

FILED  
OCT 30 2001

DEPARTMENT OF REAL ESTATE

By Lucie Q. Jain

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
JAMES ALLEN CLEMONS, )  
Respondent. )

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NO. H-7934 SF  
OAH NO. N-2001040064

DECISION

The Proposed Decision dated September 27, 2001, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon  
on NOVEMBER 20, 2001.

IT IS SO ORDERED October 22, 2001.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of

JAMES ALLEN CLEMONS,

Respondent.

Case No. H-7934 SF

OAH No. N 2001040064

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 13, 2001.

David A. Peters, Staff Counsel, represented the Department of Real Estate.

Respondent James Allen Clemons was present and represented by Edgardo Gonzalez, Attorney at Law.

Evidence was received and the matter was submitted on September 13, 2001.

**FACTUAL FINDINGS**

1. Complainant Les R. Bettencourt filed the Accusation in his official capacity as Deputy Real Estate Commissioner for the Department of Real Estate ("Department").

2. On August 6, 1999, the Department filed an Accusation alleging that Respondent violated certain provisions of the California Real Estate Law. The Accusation was resolved by a Stipulation and Agreement providing for the revocation of Respondent's license and the issuance of a restricted license. The effective date of the Stipulation was February 25, 2000. Therefore, Respondent presently holds a restricted real estate broker's license.

The Department issued the restricted license pursuant to numerous terms and conditions, including education and testing requirements. It also required Respondent to

pay the cost of the audit that led to the disciplinary action and for a subsequent audit. The purpose of the subsequent audit was to determine whether Respondent had corrected the trust fund violations that were the subject of that action.

The restricted license is scheduled to expire on February 24, 2004.

3. Respondent was originally licensed in 1978. He operates a mortgage loan brokerage business. The business includes the solicitation of lenders and borrowers for loans secured directly or collaterally by liens on real property. The loans are arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation.

4. On January 4 and 5, 2001, a Department auditor examined Respondent's accounting and other records. The purpose of the audit was to determine whether Respondent properly handled and accounted for trust funds under his control and followed other requirements.

The auditor found that Respondent violated a requirement for timely recording of documents. He twice failed to record the assignments of a deed of trust within 10 days of disbursement of the purchasers' funds to the sellers.

Specifically, in Loan No. 1058, the funds were disbursed on October 12, 2000, but the assignment was not recorded until November 28, 2000. In Loan No. 1043, the funds were disbursed on July 17, 2000, but the assignment was not recorded until August 9, 2000.

5. Mary Lois Moriarty, Respondent's secretary, testified. She is in charge of computing the recorder's fees and mailing the deeds to the recorder's office. Sometimes, the wrong amount of money is sent in, and the mailing is returned. In those instances, she voids the previous check and resends the documents with a new check for the correct amount. She stated that she assumed that was what happened in these cases.

Respondent never told her that the documents needed to be recorded within a certain time period.

Ms. Moriarty further testified that she believes Respondent to be an honest person.

6. Respondent testified that the previous Accusation arose out of his failure to keep accurate records recording multi-lender transactions. He stated that he was negligent regarding the rules for trust fund accounting and this resulted in minor trust fund shortages. He therefore took corrective action to comply with the proper procedures and now submits quarterly audits and reports to the Department.

7. Respondent did not dispute the auditor's findings in this matter. He testified that he was not aware of the rule requiring recordation within ten days of disbursement. Respondent explained that when an existing deed is purchased, he requires that the title company record before disbursement and that a "104.1" insurance endorsement be issued. This means that he purchases insurance from the title company against the failure of the assignment and the existence of any reconveyance.

The two loans at issue here involved what Respondent refers to as internal assignments. They involved transactions between his clients. He services the deeds and a title company is not used. His practice with such transactions was to send the assignment in to be recorded after the funds are disbursed. Previously, he assumed that documents mailed to a recorder's office would be recorded within a day or two of receipt. Now that he is aware of the law, he goes personally to the recorder's office to ensure that the documents are recorded within ten days.

8. Respondent took and passed the professional liability examination as required by the terms of his restricted license. He has also completed 45 hours of continuing education and paid for the costs of the audit.

9. Two business associates testified on Respondent's behalf. Carl San Miguel has been licensed as a real estate broker since 1973. He has known Respondent professionally for more than five years. Mr. San Miguel has had occasion to share more than five loans with Respondent's office. He is aware that Respondent was disciplined previously, nevertheless, he holds him in high regard.

Barbara Sue Smith was licensed as a real estate agent in 1977. She subsequently obtained a broker's license. She has known Respondent about ten years and does business regularly with him. Ms. Smith believes Respondent to enjoy an excellent reputation. She refers investors to him and has never received any complaints.

10. Two letters of reference were received in evidence. Anthony S. C. Yau has known Respondent for over 25 years. He is a certified public accountant and has provided tax preparation, tax planning and other accounting services to Respondent for many years. His office has also prepared quarterly reports regarding Respondent's trust accounts and reviewed multi-lender files and transactions. Mr. Yau believes Respondent to be very honest, trustworthy, meticulous and organized. He has never discovered a trust fund or other violation. Mr. Yau would recommend Respondent to any of his clients.

