

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED

SEP 24 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Zi

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-8179 SF
	)	
GOLDEN STATE MORTGAGE	)	
CORPORATION, a Corporation, and	)	
CLIFFORD EDWARD STANLEY,	)	
	)	
Respondents.	)	

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSES

TO: Respondents GOLDEN STATE MORTGAGE CORPORATION, a corporation, and CLIFFORD EDWARD STANLEY (herein "Respondents"):

At all times mentioned herein since November 7, 2003, Respondents have been and now are licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter "Code") as real estate brokers whose broker licenses were and now are restricted subject to the provisions of Section 10156.7 of the Code and to enumerated additional terms, conditions and restrictions imposed under authority of Section 10156.6 of the Code.

///

1 On September 16, 2004, in Case No. H-8923 SF, an  
2 Accusation (hereinafter "Accusation") by a Deputy Real Estate  
3 Commissioner of the State of California was filed alleging cause  
4 as to each Respondent under Sections 10176(a) and 10176(i) of  
5 the California Business and Professions Code (herein "the  
6 Code"), and additional cause as to Respondent CLIFFORD EDWARD  
7 STANLEY under Sections 10159.2, 10177(d), 10177(g) and 10177(h)  
8 of the Code, for the suspension or revocation of all licenses  
9 and license rights of Respondents under the Real Estate Law.

10 NOW, THEREFORE, IT IS ORDERED under authority of  
11 Section 10156.7 of the Business and Professions Code of the  
12 State of California that:

13 1. any restricted real estate broker license  
14 heretofore issued to Respondent GOLDEN STATE MORTGAGE  
15 CORPORATION, and the exercise of any privileges thereunder, is  
16 hereby suspended pending final determination made after the  
17 hearing on the aforesaid Accusation.

18 2. any restricted real estate broker license  
19 heretofore issued to Respondent CLIFFORD EDWARD STANLEY, and the  
20 exercise of any privileges thereunder, is hereby suspended  
21 pending final determination made after the hearing on the  
22 aforesaid Accusation.

23 IT IS FURTHER ORDERED that all license certificates  
24 and identification cards issued by the Department of Real Estate  
25 which are in the possession of Respondents be immediately  
26 surrendered by personal delivery or by mailing in the enclosed  
27 self-addressed envelope to:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

DEPARTMENT OF REAL ESTATE  
Attention: Flag Section  
P. O. Box 187000  
Sacramento, CA 95818-7000

This Order shall be effective immediately.

DATED: Sept. 23, 2004

JOHN R. LIBERATOR  
Acting Real Estate Commissioner

  
\_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED  
SEP - 3 2003

DEPARTMENT OF REAL ESTATE  
By Laurie J. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA  
\* \* \*

In the Matter of the Accusation of	)	
	)	No. H-8179 SF
GOLDEN STATE MORTGAGE	)	
CORPORATION, AND	)	OAH No. N-2002100369
CLIFFORD EDWARD STANLEY,	)	
	)	
Respondents.	)	

ORDER DENYING RECONSIDERATION

On June 23, 2003, a Decision After Rejection was rendered in the above-entitled matter. The Decision After Rejection is to become effective September 3, 2003.

On July 28, 2003, Respondents petitioned for reconsideration of the Decision After Rejection of June 23, 2003.

I have given due consideration to the petition of Respondents. I find no good cause to reconsider the Decision After Rejection of June 23, 2003, and reconsideration is hereby denied.

///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

IT IS HEREBY ORDERED September 3, 2003

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

A handwritten signature in cursive script, reading "Paula Reddish Zinnemann", is written over a horizontal line. The signature is positioned to the right of the typed name and title.

FILED

JUL 31 2003

DEPARTMENT OF REAL ESTATE

By Laurie G. Zin

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-8179 SF
	)	
GOLDEN STATE MORTGAGE	)	OAH No. N-2001120342
CORPORATION, AND	)	
CLIFFORD EDWARD STANLEY,	)	
	)	
Respondents.	)	

ORDER STAYING EFFECTIVE DATE

On June 23, 2003, a Decision After Rejection was rendered in the above-entitled matter to become effective August 4, 2003.

