2 delays in paying what was owed to Teka Smith amount to dishonest
3 dealing and aggravate his conduct. These delays included requiring
4 Smith to sue Respondent for the moneys owed to her; appeal and
5 failure to appear at the trial de-novo which he requested; failure
6 to make payment after the judgment was sustained and Smith's having
7 to trace assets and file a writ of attachment. Respondent's
8 payment of the balance a month before this hearing is of little
9 mitigating value for purposes of this proceeding.

10 16.

11 Respondent asserted to the auditor and testified at the
12 hearing that Smith's funds attributable to the insurance premium
13 remained in his trust account after the close of the loan escrow.
14 Respondent's assertion is contradicted by the bank statements,
15 obtained by the Department after the audit, which show that the
16 escrow trust account decreased to \$440 as of August 30, 1996. At
17 the close of escrow, Respondent was accountable to Teka Smith for
18 at least \$3,013.91 in the unremitted insurance premium and
19 unforwarded net proceeds. The inference is that funds owing to
20 Smith were appropriated for purposes not connected with the Smith
21 escrow. When there is a shortage in a fiduciary trust account, an
22 inference may arise of conversion or commingling. However,
23 Respondent was not charged in this proceeding with commingling or
24 conversion. However, this latent shortage may explain Respondent's
25 failure to maintain and produce his records to the Department.

26 17.

27 Respondent should have known that the above violations



1 occurred or were occurring. Respondent failed to exercise
2 reasonable supervision over the activities of his employees for
3 which a real estate license was required so as to prevent the
4 violations. The lack of supervision include the following:

5 (a) Respondent failed to initial and date the Teka Smith
6 loan escrow instruction, as he was required to do by former
7 Regulation 2725 as it then existed.

8 (b) Respondent did nothing to check the status of his
9 escrow trust account during the audit period.

10 (c) Had Respondent reviewed the Teka Smith loan
11 application in a timely manner, he would have earlier discovered
12 the forgery of his signature on that loan application.

13 (d) Respondent referred Smith's inquiries about her
14 escrow to Aguilera.

15 18.

16 Sparrow has been a broker since 1984 and as a salesperson
17 from 1975 and has conducted real estate in the same area for twenty
18 years. He has no other source of income. Sparrow has participated
19 in various community activities: The Frank Eagleson Foundation, a
20 non-profit organization to give scholarships to children from
21 parochial schools; Jefferson Park Harvey Committee, a non profit
22 formed after the '92 uprising, to promote the use of libraries. No
23 prior disciplinary action has been brought against him.

24 DETERMINATION OF ISSUES

25 1. The conduct or omissions of Respondent as set forth
26 above subject his real estate licenses and license rights to
27 suspension or revocation under the following Code Sections:



1 (a) 10137 for employing or compensating unlicensed
2 Aguilera to perform licensed acts, as set forth in paragraphs 6 and
3 7, above.

4 (b) 10176(a) for substantially misrepresenting to
5 Smith and the lender that \$1,458 had been paid to an insurance
6 carrier, as set forth in paragraph 11, above.

7 (c) 10176(i), fraud or dishonest dealing, for
8 failing to deliver to Teka Smith the loan proceeds she was entitled
9 to, as set forth in paragraph 10 above.

10 (d) 10177(d) for violations of the following Code
11 Sections and Regulations:

12 (i) Code Section 10145 for failing to pay
13 \$1,458 to the insurance carrier, as set forth in paragraph 10,
14 above.

15 (ii) Code Section 10145 and Regulation 2831
16 for failure to maintain columnar records, as set forth in paragraph
17 4(c), above.

18 (iii) Regulation 2831.1 for failure to
19 maintain adequate separate records, as set forth in paragraph 4(d),
20 above.

21 (iv) Regulation 2831.2, for failure to monthly
22 reconcile his control records with his separate records, as set
23 forth in paragraph 4(e) above.

24 (v) Code Section 10148 for failure to provide
25 to the Department bank statements, deposit tickets, canceled
26 checks, columnar records and separate records for the trust
27 accounts, as set forth in paragraph 4(f), above.



1 (e) Code Section 10177(h) for failure to exercise
2 reasonable supervision over the activities of employees, as set
3 forth in paragraph 17, above.

4 (f) Code Section 10177.5 for the judgment set forth
5 in paragraph 5 through 15, above, because of the insurance premium
6 unremitted to the insurance carrier or proceeds unforwarded to
7 Smith, leading to the failure by a fiduciary to render a proper
8 accounting to his principal. The Smith loan transaction was one in
9 which a real estate license was required. Code Section 10131(d).
10 While nowhere in the papers of the court proceeding is "fraud,
11 misrepresentation or deceit" mentioned, the underlying loan
12 transaction did, in its closing, involve a misrepresentation as to
13 the insurance proceeds and a monetary award for the insurance
14 proceeds became part of the judgment.

15 (g) Considering the gravity of the failure to
16 maintain bank and bookkeeping records and failure to produce same
17 for examination by the Department, his benefiting from the efforts
18 of his unlicensed employee's negotiation of the terms of the loan
19 with Teka Smith, his misrepresentation as to the payment to the
20 insurance carrier and his dishonest delay in paying funds legally
21 owing to Teka Smith, it is apparent that Respondent has failed in
22 many respects in his duties as a broker. Therefore the below order
23 is made.

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

26 ///

27



ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and license rights of Respondent CLYDE GAILE SPARROW under Part 1 of Division 4 of the Business and Professions Code are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent CLYDE GAILE SPARROW pursuant to Section 10156.5 of the Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for said licenses within ninety (90) days from the effective date of the Order.

