

Sacto

1 Department of Real Estate
320 West 4th Street, Ste. 350
2 Los Angeles, California 90013-1105
3 Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

SEP 24 2008

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 CLYDE GAILE SPARROW dba as)
13 First Choice Real Estate and)
14 Investments, and Home Loans)
Unlimited,)
15 Respondent.)
16)
17)
18)

No. H-34733 LA

STIPULATION
AND
AGREEMENT

19 It is hereby stipulated by and between CLYDE GAILE
20 SPARROW dba First Choice Real Estate and Investments (sometimes
21 referred to as ("Respondent"), and the Complainant, acting by and
22 through Elliott Mac Lennan, Counsel for the Department of Real
23 Estate, as follows for the purpose of settling and disposing of
24 the Accusation filed on March 6, 2008, in this matter:

- 25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondent
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1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act ("APA"), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement (Stipulation).

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

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

22 4. This Stipulation is based on the allegations
23 contained in the Accusation. In the interest of expedience and
24 economy, Respondent chooses not to contest these allegations, but
25 to remain silent and understands that, as a result thereof, these
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1 allegations, without being admitted or denied, will serve as a
2 prima facie basis for the disciplinary action stipulated to
3 herein. The Real Estate Commissioner shall not be required to
4 provide further evidence to prove said allegations.

5 5. This Stipulation and Respondent's decision not to
6 contest the Accusation is made for the purpose of reaching an
7 agreed disposition of this proceeding and is expressly limited to
8 this proceeding and any other proceeding or case in which the
9 Department of Real Estate ("Department"), the state or federal
10 government, or any agency of this state, another state or federal
11 government is involved, and otherwise shall not be admissible in
12 any other criminal or civil proceedings.

13 6. It is understood by the parties that the Real
14 Estate Commissioner may adopt this Stipulation as his Decision
15 in this matter thereby imposing the penalty and sanctions on
16 Respondents real estate licenses and license rights as set forth
17 in the "Order" herein below. In the event that the Commissioner,
18 in his discretion, does not adopt the Stipulation, it shall be
19 void and of no effect and Respondents shall retain the right to
20 a hearing and proceeding on the Accusation under the provisions
21 of the APA and shall not be bound by any stipulation or waiver
22 made herein.

23 7. The Order or any subsequent Order of the Real
24 Estate Commissioner made pursuant to this Stipulation shall not
25 constitute an estoppel, merger or bar to any further
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1 administrative or civil proceedings by the Department of Real
2 Estate with respect to any matters which were not specifically
3 alleged to be causes for Accusation in this proceeding but do
4 constitute a bar, estoppel and merger as to any allegations
5 actually contained in the Accusation against Respondents herein.

6 8. Respondent understands that by agreeing to this
7 Stipulation, Respondent agrees to pay, pursuant to Business and
8 Professions Code Section 10148, the cost of the audit (LA 070039
9 and LA 070048) which led to this disciplinary action. The amount
10 of said cost is \$10,699.56.

11 9. Respondent has received, read, and understands the
12 "Notice Concerning Costs of Subsequent Audit". Respondent
13 further understands that by agreeing to this Stipulation, the
14 findings set forth below in the Determination of Issues become
15 final, and the Commissioner may charge Respondent for the cost of
16 any subsequent audit conducted pursuant to Business and
17 Professions Code Section 10148 to determine if the violations
18 have been corrected. The maximum cost of the subsequent audit
19 will not exceed \$10,699.56.
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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:

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4 The conduct of CLYDE GAILE SPARROW, as described in
5 Paragraph 4, above, constitutes a violation of Business and
6 Professions Code ("Code") Sections 10145 and 10240 and violations
7 of Title 10, Chapter 6, California Code of Regulations Sections
8 2731, 2831, 2831.1, 2831.2, 2950(d), 2950(h) and 2951. This
9 conduct is a basis for the suspension or revocation of
10 Respondent's license pursuant to Sections 10177(d) and 10177(g)
11 of the Business and Professions Code.