IT IS HEREBY ORDERED that the effective date of the Decision After Rejection of the Real Estate Commissioner of June 23, 2003, is stayed for a period of thirty (30) days.

///

///

///

///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

The Decision After Rejection of the Real Estate  
Commissioner of June 23, 2003, shall become effective at  
12 o'clock noon on September 3, 2003.

DATED: July 29, 2003

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

John R. Liberator

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED  
JUL 14 2003

DEPARTMENT OF REAL ESTATE  
By Laurie G. Zin

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-8179 SF
	)	
GOLDEN STATE MORTGAGE CORPORATION, and	)	OAH No. N-2001120342
CLIFFORD EDWARD STANLEY	)	
	)	
Respondents.	)	

**DECISION AFTER REJECTION**

The matter came on for hearing before Mary-Margaret Anderson, Administrative Law Judge of the Office of Administrative Hearings, in Oakland, California, on February 3, 2003.

David A. Peters, Counsel, represented the Complainant. Respondents GOLDEN STATE MORTGAGE CORPORATION and CLIFFORD EDWARD STANLEY were represented by CLIFFORD EDWARD STANLEY.

Evidence was received, the hearing was closed, and the matter was submitted.

///



1           On February 21, 2003, the Administrative Law Judge rendered  
2 a Proposed Decision, which I declined to adopt as my Decision  
3 herein. Pursuant to Section 11517(c) of the Government Code of  
4 the State of California, Respondents were served with notice of  
5 my determination not to adopt the Proposed Decision of the  
6 Administrative Law Judge along with a copy of said Proposed  
7 Decision. Respondents were notified that the case would be  
8 decided by me upon the record, the transcript of proceedings  
9 held on February 3, 2003, and upon written argument offered by  
10 Respondents and Complainant.

11                   Respondents and Complainant have submitted written  
12 argument.

13                   The following shall constitute the Decision of the  
14 Real Estate Commissioner in this proceeding.

15                                           FACTUAL FINDINGS

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

19                   2. Golden State Mortgage Corporation (Golden) is a  
20 California real estate corporation. Its license was originally  
21 issued on July 6, 1984. Clifford Edward Stanley (Respondent)  
22 was originally issued a real estate broker's license on  
23 February 5, 1968 and is the designated broker-officer of Golden.  
24 His broker's license is currently scheduled to expire on  
25 February 4, 2005.

26           ///

27           ///

1 Respondent operates a mortgage loan brokerage  
2 business. The loans are arranged, negotiated, processed and  
3 consummated on behalf of others for compensation or in  
4 expectation of compensation.

5 4. Beginning March 5, 2001, a Department auditor  
6 examined Respondent's accounting and other records covering the  
7 period from November 1, 1998 to March 31, 2001.

8 The examination was performed intermittently until  
9 October 30, 2001. The purpose was to determine whether  
10 Respondent properly handled and accounted for trust funds and  
11 otherwise complied with real estate law and regulations.

12 5. The auditor examined records concerning a bank  
13 account maintained by Respondent entitled Golden State Mortgage  
14 Corporation. It is a general business account and is used for  
15 activities including the collection, handling and deposit of  
16 fees collected from prospective borrowers. Respondent does not  
17 have a trust account.

18 During the time period covered by the audit,  
19 Respondent charged potential borrowers a non-refundable fee for  
20 initiating the loan application process. The amount depended  
21 upon whether or not a specific property was identified. If so,  
22 the fee was \$60.00. If not, the fee was \$410.00. These fees  
23 were deposited into his general business account.

24 6. Specifically, the auditor found that Respondent  
25 had collected the following fees prior to completing the loan  
26 process:

27 DATE BORROWER(S) FEE PROPERTY

1	8-21-00	Dawn L. & Bow Kiam Aiu	\$410.00	10281 Ashdale Drive San Jose, California
2				
3	8-22-00	Nga Lee	\$410.00	2391 Cottle Avenue San Jose, California
4	8-7-00	Abundio Estrada & Guillermina Valencia	\$470.00	247 N. Capitol Avenue San Jose, California
5				

6           7.     Licensees who wish to collect advance fees must  
7 obtain prior approval from the Department. As of January 24,  
8 2003, neither Respondent nor any other representative on behalf  
9 of Golden had submitted advance fee materials to the Department  
10 for its review and approval.