A. The restricted real estate broker license issued to Respondent is suspended for a period of thirty (30) days from the issuance of said restricted license. If Respondent petitions the Real Estate Commissioner pursuant to Section 10175.2 of the Business and Professions Code, then said suspension shall be stayed on condition that:

(1) Respondent pays \$50 for each day of suspension to be stayed, or a total of \$1,500 to stay all 30 days of the suspension.

(2) Payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. To stay any or all of the actual suspension, the check must be delivered to the Department prior to the effective date of this Order in this matter.

(3) If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of this Order, the Commissioner may, without a hearing, order the immediate suspension

1 provided for above, in which event the Respondent shall not be
2 entitled to any repayment nor credit, prorated or otherwise, for
3 money paid to the Department under the terms of this Order.

4 B. The restricted license issued to Respondent CLYDE
5 GAILE SPARROW shall be subject to all of the provisions of Section
6 10156.7 of the Business and Professions Code and to the following
7 limitations, conditions and restrictions imposed under authority of
8 Section 10156.6 of said Code:

9 (1) The restricted license may be suspended prior
10 to hearing by order of the Real Estate Commissioner in the event of
11 Respondent CLYDE GAILE SPARROW's conviction or plea of nolo
12 contendere to a crime which bears a significant relation to
13 Respondent's fitness or capacity as a real estate licensee.

14 (2) The restricted license may be suspended prior
15 to hearing by Order of the Real Estate Commissioner on evidence
16 satisfactory to the Commissioner that Respondent CLYDE GAILE
17 SPARROW has, during the time he holds a restricted license,
18 violated provisions of the California Real Estate Law, the
19 Subdivided Lands Law, Regulations of the Real Estate Commissioner,
20 or the conditions attaching to these restricted licenses.

21 (3) Respondent CLYDE GAILE SPARROW shall not be
22 eligible to apply for the issuance of an unrestricted real estate
23 license nor the removal of any of the conditions, limitations or
24 restrictions of a restricted license until two (2) years have
25 elapsed from the date of issuance of the restricted license to
26 Respondent.

27 ///



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

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

20 (6) Respondent shall report in writing to the
21 Department of Real Estate as the Real Estate Commissioner shall
22 direct by his Decision herein or by separate written order issued
23 while the restricted license is in effect such information
24 concerning Respondent's activities for which a real estate license
25 is required as the Commissioner shall deem to be appropriate to
26 protect the public interest.

27 ///



1 Such reports may include, but shall not be limited
2 to, periodic independent accountings of trust funds in the custody
3 and control of Respondent and periodic summaries of salient
4 information concerning each real estate transaction in which the
5 Respondent engaged during the period covered by the report.

6 (7) Pursuant to Section 10148 of the Business and
7 Professions Code, Respondent shall pay the Commissioner's
8 reasonable cost for an audit to determine if Respondent has
9 corrected the trust fund violation(s) found in paragraphs 4.(b) of
10 the Determination of Issues. In calculating the amount of the
11 Commissioner's reasonable cost, the Commissioner may use the
12 estimated average hourly salary for all persons performing audits
13 of real estate brokers, and shall include an allocation for travel
14 time to and from the auditor's place of work. Respondent shall pay
15 such cost within 45 days of receiving an invoice from the
16 Commissioner detailing the activities performed during the audit
17 and the amount of time spent performing those activities. The
18 Commissioner may suspend the restricted license issued to
19 Respondent pending a hearing held in accordance with Section 11500,
20 et seq., of the Government Code, if payment is not timely made as
21 provided for herein, or as provided for in a subsequent agreement
22 between the Respondent and the Commissioner. The suspension shall
23 remain in effect until payment is made in full or until Respondent
24 enters into an agreement satisfactory to the Commissioner to
25 provide for payment, or until a decision providing otherwise is
26 adopted following a hearing held pursuant to this condition.

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(8) Respondent shall engage the services of a recognized office systems management consultant for a six-month period beginning on the date his restricted real estate broker license is issued. This service shall be maintained for the purpose of developing and monitoring a system specifically designed to enable Respondent to comply with the requirements of maintaining records required by both the Business and Professions Code and related Regulations. Respondent shall certify to the Commissioner, in writing each month, that Respondent is receiving this service.

This Decision shall become effective at 12 o'clock noon on AUG 31 1999

IT IS SO ORDERED July 29, 1999

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

*Suits
Zay*

FILED
APR - 1 1999
DEPARTMENT OF REAL ESTATE

By *Laura B. Orr*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|------------------------------------|---|----------------|
| In the Matter of the Accusation of |) | NO. H-27205 LA |
| |) | |
| CLYDE GAILE SPARRROW, |) | L-1997060403 |
| Individually and dba First Choice |) | |
| Real Estate and Investments, Home |) | |
| Loans Unlimited and Metropolitan |) | |
| Funding Group and as Designated |) | |
| officer of G. Miller and |) | |
| Associates Financial Services, |) | |
| Incorporated, |) | |
| |) | |
| |) | |
| Respondents. |) | |

NOTICE

TO: CLYDE GAILE SPARROW
and
ROSE POTHIER, his counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 1, 1999, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 1, 1999, is attached hereto for your information.