ORDER

12
13 WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

14 I. The real estate broker license of Respondent CLYDE
15 GAILE SPARROW, under the Real Estate Law is revoked; provided,
16 however, a new restricted real estate broker license shall be
17 issued to said Respondent, pursuant to Section 10156.5 of the
18 Business and Professions Code if Respondent:

19 (A) Makes application thereof and pays to the
20 Department of Real Estate the appropriate fee for the restricted
21 license within ninety (90) days from the effective date of this
22 Decision.

23 (B) Respondent CLYDE GAILE SPARROW shall, prior to and
24 as a condition of the issuance of the restricted license, submit
25 proof satisfactory to the Commissioner of having taken and
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1 successfully completed the continuing education course on trust
2 fund accounting and handling specified in paragraph (3) of
3 subdivision (a) of Section 10170.5 of the Business and
4 Professions Code. Proof of satisfaction of this requirement
5 includes evidence that Respondent has successfully completed the
6 trust fund account and handling continuing education course
7 within 120 days prior to the effective date of the Decision in
8 this matter.

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

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

19 2. The restricted license issued to Respondent may
20 be suspended prior to hearing by Order of the Real Estate
21 Commissioner on evidence satisfactory to the Commissioner that
22 Respondent has violated provisions of the California Real Estate
23 Law, the Subdivided Lands Law, Regulations of the Real Estate
24 Commissioner or conditions attaching to the restricted license.
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1 3. Respondent shall not be eligible to apply for the
2 issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions of
4 a restricted license until two (2) years have elapsed from the
5 effective date of this Decision.

6 II. All licenses and licensing rights of Respondent
7 CLYDE GAILE SPARROW under the Real Estate Law suspended for a
8 period of sixty (60) days from the issuance of the restricted
9 license; provided, however, that if Respondent petitions, thirty
10 (30) days of said suspension (or a portion thereof) shall be
11 stayed for two (2) years upon condition that:

12 A1. Respondent pays a monetary penalty pursuant to
13 Section 10175.2 of the Business and Professions Code at the rate
14 of \$50.00 per day for each day of the suspension for a total
15 monetary penalty of \$1,500.

16 2. Said payment shall be in the form of a cashier's
17 check or certified check made payable to the Recovery Account of
18 the Real Estate Fund. Said check must be received by the
19 Department prior to the effective date of the Decision in this
20 matter.
21

22 3. No further cause for disciplinary action against
23 the real estate license of Respondent occurs within two (2) years
24 from the effective date of the Decision in this matter.

25 4. If Respondent fails to pay the monetary penalty in
26 accordance with the terms of the Decision, the Commissioner may,
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1 without a hearing, order the immediate execution of all or any
2 part of the stayed suspension, in which event the Respondent
3 shall not be entitled to any repayment nor credit, prorated or
4 otherwise, for money paid to the Department under the terms of
5 this Decision.

6 5. If Respondent pays the monetary penalty and if no
7 further cause for disciplinary action against the real estate
8 license of Respondent occurs within two (2) years from the
9 effective date of the Decision, the stay hereby granted shall
10 become permanent.

11 B.1 The remaining thirty days of the sixty day
12 suspension shall be stayed for two years upon the following terms
13 and conditions:

14 (a) Respondent shall obey all laws, rules and
15 regulations governing the rights, duties and responsibilities of
16 a real estate licensee in the State of California; and

17 (b) That no final subsequent determination be made
18 after hearing or upon stipulation, which cause for disciplinary
19 action occurred within two years from the effective date of this
20 Decision. Should such a determination be made, the Commissioner
21 may, in his discretion, vacate and set aside the stay order and
22 reimpose all or a portion of the stayed suspension. Should no
23 such determination be made, the stay imposed herein shall become
24 permanent.