Denise Perrucci, Assistant Vice President-Branch Manager for Fidelity National Title Company has known Respondent for approximately ten years. She has processed his escrow transactions for five years. Ms. Perrucci values Respondent for his honesty, truthfulness and consideration. She stated that he has acted with the highest professionalism and integrity in all of his transactions with her office.

11. Respondent holds a bachelor's degree in accounting and business administration. He is a certified public accountant, but does not practice accounting. Respondent is married and has two children. He provides financial support for all of his family members.

## LEGAL CONCLUSIONS

1. Cause for discipline exists pursuant to Business and Professions Code section 10177(d) of the Business and Professions Code as that section interacts with section 10234 (failure to record within ten days of receipt of funds) by reason of the matters set forth in Finding 4.

2. While conducting business pursuant to a license restricted for violations of the licensing statutes, Respondent was audited and other violations discovered. It is acknowledged that no members of the public were harmed in either instance, and that the subsequent violations are minor. However, the nature of the violations is somewhat beside the point at this juncture. The point is that Respondent allowed them to occur.

Operating pursuant to a restricted license is analogous to being on probation. The hope and expectation is that a licensee will take special care to comply with the law. In addition, terms requiring continuing education are included to ensure that a licensee is fully aware of legal requirements.

Respondent is a very experienced broker. He was trained as an accountant. He recently completed continuing education courses and knew a subsequent audit would be conducted. Nonetheless, he violated a clear and simple rule regarding the recordation of documents that is designed to provide protection to the public.

It is therefore not reasonable to conclude that the public interest would be protected by compliance with his request that he continue with the current restricted license.

## ORDER

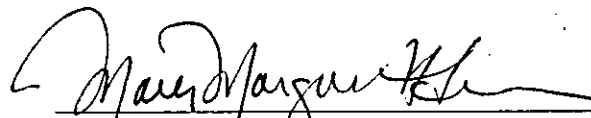
All licenses and licensing rights of Respondent James Allen Clemons under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application thereof and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following

limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two year(s) have elapsed from the effective date of this Decision.
4. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

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

DATED: September 27, 2001



MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

*Lucie Q. Jin*

In the Matter of the Accusation of

JAMES ALLEN CLEMONS,

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}

Case No. H-7934 SF

OAH No. N-2001040064

Respondent

SECOND AMENDED  
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on THURSDAY, SEPTEMBER 13, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

DEPARTMENT OF REAL ESTATE

Dated: MAY 24, 2001

By *David A. Peters*  
DAVID A. PETERS Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED

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DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JAMES ALLEN CLEMONS,

By Laurel A. Zorn  
Case No. H-7934 SF

OAH No. N-2001040064

Respondent

FIRST AMENDED  
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on THURSDAY, JUNE 14, 2001, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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DEPARTMENT OF REAL ESTATE

Dated: APRIL 24, 2001

By

David A. Peters

DAVID A. PETERS

Counsel



FILED

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

APR - 9 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

JAMES ALLEN CLEMONS,

By *Marie L. Z...*

Case No. H-7934 SF

OAH No. N-2001040064

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CA 94612 on THURSDAY, MAY 17, 2001, at the hour of 9:00 AM, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

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DEPARTMENT OF REAL ESTATE

Dated: APRIL 9, 2001

By *David A. Peters*  
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0781 (Direct)

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MAR 20 2001

DEPARTMENT OF REAL ESTATE

By Laurie A. Zari

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11	In the Matter of the Accusation of	)	No. H-7934 SF
12	JAMES ALLEN CLEMONS,	)	<u>ACCUSATION</u>
13	Respondent.	)	
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15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 accusation against JAMES ALLEN CLEMONS dba California Secured  
18 Funding, and Framework Financial LP (hereinafter "Respondent"),  
19 is informed and alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real  
22 Estate Commissioner of the State of California, makes this  
23 Accusation in his official capacity.

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II

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code") as a real estate broker with a restricted license.

III

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation, and wherein such loans were serviced and payments thereon were collected on behalf of others.

IV

At various times beginning on or before July 17, 2000, Respondent failed to record deeds of trust in the name of lenders as beneficiaries within ten (10) days of the purchasers' funds being disbursed to the sellers as required by Section 10234 of the Code. Respondent's failure to record said deeds of trust include but are not limited to the following:

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	<u>NOTE</u>	<u>DATE FUNDS</u>	<u>DATE</u>
<u>LOAN NO.</u>	<u>PURCHASER</u>	<u>DISBURSED</u>	<u>RECORDED</u>
1058	G. Crawford	10/12/00	11/28/00
1043	T. Locke	07/17/00	08/09/00

V

The facts alleged above are grounds for the suspension or revocation of Respondent's license under Section 10177(d) of the Code in conjunction with Section 10234 of the Code.

PRIOR DISCIPLINARY ACTION

On January 12, 2000, effective February 25, 2000, in Case No. H-7743 SF, the Real Estate Commissioner revoked the real estate broker license of JAMES ALLEN CLEMONS and granted the right to a restricted broker license for violation of Sections 10177(d) of the Code in conjunction with Sections 10145 and 10229(j)(3) of the Code and Sections 2832, 2832.1, 2831.1, and 2831.2 of Title 10, California Code of Regulations.

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

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 8<sup>th</sup> day of March, 2001.