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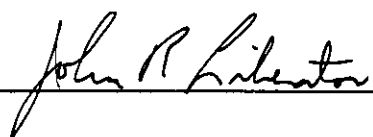
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 27, 28, 1998, and January 28, 1999, and any written argument hereafter 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 May 27, 28, 1998, and January 28, 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 16, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner



lbo

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

| | | |
|---|---|----------------------|
| In the Matter of the Accusation Against: |) | No. H-27205 LA |
| |) | |
| CLYDE GAILE SPARROW, |) | OAH No. L-1997060403 |
| Individually and dba First Choice Real Estate |) | |
| and Investments, Home Loans Unlimited and |) | |
| Metropolitan Funding Group and as Designated |) | |
| officer of G. Miller and Associates Financial |) | |
| Services, Incorporated, |) | |
| |) | |
| |) | |
| Respondent. |) | |

PROPOSED DECISION

This matter was heard in Los Angeles, California, before Denny R. Davis, Administrative Law Judge, Office of Administrative Hearings, on May 27, and 28, 1998, and January 28, 1999.

Rose Pothier, Attorney at Law with Pothier and Associates, represented respondent.

Sean Crahan, Counsel for the Department of Real Estate, represented complainant.

Evidence was received, the record was closed on January 28, 1999, and the matter was submitted.

FACTUAL FINDINGS

1. Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity.

2. Clyde Gaile Sparrow, ("respondent") is presently licensed by the Department and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker both individually and doing business as First Choice Real Estate And Investments, Home Loans Unlimited and Metropolitan Funding Group. He holds license number 00519465 which is scheduled to expire, if not renewed, on November 9, 2000. Respondent was originally licensed by the Department of Real Estate as a Real Estate Salesperson in 1975. He has been licensed as a Real Estate Broker since 1984.

3. Between January 21, 1997, through February 13, 1997, the Department conducted an audit of respondent. The audit period was from January 1, 1996, through December 31, 1996. The purpose of the audit was to ascertain whether respondent managed trust funds in accordance with real estate laws and regulations.

4. During the audit period respondent was engaged in the real estate resale brokerage business within the meaning of Business and Professions Code section 10131(a). During the audit period respondent was engaged in the mortgage loan brokerage business as defined by Business and Professions Code section 10131(d).

5. Respondent maintained two trust accounts. Account number one was maintained for loan escrows. Account number two was maintained for earnest money deposits and purchase escrows. During the audit reconciliation and accountability could not be calculated for either account because respondent was unable to produce banking and bookkeeping records for the audit period. Respondent did not maintain required records and documents including bank statements, cancelled checks and deposit receipts, for either trust account. Respondent stated the bank sent his bank account statements to the wrong address.

6. During the audit respondent was asked for his trust account bank statements. He was unable to produce them, stating they were unavailable because the bank had sent them to the wrong address. Respondent reported he had not received bank statements from the bank for either account for over one year.

7. Respondent maintained trust account check folios in a box. There was no order or system used for the placing of those checks in the box. Respondent did not maintain columnar records for the audit period for either trust account. Respondent did not maintain separate records for the audit period for either trust account. Respondent did not maintain monthly reconciliation of records for the audit period for either trust account. The audit could not produce a bank reconciliation and accountability for respondent's two trust accounts because respondent was unable to provide the auditor banking and bookkeeping records for the audit period.

8. On August 6, 1996, a client of respondent became a borrower on a loan secured by her real estate. An employee of respondent and the borrower negotiated the terms of the loan. That employee was not licensed by the Department of Real Estate although she was represented as respondent's escrow officer. She had been introduced to the Department's auditor as respondent's escrow officer. The employee (escrow officer) and the borrower

negotiated the waiver of one of two fees, either the escrow officer fee or the loan processor fee. There was an approximate \$1,600 difference between the two services. It was not clear which fee would be waived. As a consequence, a dispute arose regarding the waiver. In his failure to participate in and direct the negotiation between the borrower and his employee, respondent failed to exercise supervision over his business and his staff as is required by Business and Professions Code section 10177.5. The dispute was whether the waiver should be granted, and then whether it had been honored and paid. Ultimately the dispute was taken to small claims court where the court awarded the borrower \$1,730. In the same action before the small claims court the borrower raised a second cause of action. This dispute was whether respondent had forwarded the borrower's monetary advance for homeowner's insurance, in the amount of \$1,458. The small claims court found in favor of the borrower. For the two causes the small claims court awarded the borrower the total sum of \$3,948.

9. Respondent was cooperative during the audit. He instructed his staff to cooperate with the auditor. There is no cease and desist order issued by the Department against respondent. Respondent is involved in numerous community activities. He is a library volunteer, member of his church for 24 years, and in 1988 he founded a support group for children. The evidence does not show respondent has any history of claims being lodged against his license before this case.

10. Respondent has conducted escrows since 1990. At the time respondent's business was audited, it was classified as being a small business. It employed approximately six real estate salespersons. There were three or four open escrows. In August 1998 respondent's last escrow concluded and it was closed. From that time to the present respondent has not opened an escrow. Respondent stated he does not intend to conduct escrows in the future. In January 1998 respondent retained the services of a business practices consultant. New bookkeeping systems have been developed and put in place within respondent's business.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177 provides in part:

"The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

"(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real

Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

“.....

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

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

“.....

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

Respondent violated section 10177 subsections (d) (g) (h) and (i) by failing to maintain business records required by the commissioner of real estate as shown in Findings 6 and 7. It is of no consequence that respondent's bank may have misdirected his bank statements to the wrong address. Respondent continued to remain responsible for the gathering and maintaining of records. Respondent failed to take reasonable action to recover the statements. He reported that he called the bank one time in a one-year period inquiring about the statements. This is an insufficient exercise of diligence in an effort to comply with the requirements of the Business and Professions Code sections (d) and (h).

As shown in Findings 6 and 7, respondent failed to maintain trust account columnar records. Respondent further failed to maintain separate records, separate ledgers, and monthly reconciliation and accountability records. Respondent demonstrated both negligence and incompetence in his failure to maintain required records. In doing so, he violated Business and Professions Code section 10177(g).