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1 III. Pursuant to Section 10148 of the Business and

2 Professions Code, Respondent shall pay the Commissioner's
3 reasonable cost for (a) the audit which led to this disciplinary
4 action and (b) a subsequent audits to determine if Respondent is
5 now in compliance with the Real Estate Law. The cost of the
6 audit which led to this disciplinary action is \$10,699.56. In
7 calculating the amount of the Commissioner's reasonable cost, the
8 Commissioner may use the estimated average hourly salary for all
9 persons performing audits of real estate brokers, and shall
10 include an allocation for travel time to and from the auditor's
11 place of work. Said amount for the prior and subsequent audits
12 shall not exceed \$21,399.12.

13 Respondent shall pay such cost within 60 days of
14 receiving an invoice from the Commissioner detailing the
15 activities performed during the audit and the amount of time
16 spent performing those activities.

17 The Commissioner may suspend the license of Respondent
18 pending a hearing held in accordance with Section 11500, et seq.,
19 of the Government Code, if payment is not timely made as provided
20 for herein, or as provided for in a subsequent agreement between
21 the Respondent and the Commissioner. The suspension shall remain
22 in effect until payment is made in full or until Respondent
23 enters into an agreement satisfactory to the Commissioner to
24 provide for payment, or until a decision providing otherwise is
25 adopted following a hearing held pursuant to this condition.
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Respondent (1) shall mail to Elliott Mac Lennan:
Attention: Legal Section, Department of Real Estate, 320 W.
Fourth St., Suite 350, Los Angeles, California 90013-1105 the
original signed signature page of the stipulation herein.
Additionally, Respondent shall also (2) facsimile a copy of
stipulation signature page, as actually signed by Respondent, to
the Department at the following telephone/fax number: (213) 576-
6917, Attention: Elliott Mac Lennan. A facsimile constitutes
acceptance and approval of the terms and conditions of this
stipulation. Respondent agrees, acknowledges and understands
that by electronically sending to the Department a facsimile copy
of Respondent's actual signature as it appears on the
stipulation, which receipt of the facsimile copy by the
Department shall be as binding on Respondent as if the Department
had received the original signed stipulation.

DATED: 06-23-08



CLYDE GAILE SPARROW, Respondent

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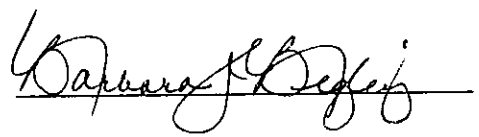
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at
12 o'clock noon on _____ October 23 _____, 2008.

IT IS SO ORDERED 8/17, 2008.

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED

MAR -6 2008

DEPARTMENT OF REAL ESTATE

BY: *H. Suarez*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 34733 LA

12 CLYDE GAILE SPARROW, dba)
13 First Choice Real Estate and)
14 Investments, and Home Loans)
15 Unlimited,)

A C C U S A T I O N

Respondent.)

16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, acting in her official
18 capacity, for cause of Accusation against CLYDE GAILE SPARROW dba
19 First Choice Real Estate and Investments, and Home Loans
20 Unlimited, is informed and alleges as follows:

21 1.

22 All references to the "Code" are to the California
23 Business and Professions Code and all references to "Regulations"
24 are to Title 10, Chapter 6, California Code of Regulations.
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1 LICENSE HISTORY

2 2.

3 At all times mentioned, CYLDE GAILE SPARROW
4 ("SPARROW"), was licensed or had license rights issued by the
5 Department of Real Estate ("Department") as a real estate broker.
6 On August 31, 1984, SPARROW was originally licensed as a real
7 estate broker.

8 On August 31, 1999, in case number H-27205 LA,
9 SPARROW's broker license was revoked with right to a restricted
10 broker license. The restricted broker license issued on
11 September 10, 1999, as more fully set forth below in Paragraph 9.

12 LICENSED ACTIVITIES AND BROKERAGE

13 3.

14 At all times mentioned, in the City of Carson, County
15 of Orange, SPARROW acted as real estate broker and conducted
16 licensed activities within the meaning of:

17 A. Code Section 10131(d). SPARROW operated a mortgage
18 and loan brokerage dba First Choice Real Estate and Investments,
19 and Home Loans Unlimited; and

20 B. Conducted broker-controlled escrows through his
21 escrow division, First Choice Real Estate & Investments Escrow
22 Division, under the exemption set forth in California Financial
23 Code Section 17006(a)(4) for real estate brokers performing
24 escrows incidental to a real estate transaction where the broker
25 is a party and where the broker is performing acts for which a
26 real estate license is required.
27

AUDIT

4.

