

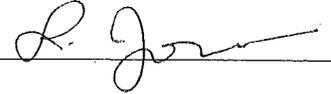
FILED

1 BUREAU OF REAL ESTATE
2 P. O. Box 137007
3 Sacramento, CA 95813-7007

September 19, 2013

BUREAU OF REAL ESTATE

4 Telephone: (916) 263-8670

By 

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7
8 STATE OF CALIFORNIA

9 BUREAU OF REAL ESTATE

10 * * *

11 To:

12)
13 GARY DEWAYNE BAILEY)
14)
15)

No. H-2835 FR

ORDER TO DESIST AND REFRAIN
(B&P Code Section 10086)

16 The Commissioner of the California Bureau of Real Estate (Bureau) caused an
17 investigation to be made of the activities of GARY DEWAYNE BAILEY (BAILEY). Based on
18 that investigation, the Commissioner has determined that BAILEY has engaged in, is engaging
19 in, or is attempting to engage in, acts or practices constituting violations of the California
20 Business and Professions Code (Code) and/or Title 10, Chapter 6, California Code of
21 Regulations (Regulations), including the business of, acting in the capacity of, and/or
22 advertising or assuming to act as, a real estate broker in the State of California within the
23 meaning of Sections 10131(d) (performing services for borrowers and/or lenders in connection
24 with loans secured by real property) and/or 10131.2 (real estate broker license required to charge
25 and collect an advance fee) of the Code. Furthermore, based on the investigation, the
26 Commissioner hereby issues the following Findings of Fact, Conclusions of Law, and Desist
27 and Refrain Order under the authority of Section 10086 of the Code.

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FINDINGS OF FACT

1. At no time mentioned was BAILEY licensed by the Bureau in any capacity.

2. During the period of time set forth below, BAILEY, on behalf of Upgrade Realty Corporation, solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation; negotiate one or more loans for, or perform services for, borrowers and/or lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charge, demand or collect an advance fee for any of the services offered.

3. On or about December 20, 2011, BAILEY, as a representative of Upgrade Realty Corporation, demanded and received an advance fee of \$1,500 from Reginald and Odessa D. for loan modification and negotiation services on behalf of Reginald and Odessa D. in connection with a loan secured by real property located at 1149 Via Del Sol Road, Salinas, California.

4. On or about December 20, 2011, BAILEY, as a representative of Upgrade Realty Corporation, demanded and received an advance fee of \$1,000 from Reginald and Odessa D. for loan modification and negotiation services on behalf of Reginald and Odessa D. in connection with a loan secured by real property located at 76153 Deerwood Drive, Yulee, Florida.

5. Between on or about December 5, 2011, and June 6, 2012, BAILEY, as a representative of Upgrade Realty Corporation, demanded and received an advance fee totaling \$4,400 from Elizabeth B. for loan modification and negotiation services on behalf of Elizabeth B. in connection with a loan secured by real property located at 1919 West 108th Street, Los Angeles, California.

CONCLUSIONS OF LAW

6. Based on the findings of fact contained in paragraphs 1 through 5, BAILEY solicited one or more borrowers to perform services for those borrowers and/or those

1 provides evidence satisfactory to the Commissioner that he is properly licensed by the Bureau as
2 a real estate broker, and:

3 (A) Has an advance fee agreement which has been submitted to the
4 Bureau and which is in compliance with Sections 2970 and 2972 of the Regulations;

5 (B) Has placed all previously collected advance fees into a trust
6 account for that purpose and is in compliance with Section 10146 of the Code;

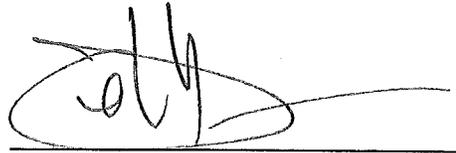
7 (C) Has provided an accounting to trust fund owner-beneficiaries
8 pursuant to Section 2972 of the Regulations; and

9 (D) Is in compliance with California law, as amended effective as
10 of October 11, 2009, with respect to loan modification and/or forbearance services. Under
11 the amended law, BAILEY can only collect advance fees for loan modification or other
12 mortgage loan forbearance services related to commercial loans and loans for residential
13 properties containing five or more dwelling units.

14 3. Immediately desist and refrain from demanding, claiming, collecting and/or
15 receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and
16 under any conditions, with respect to the performance of loan modification or any other form of
17 mortgage loan forbearance services in connection with loans on residential property containing
18 four or fewer dwelling units.

19 DATED: 9/19/2013

21 REAL ESTATE COMMISSIONER

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25 **By: JEFFREY MASON**
26 **Chief Deputy Commissioner**

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- NOTICE -

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Business and Professions Code Section 10139 provides that “Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars (\$60,000).”