Respondent violated section 10177(h) for failure to exercise reasonable supervision and control over business activities and his employees. In this case respondent permitted an unlicensed employee to negotiate terms of a loan.

It is the contemplation of the commissioner of the Department of Real Estate that only qualified and licensed persons, who are adequately supervised by their employing broker, shall engage in contract negotiations. In the instant case, the employee was neither licensed by the Department nor supervised by respondent.

2. Business and Professions Code section 10176(a) provides:

"The commissioner may, upon his own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

"(a) Making any substantial misrepresentation."

Respondent's failure to forward insurance premium moneys constitutes a substantial misrepresentation within the meaning of section 10176(a).

3. The evidence does not show respondent engaged in fraudulent conduct. The small claims court decision makes no reference to fraud. Because there was confusion between respondent's employee and the real estate loan client about which service fee was to be waived, a dispute arose. Respondent's failure to supervise his employee and respondent's failure to be directly involved in the negotiated agreement, resulted in the confusion and the dispute. While emotions ran high in this case and resolution did not occur until the small claims court was engaged, there is no evidence of fraud by respondent. The borrower has received reimbursement for the unpaid homeowner's insurance premium and respondent has paid to the client the moneys ordered by the small claims court.

ORDER

All licenses and licensing rights of respondent under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this decision; provided, however, that 60 days of said suspension shall be stayed for three (3) years upon the following terms and conditions:

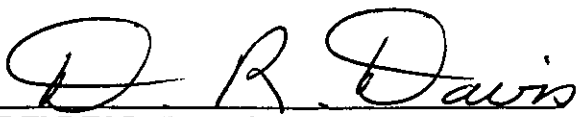
1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within three (3) years of the effective date of this decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

*not
adopted*

*Not
Adopted*

3. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
4. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.
5. Respondent shall certify the occurrence of regularly scheduled supervision of all employees and licensed real estate sales persons. Respondent must certify said supervision in writing every six months for a period of three years.
6. Respondent shall engage the services of a recognized office systems management consultant for the next six months. This service shall be maintained for the purpose of developing and monitoring systems specifically designed to enable respondent to comply with the requirements of maintaining records required by both the Business and Professions Code and related regulations. Respondent shall certify to the commissioner, in writing each month, that respondent is receiving this service.

Dated: March 1, 1999


DENNY R. DAVIS
Administrative Law Judge
Office of Administrative Hearings

Sacto

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
OCT - 9 1998

| | | | |
|------------------------------------|---|----------------------|---------------------------|
| In the Matter of the Accusation of |) | Case No. H-27205 | DEPARTMENT OF REAL ESTATE |
| |) | OAH No. L-1997060403 | |
| CLYDE GAILE SPARROW, |) | | |
| |) | | |
| _____ Respondent. |) | | By <u>Sandra B. Orma</u> |

NOTICE OF FURTHER 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 28, 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: OCT - 9 1998

DEPARTMENT OF REAL ESTATE

By: Sean Crahan
SEAN CRAHAN, Counsel

cc: Clyde Gaile Sparrow
Rose Pothier, Esq.
Sacto.
ALJ Davis, Sacto. OAH
OAH-LA

Sacto

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 15 1998

In the Matter of the Accusation of)
Case No. H-27205 LA)
OAH No. L-1997060403)
CLYDE GAILE SPARROW,)
Respondent.)

By *Sanna B. Ome*

NOTICE OF FURTHER 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 SEPTEMBER 29, 1998, at the hour of 10:00 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: JUL 15 1998

DEPARTMENT OF REAL ESTATE

By: *Sean Crahan*
SEAN CRAHAN, Counsel

cc: Clyde Gaile Sparrow
Rose Pothier, Esq.
✓ Sacto.
ALJ Davis, Sacto. OAH
OAH-LA

Handwritten signature/initials

1 Sean Crahan, Counsel
2 California Bar #49351
3 Department of Real Estate
4 107 South Broadway, Room 8107
5 Los Angeles, CA 90012
6
7
8 (213) 897-3937

FILED
JUN 11 1998
DEPARTMENT OF REAL ESTATE

By Jana B. Orona

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-27205 LA
12)
12 CLYDE GAILE SPARROW,) L-1997060403
12 individually and dba)
13 First Choice Real Estate And) S E C O N D A M E N D E D
13 Investments, Home Loans)
14 Unlimited and Metropolitan) A C C U S A T I O N
14 Funding Group,)
15)
15 Respondent.)
16 _____)

17 The Complainant, Thomas McCrady, a Deputy Real Estate
18 Commissioner of the State of California, for cause of accusation
19 against CLYDE GAILE SPARROW, individually and doing business as
20 First Choice Real Estate And Investments, Home Loans Unlimited and
21 Metropolitan Funding Group and as designated officer of G. Miller
22 And Associates Financial Services Incorporated, amends in
23 underscore, the Accusation, filed May 14, 1997, and alleges as
24 follows:

25 1.

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

1 Accusation in his official capacity. Amendments set forth in this
2 Second Amended Accusation are indicated in underscore or ~~strike~~
3 ~~out~~.

4 2.

5 At all times mentioned herein, CLYDE GAILE SPARROW is
6 presently licensed and/or has license rights under the Real Estate
7 Law (Part 1 of Division 4 of the California Business and
8 Professions Code, hereinafter referred to as the "Code"). At all
9 times mentioned herein, Respondent was and still is licensed by the
10 Department as a real estate broker both individually and doing
11 business as First Choice Real Estate And Investments, Home Loans
12 Unlimited and Metropolitan Funding Group. ~~and as designated officer~~
13 ~~of G. Miller And Associates Financial Services Incorporated.~~

14 3.