On December 18, 2007, the Department completed an audit examination of the books and records of SPARROW, pertaining to the mortgage and loan brokerage and broker-controlled escrow activities described in Paragraph 3, that require a real estate license. The audit examination covered a period of time beginning on September 1, 2004 through August 31, 2007. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 070039 and LA 070048 and the exhibits and workpapers attached to said audit reports.

5.

At all times mentioned, in connection with the activities described in Paragraph 4, SPARROW accepted or received funds in trust (trust funds) from or on behalf of buyers, sellers borrowers and escrow holders. Thereafter SPARROW made disposition of such funds. SPARROW maintained the following trust accounts into which he deposited certain of these funds:

"First Choice Real Estate & Investments Escrow Division Trust Account

Account No. 001787896"

Mellon 1st Business Bank

1100 South New Hampshire Avenue

Los Angeles, CA 90006

("T/A #1")

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1 "First Choice Real Estate & Investments Escrow Division Trust
2 Account (VE3T)
3 Account No. 001747878"
4 Mellon 1st Business Bank
1100 South New Hampshire Avenue
Los Angeles, CA 90006 ("T/A #2")

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6 VIOLATIONS OF THE REAL ESTATE LAW

7 6.

8 With respect to the licensed activities referred to in
9 Paragraphs 3 and 5, and the audit examination including the
10 exhibits and workpapers referred to in Paragraph 4, it is alleged
11 that SPARROW:

12 (a) Permitted, allowed or caused the disbursement of
13 trust funds from T/A #2 account where the disbursement of funds
14 reduced the total of aggregate funds in T/A #2, to an amount
15 which, on August 31, 2007, was \$1,879.40, less than the existing
16 aggregate trust fund liability to every principal who was an
17 owner of said funds, without first obtaining the prior written
18 consent of the owners of said funds, as required by Code Section
19 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951. This
20 shortage, due to a deposit error, was cured on October 10, 2007.

21 (b) Failed to maintain a control record in the form of
22 a columnar record in chronological order of all trust funds
23 received, deposited and disbursed, in violation of Code Section
24 10145 and Regulations 2831, 2950(d) and 2951. SPARROW did not
25 maintain a columnar record for loan transactions where he
26 collected credit report fees and appraisal fees along with his
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1 real estate commission fees earned at the close of escrow.

2 (c) Failed to maintain a separate record for each
3 beneficiary or transaction, thereby failing to account for all
4 trust funds received, including credit report fees and appraisal
5 fees, as required by Code Section 10145 and Regulations 2831.1,
6 2950(d) and 2951.

7 (d) Failed to perform a monthly reconciliation of the
8 balance of all separate beneficiary or transaction records
9 maintained pursuant to Regulation 2831.1 with the record of all
10 trust funds received and disbursed by the escrow trust account,
11 as required by Code Section 10145 and Regulations 2831.2, 2950(d)
12 and 2951.

13 (e) Failed to disclose in writing to all parties of his
14 financial interest and ownership of the escrow company for First
15 Choice Real Estate and Investments, as required by Code Section
16 10145 and Regulation 2950(h).

17 (f) Overcharged borrowers Marvin Avila, Vincent
18 Harrison and Patricia P. Correa, \$50.67 each for an excess charge
19 over the invoiced cost of their credit reports, totaling \$152.01,
20 without disclosing to said borrowers the reasons for the
21 overcharge, in violation of Code Sections 10176(a) and 10176(g).

22 (g) Failed to provide, maintain or retain a true,
23 complete and correct copy of a Department of Real Estate approved
24 Mortgage Loan Disclosure Statement signed by the broker for
25 borrowers Joseph Abaekobe, Patricia A. Correa, Laura Martinez,
26
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1 Carlos Castillo, Riad El-Khoury, Anthony Leonard, Vincent
2 Harrison, Debra Moss, Karen McCoy and Marvin Avila, by not
3 disclosing lender rebates in the form of yield spread premiums,
4 in violation of Code Section 10240 and Regulation 2840.

5 (h) Used the fictitious names of "1st Choice Real
6 Estate" and "First Choice Real Estate" to conduct licensed
7 activities including mortgage loans and broker-controlled escrows
8 without holding a license bearing said fictitious business names,
9 in violation of Code Section 10159.5 and Regulation 2731; and

10 (i) Commingled trust funds by deposits therein into the
11 general account between August 31, 2006 and October 10, 2007.

12 DISCIPLINARY STATUTES AND REGULATIONS

13 7.

14 The conduct of Respondent SPARROW, described in
15 Paragraph 6, violated the Code and the Regulations as set forth:

16 <u>PARAGRAPH</u>	17 <u>PROVISIONS VIOLATED</u>
18 6(a)	19 Code Sections 10145 and Regulations 20 2832.1, 2950(d), 2950(g) and 2951
21 6(b)	22 Code Section 10145 and Regulations 2831, 23 2950(d) and 2951
24 6(c)	25 Code Section 10145 and Regulations 26 2831.1, 2950(d) and 2951

- 1 6(d) Code Section 10145 and Regulations
- 2 2831.2, 2950(d) and 2951

- 3
- 4 6(e) Code Section 10145 and Regulation
- 5 2950(h)

- 6
- 7 6(f) Code Sections 10176(a) and 10176(g)

- 8
- 9 6(g) Code Section 10240 and Regulation 2840

- 10
- 11 6(h) Code Section 10159.5 and Regulation 2731

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- 13 6(i) Code Section 10176(e)

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15 Each of the foregoing violations constitute cause for the
16 suspension or revocation of the real estate license and license
17 rights of SPARROW under the provisions of Code Sections 10176(e),
18 10176(g), 10177(d) and/or 10177(g).

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1 NEGLIGENCE

2 8.

3 The overall conduct of SPARROW constitutes negligence
4 and is cause for discipline of the real estate license and
5 license rights of SPARROW pursuant to Code Section 10177(g).

6 PRIOR DEPARTMENTAL ACTION

7 9.

8 On August 27, 1993, in Case No. H-25535 LA, an
9 Accusation was filed against Respondent SPARROW, that resulted in
10 discipline by stipulated revocation with right to a restricted
11 license of Sparrow's real estate broker license on terms and
12 conditions for violations of Code Sections 10145, 10148, 10177(d)
13 and 10177(h) and Regulations 2831, 2831.1 and 2831.2, effective
14 August 31, 1999.
15

16 LACK OF SUPERVISION AND COMPLIANCE

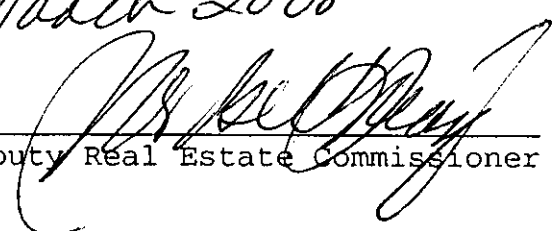
17 10.

18 The overall conduct of SPARROW constitutes a failure to
19 exercise supervision and control over the licensed activities of
20 his brokerage. Nor did SPARROW maintain a system in place for
21 regularly monitoring his compliance with the Real Estate Law
22 especially in regard to establishing policies to review trust
23 fund handling and record keeping for his client's trust funds, in
24 violation. This conduct is cause for discipline of the real
25 estate license and license rights of SPARROW pursuant to Code
26 Section 10177(h), 10177(d) and/or 10177(g).
27

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent CLYDE
5 GAILE SPARROW, under the Real Estate Law (Part 1 of Division 4 of
6 the Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this *4th* day of *March* 2008.

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12 Deputy Real Estate Commissioner
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24 cc: Clyde Gaile Sparrow
25 Maria Suarez
26 Sacto
27 Audits - Darryl M. Thomas
Tanika Beamon