15 (a) At times herein mentioned, Respondent was engaged in
16 the real estate resale brokerage business as defined by Code
17 Section 10131(a) in that Respondent, for or in expectation of
18 compensation, solicited and negotiated with buyers and sellers of
19 real estate.

20 (b) At times herein mentioned, Respondent was engaged in
21 the mortgage loan brokerage business as defined by Code Section
22 10131(d) in that Respondent, for or in expectation of compensation,
23 solicited and negotiated with borrowers for loans from third-party
24 lenders secured by real property (secured loans).

25 (c) In connection with the above set forth activities,
26 Respondent conducted escrows.

27 /



1
2 From time to time between January 21, 1997, through
3 February 13, 1997, a representative of the Department attempted to
4 complete an examination of the books and records of Respondent with
5 respect to his activities requiring a real estate license for the
6 period from January 1, 1996 through December 31, 1996. That audit
7 determined that Respondent was operating in violation of the
8 following Code Sections and Regulations from Chapter 6, Title 10,
9 California Code of Regulations (Regulations) as set forth in the
10 following paragraphs.

11 (a) In conducting mortgage loan brokerage, Respondent,
12 doing business as Home Loans Unlimited, received funds from lenders
13 to be disbursed through escrow to borrowers (trust funds). These
14 trust funds were deposited in an account at Bank of America in an
15 account known as the Home Loans Unlimited Escrow Division Trust
16 Account - Account No. 24415-33722 (hereafter TA 1).

17 (b) In conducting real estate resales, Respondent, doing
18 business as First Choice Real Estate And Investments, received
19 funds from and on behalf of purchasers to be disbursed through
20 escrow to sellers. These trust funds were deposited in an account
21 at Bank of America, known as the First Choice Real Estate And
22 Investments Escrow Account, account No. 24410-33734 (hereafter TA
23 2).

24 (c) Respondent failed to maintain columnar records
25 showing trust funds received and disbursed for either TA 1 or TA 2
26 in willful violation of Regulation 2831.

27 (d) Respondent failed to maintain separate records for



1 either TA 1 or TA 2 in willful violation of Regulation 2831.1.

2 (e) Respondent failed to monthly reconcile his control
3 records with his separate records, for either TA 1 or TA 2 in
4 willful violation of Regulation 2831.2.

5 (f) Respondent was requested and subpoenaed to produce
6 bank statements, deposit tickets, canceled checks, columnar records
7 and separate records for TA 1 and TA 2. Respondent willfully
8 failed to produce those records in willful violation of Code
9 Section 10148.

10 5.

11 On or about September 30, 1996, Teka Smith obtained a
12 small claims judgment in the Compton Municipal Court, case number
13 96S02313, against Respondent for \$3908.00 plus \$40 costs. Sparrow
14 appealed to the Compton Superior Court and a trial de novo was set
15 for 11-26-96 in Compton Superior Court. The judgment of the
16 Municipal Court was sustained. Said judgment is final. Said
17 judgment based on fraud in a transaction for for which a real
18 estate license is required.

19 6.

20 The facts leading up to the judgment set forth in
21 paragraph 5 above are that, on or about August 6, 1996, Teka Smith
22 became a borrower on a loan secured by her real property at 5667
23 Marburn Avenue, Los Angeles, California. This loan was negotiated
24 and escrowed by Respondent doing business as Home Loans Unlimited.
25 Respondent was acting for or in expectation of compensation. In
26 the course of negotiating this loan, Respondent:

27 (a) Employed or compensated Sally Aguilera, aka Arasell



1 Correa who negotiated the terms of the loan with Teka Smith. Sally
2 Aguilera, aka Arasell Correa was at no time herein licensed by the
3 Department as a real estate broker or salesperson.

4 (b) Caused, allowed or permitted his name to be signed
5 to a loan application representing that he had conducted a "face to
6 face" interview with borrower Teka Smith when in fact he had no
7 such interview with Teka Smith.

8 (c) Dishonestly or fraudulently failed to deliver to
9 Teka Smith the loan proceeds of \$1,730 to which she was entitled.
10 Teka Smith did not receive these loan proceeds until she filed a
11 complaint in small claims court and obtained a judgement, sustained
12 by the Superior Court Appellate Department in the Compton Municipal
13 Court, case number 96S02313.

14 (d) At the close of the loan escrow, respondent falsely
15 represented to Teka Smith that \$1,458 had been paid to an insurance
16 carrier when in fact no payment had been made.

17 7.

18 Respondent knew or should have known that the above
19 violations occurred or were occurring. Respondent failed to
20 exercise reasonable supervision over the activities of employees of
21 First Choice Real Estate And Investments for which a real estate
22 license was required so as to prevent the violations.

23 8.

24 The conduct or omissions of Respondent as set forth above
25 subject his real estate licenses and license rights to suspension
26 or revocation under the following Code Sections:

27



1 (a) 10137 for employing or compensating unlicensed
2 persons to perform licensed acts, as set forth in paragraph 6(a)
3 above.

4 (b) 10176(a) for substantially misrepresenting to Teka
5 Smith that \$1,458 had been paid to an insurance carrier, as set
6 forth in paragraph 6(c) above.

7 (c) 10176(i) for failing to deliver to Teka Smith the
8 loan proceeds she was entitled to, as set forth in paragraph 6(c)
9 above.

10 (d) 10177(d) for willful violations of the following
11 Code Sections and Regulations:

12 (i) Code Section 10145 for the shortage in the
13 escrow trust account arising from the failure to maintain an amount
14 sufficient to cover the funds allocated to pay \$1,458 to the
15 insurance carrier, as set forth in paragraph 6(c) above.

16 (ii) Code Section 10145 and Regulation 2831 for
17 failure to deposit trust funds in a trust account, as set forth in
18 paragraph 4(c), above.

19 (iii) Regulation 2831.1 for failure to maintain
20 adequate separate records, as set forth in paragraph 4(d), above.

21 (iv) Regulation 2831.2, for failure to monthly
22 reconcile his control records with his separate records, as set
23 forth in paragraph 9 above.

24 (v) Code Section 10148 for failure to provide to
25 the Department bank statements, deposit tickets, canceled checks,
26 columnar records and separate records for TA 1 and TA 2, as set
27 forth in paragraph 4(f), above.

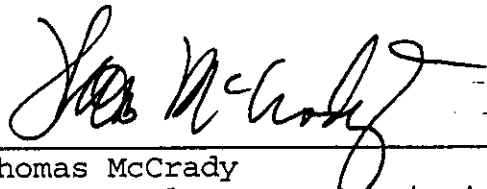


1 (b) Code Section 10177(h) for failure to exercise
2 reasonable supervision over the activities of employees of First
3 Choice Real Estate And Investments, as set forth in paragraph 6,
4 above.

5 (e) Code Section 10177.5 for the entry of a fraud
6 judgment, as set forth in paragraph 5 7, above,

7 WHEREFORE, Complainant prays that a hearing be conducted
8 on the allegations of this Accusation and that upon proof thereof,
9 a decision be rendered imposing disciplinary action against all
10 licenses and/or license rights of CLYDE GAILE SPARROW, individually
11 and doing business as First Choice Real Estate And Investments,
12 Home Loans Unlimited and Metropolitan Funding Group and as
13 designated officer of G. Miller And Associates Financial Services
14 Incorporated, under the Real Estate Law and for such other and
15 further relief as may be proper under applicable provisions of law,
16 including the imposition of a fine of up to \$10,000 pursuant to the
17 provisions of Section 10139.5 of the Business and Professions Code.

18 Dated at Los Angeles, California
19 this 11th day of June, 1998.

20
21 
22 _____
Thomas McCrady
Deputy Real Estate Commissioner

23
24
25 cc: Clyde Gaile Sparrow
26 Rose Pothier, Esq.
DR
27 Sacto

SC/sc



*Sacto
OAH*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
APR 21 1998
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of)
Case No. H-27205 LA)
CLYDE GAILE SPARROW,)
OAH No. L- 1997060403)
Respondent.)

By Jana B. Dine

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 MAY 27 & 28, 1998, 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: APR 21 1998

DEPARTMENT OF REAL ESTATE

By: Sean Crahan
SEAN CRAHAN, Counsel

cc: Clyde Gaile Sparrow
Rose Pothier, Esq.
Sacto.
OAH

*Sacto
2/9/98*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
FEB - 9 1998
DEPARTMENT OF REAL ES

In the Matter of the Accusation of) Case No. H-27205 LA
) OAH No. L- 1997060403
CLYDE GAILE SPARROW,)
)
)
Respondent.)

By June B. Crona

NOTICE OF FURTHER 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 APRIL 7 & 8, 1998, 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: FEB - 9 1998

DEPARTMENT OF REAL ESTATE

By: Sean Crahan
SEAN CRAHAN, Counsel

cc: Clyde G. Sparrow
Sacto.
OAH
Rose Pothier, Esq.

Sean Crahan

1 Sean Crahan, Counsel
2 Department of Real Estate
3 107 South Broadway, Room 8107
4 Los Angeles, CA 90012
5 California Bar #49351
6
7
8 (213) 897-3937

FILED
NOV 26 1997
DEPARTMENT OF REAL ESTATE

By *Laura B. Orma*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

| | | |
|----|--------------------------------------|----------------------------|
| 11 | In the Matter of the Accusation of) | No. H-27205 LA |
| 12 | CLYDE GAILE SPARROW,) | <u>A M E N D E D</u> |
| 13 | individually and dba) | <u>A C C U S A T I O N</u> |
| 14 | First Choice Real Estate And) | |
| 15 | Investments, Home Loans) | |
| 16 | Unlimited and Metropolitan) | |
| 17 | Funding Group and as) | |
| 18 | designated officer of) | |
| | G. Miller And Associates) | |
| | Financial Services) | |
| | Incorporated,) | |
| | Respondent.) | |

19 The Complainant, Thomas McCrady, a Deputy Real Estate
20 Commissioner of the State of California, for cause of accusation
21 against CLYDE GAILE SPARROW, individually and doing business as
22 First Choice Real Estate And Investments, Home Loans Unlimited and
23 Metropolitan Funding Group and as designated officer of G. Miller
24 And Associates Financial Services Incorporated, amends in
25 underscore, the Accusation, filed May 14, 1997, and alleges as
26 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 times mentioned herein, CLYDE GAILE SPARROW 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 referred to as the "Code"). At all times mentioned herein, Respondent was and still is licensed by the Department as a real estate broker both individually and doing business as First Choice Real Estate And Investments, Home Loans Unlimited and Metropolitan Funding Group and as designated officer of G. Miller And Associates Financial Services Incorporated.

3.

(a) At times herein mentioned, Respondent was engaged in the real estate resale brokerage business as defined by Code Section 10131(a) in that Respondent, for or in expectation of compensation, solicited and negotiated with buyers and sellers of real estate.

(b) At times herein mentioned, Respondent was engaged in the mortgage loan brokerage business as defined by Code Section 10131(d) in that Respondent, for or in expectation of compensation, solicited and negotiated with borrowers for loans from third-party lenders secured by real property (secured loans).

(c) In connection with the above set forth activities, Respondent conducted escrows.



1
2 From time to time between January 21, 1997, through
3 February 13, 1997, a representative of the Department attempted to
4 complete an examination of the books and records of Respondent with
5 respect to his activities requiring a real estate license for the
6 period from January 1, 1996 through December 31, 1996. That audit
7 determined that Respondent was operating in violation of the
8 following Code Sections and Regulations from Chapter 6, Title 10,
9 California Code of Regulations (Regulations) as set forth in the
10 following paragraphs.

11 (a) In conducting mortgage loan brokerage, Respondent,
12 doing business as Home Loans Unlimited, received funds from lenders
13 to be disbursed through escrow to borrowers (trust funds). These
14 trust funds were deposited in an account at Bank of America in an
15 account known as the Home Loans Unlimited Escrow Division Trust
16 Account - Account No. 24415-33722 (hereafter TA 1).

17 (b) In conducting real estate resales, Respondent, doing
18 business as First Choice Real Estate And Investments, received
19 funds from and on behalf of purchasers to be disbursed through
20 escrow to sellers. These trust funds were deposited in an account
21 at Bank of America, known as the First Choice Real Estate And
22 Investments Escrow Account, account No. 24410-33734 (hereafter TA
23 2).

24 (c) Respondent failed to maintain columnar records
25 showing trust funds received and disbursed for either TA 1 or TA 2
26 in willful violation of Regulation 2831.

27 (d) Respondent failed to maintain separate records for



1 either TA 1 or TA 2 in willful violation of Regulation 2831.1.

2 (e) Respondent failed to monthly reconcile his control
3 records with his separate records, for either TA 1 or TA 2 in
4 willful violation of Regulation 2831.2.

5 (f) Respondent was requested and subpoenaed to produce
6 bank statements, deposit tickets, canceled checks, columnar records
7 and separate records for TA 1 and TA 2. Respondent willfully
8 failed to produce those records in willful violation of Code
9 Section 10148.

10 5.

11 On or about September 30, 1996, Teka Smith obtained a
12 small claims judgment in the Compton Municipal Court, case number
13 96S02313, against Respondent for \$3908.00 plus \$40 costs. Sparrow
14 appealed to the Compton Superior Court and a trial de novo was set
15 for 11-26-96 in Compton Superior Court. The judgment of the
16 Municipal Court was sustained. Said judgment is final. Said
17 judgment based on fraud in a transaction for for which a real
18 estate license is required.

19 6.

20 Respondent knew or should have known that the above
21 violations occurred or were occurring. Respondent failed to
22 exercise reasonable supervision over the activities of employees of
23 First Choice Real Estate And Investments for which a real estate
24 license was required so as to prevent the violations.

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The conduct or omissions of Respondent as set forth above subject his real estate licenses and license rights to suspension or revocation under the following Code Sections:

(a) 10177(d) for willful violations of the following Code Sections and Regulations:

(i) Code Section 10145 and Regulation 2831 for failure to deposit trust funds in a trust account, as set forth in paragraph 4(c), above.

(ii) Regulation 2831.1 for failure to maintain adequate separate records, as set forth in paragraph 4(d), above.

(iii) Regulation 2831.2, for failure to monthly reconcile his control records with his separate records, as set forth in paragraph 9 above.

(iv) Code Section 10148 for failure to provide to the Department bank statements, deposit tickets, canceled checks, columnar records and separate records for TA 1 and TA 2, as set forth in paragraph 4(f), above.

(b) Code Section 10177(h) for failure to exercise reasonable supervision over the activities of employees of First Choice Real Estate And Investments, as set forth in paragraph 6, above.

(c) Code Section 10177.5 for the entry of a fraud judgment, as set forth in paragraph 5, above,

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



1 licenses and/or license rights of CLYDE GAILE SPARROW, individually
2 and doing business as First Choice Real Estate And Investments,
3 Home Loans Unlimited and Metropolitan Funding Group and as
4 designated officer of G. Miller And Associates Financial Services
5 Incorporated, under the Real Estate Law and for such other and
6 further relief as may be proper under applicable provisions of law.
7 Dated at Los Angeles, California
8 this 26th day of November , 1997.

9
10 Thomas McCrady

11 Thomas McCrady
12 Deputy Real Estate Commissioner

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15 cc: Clyde Gaile Sparrow
16 DR
17 Sacto

18 SC/sc
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Jack Sparrow

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

FILE
JUL 16 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-27205 LA
) OAH No. L-1997060403
CLYDE GAILE SPARROW,)
)
Respondent.)

By Laura B. Crane

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 FEBRUARY 4 & 5, 1998, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: JUL 16 1997

DEPARTMENT OF REAL ESTATE

By: Sean Crahan
SEAN CRAHAN, Counsel

cc: Clyde Gaile Sparrow
Sacto.
OAH

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

(213) 897-3937

FILED
MAY 14 1997
DEPARTMENT OF REAL ESTATE
By *[Signature]*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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|--------------------------------------|---------------------|
| In the Matter of the Accusation of) | No. H-27205 LA |
| CLYDE GAILE SPARROW,) | A C C U S A T I O N |
| individually and dba) | |
| First Choice Real Estate And) | |
| Investments, Home Loans) | |
| Unlimited and Metropolitan) | |
| Funding Group and as) | |
| designated officer of) | |
| G. Miller And Associates) | |
| Financial Services) | |
| Incorporated,) | |
| Respondent.) | |

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against CLYDE GAILE SPARROW, individually and doing business as First Choice Real Estate And Investments, Home Loans Unlimited and Metropolitan Funding Group and as designated officer of G. Miller And Associates Financial Services Incorporated, alleges as follows:

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1.

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

5 2.

6 At all times mentioned herein, CLYDE GAILE SPARROW is
7 presently licensed and/or has license rights under the Real Estate
8 Law (Part 1 of Division 4 of the California Business and
9 Professions Code, hereinafter referred to as the "Code"). At all
10 times mentioned herein, Respondent was and still is licensed by the
11 Department as a real estate broker both individually and doing
12 business as First Choice Real Estate And Investments, Home Loans
13 Unlimited and Metropolitan Funding Group and as designated officer
14 of G. Miller And Associates Financial Services Incorporated.

15 3.

16 (a) At times herein mentioned, Respondent was engaged in
17 the real estate resale brokerage business as defined by Code
18 Section 10131(a) in that Respondent, for or in expectation of
19 compensation, solicited and negotiated with buyers and sellers of
20 real estate.

21 (b) At times herein mentioned, Respondent was engaged in
22 the mortgage loan brokerage business as defined by Code Section
23 10131(d) in that Respondent, for or in expectation of compensation,
24 solicited and negotiated with borrowers for loans from third-party
25 lenders secured by real property (secured loans).

26 (c) In connection with the above set forth activities,
27 Respondent conducted escrows.



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2 From time to time between January 21, 1997, through
3 February 13, 1997, a representative of the Department attempted to
4 complete an examination of the books and records of Respondent with
5 respect to his activities requiring a real estate license for the
6 period from January 1, 1996 through December 31, 1996. That audit
7 determined that Respondent was operating in violation of the
8 following Code Sections and Regulations from Chapter 6, Title 10,
9 California Code of Regulations (Regulations) as set forth in the
10 following paragraphs.

11 (a) In conducting mortgage loan brokerage, Respondent,
12 doing business as Home Loans Unlimited, received funds from lenders
13 to be disbursed through escrow to borrowers (trust funds). These
14 trust funds were deposited in an account at Bank of America in an
15 account known as the Home Loans Unlimited Escrow Division Trust
16 Account - Account No. 24415-33722 (hereafter TA 1).

17 (b) In conducting real estate resales, Respondent, doing
18 business as First Choice Real Estate And Investments, received
19 funds from and on behalf of purchasers to be disbursed through
20 escrow to sellers. These trust funds were deposited in an account
21 at Bank of America, known as the First Choice Real Estate And
22 Investments Escrow Account, account No. 24410-33734 (hereafter TA
23 2).

24 (c) Respondent failed to maintain columnar records
25 showing trust funds received and disbursed for either TA 1 or TA 2
26 in willful violation of Regulation 2831.

27 (d) Respondent failed to maintain separate records for

1 either TA 1 or TA 2 in willful violation of Regulation 2831.1.

2 (e) Respondent failed to monthly reconcile his control
3 records with his separate records, for either TA 1 or TA 2 in
4 willful violation of Regulation 2831.2.

5 (f) Respondent was requested and subpoenaed to produce
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7 and separate records for TA 1 and TA 2. Respondent willfully
8 failed to produce those records in willful violation of Code
9 Section 10148.

10 5.

11 On or about September 30, 1996, Smith obtained a small
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13 96S02313, against Respondent for \$3908.00 plus \$40 costs. Sparrow
14 appealed to the Compton Superior Court and a trial de novo was set
15 for 11-26-96 in Compton Superior Court. The judgment of the
16 Municipal Court was sustained. Said judgment is final. Said
17 judgment based on fraud in a transaction for for which a real
18 estate license is required.

19 6.

20 Respondent knew or should have known that the above
21 violations occurred or were occurring. Respondent failed to
22 exercise reasonable supervision over the activities of employees of
23 First Choice Real Estate And Investments for which a real estate
24 license was required so as to prevent the violations.

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The conduct or omissions of Respondent as set forth above subject his real estate licenses and license rights to suspension or revocation under the following Code Sections:

(a) 10177(d) for willful violations of the following Code Sections and Regulations:

(i) Code Section 10145 and Regulation 2831 for failure to deposit trust funds in a trust account, as set forth in paragraph 4(c), above.

(ii) Regulation 2831.1 for failure to maintain adequate separate records, as set forth in paragraph 4(d), above.

(iii) Regulation 2831.2, for failure to monthly reconcile his control records with his separate records, as set forth in paragraph 9 above.

(iv) Code Section 10148 for failure to provide to the Department bank statements, deposit tickets, canceled checks, columnar records and separate records for TA 1 and TA 2, as set forth in paragraph 4(f), above.

(b) Code Section 10177(h) for failure to exercise reasonable supervision over the activities of employees of First Choice Real Estate And Investments, as set forth in paragraph 6, above.

(c) Code Section 10177.5 for the entry of a fraud judgment, as set forth in paragraph 5, above,

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1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations of this Accusation and that upon proof thereof,
3 a decision be rendered imposing disciplinary action against all
4 licenses and/or license rights of CLYDE GAILE SPARROW, individually
5 and doing business as First Choice Real Estate And Investments,
6 Home Loans Unlimited and Metropolitan Funding Group and as
7 designated officer of G. Miller And Associates Financial Services
8 Incorporated, under the Real Estate Law and for such other and
9 further relief as may be proper under applicable provisions of law.
10 Dated at Los Angeles, California
11 this 14th day of May, 1997.

12
13 THOMAS MC CRADY
14 Thomas McCrady
 Deputy Real Estate Commissioner

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17 cc: Clyde Gaile Sparrow
 DR
18 Sacto
19 SC/sc

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