11           8.     Respondent maintained both to the auditor and at  
12 hearing that the fees he collected are not advance fees because  
13 they are collected for services performed by him in initiating  
14 the loan application process. He testified that he has a small  
15 office with two to four people and doesn't want to maintain a  
16 trust account. Only one-half of the applications he takes result  
17 in completed loans. To help reimburse himself for costs incurred  
18 assisting borrowers who do not complete a loan, he came up with  
19 this arrangement.

20           Respondent stated that he told clients up front about  
21 the fees and they agreed to pay them. In addition, he advised  
22 clients in writing via a form entitled "Residential Loan  
23 Application Supplement." The form contains the following  
24 language:

25     ///  
26     ///  
27     ///

1 I/We certify that the statements made herein  
2 are true to the best of my/our knowledge and  
3 belief. I/We authorize you to proceed with the  
4 processing of my/our loan. I/we agree to pay  
5 for the loan application fee in the amount of  
6 \$\_\_\_\_\_ which is not refundable.

7 9. Respondent stated that he does not agree with the  
8 Department's position that these are advance fees as described  
9 by statute. He believes that they are within the standard of  
10 the industry- like those charged by Wells Fargo Bank and Bank of  
11 America. Although Respondent understands the purpose of the  
12 advance fee law is to protect the public, he stated that he is  
13 an honest and truthful operator who makes a good faith effort to  
14 obtain loans for clients.

15 Respondent testified that he consulted his attorney  
16 several years ago who agreed with Respondent's interpretation.  
17 Nonetheless, Respondent represented that he wants to comply with  
18 the law and has stopped collecting the fees since advised by the  
19 Department that he was violating it.

#### 20 LEGAL CONCLUSIONS

21 1. It is unlawful for a real estate licensee to charge  
22 advance fees unless the charge is pre-approved by the  
23 Department. The pre-approved advance fees are trust funds and  
24 must be held in trust accounts for the benefit of the  
25 principal.<sup>1</sup>

26 ///

27 ///

---

<sup>1</sup> Business and Professions Code Section 10146.

1           The term "advance fee" is defined in Business and  
2 Professions Code<sup>2</sup> Section 10026 as follows:

3           ...a fee claimed, demanded, charged, received  
4 collected or contracted for a listing,  
5 advertisement or offer to sell or lease  
6 property other than in a newspaper of general  
7 circulation, issued primarily for the purpose  
8 of promoting the sale or lease of business  
9 opportunities or real estate or for referral  
10 to real estate brokers or salesmen, or  
11 soliciting borrowers or lenders for, or to  
12 negotiate loans on, business opportunities or  
13 real estate.

14           2.     The issue of whether a licensee can lawfully  
15 charge and collect a fee for time spent preparing a loan  
16 application package was addressed in Nelson vs. Department of  
17 Real Estate (1984) 161 Cal. App. 3d 939.

18           Nelson's company contracted with clients pursuant to  
19 an "Agreement for Financial Services." The agreement included  
20 provisions for payment of different types of fees. For example,  
21 there was a \$1000.00 fee, payable in advance, for "the time  
22 involved to appraise the feasibility of the loan requested and  
23 for the time involved in reviewing the details of this loan with  
24 a potential lender or lenders." (pg. 939)

25           The Court found that, despite the fact that they were  
26 broken down into components and were nonrefundable, the fees  
27 constituted advance fees pursuant to the statute. The Court also  
noted that the would-be borrowers had not engaged the licensees  
to simply assemble loan packages, but to actually obtain loans.  
It described the statutory and regulatory scheme as one designed

---

<sup>2</sup> All statutory references are to the Business and Professions Code.

1 to protect potential borrowers from fraud. Finally, the Court  
2 confirmed that any fees so collected were required to be held in  
3 trust.

4 3. There is no significant difference between the fees  
5 charged and collected by Respondent and those described in  
6 Nelson. Respondent has violated real estate law and regulation  
7 by collecting advance fees without prior permission, not holding  
8 the fees in a trust account and co-mingling the fees with non-  
9 trust funds. In addition, regulations governing the accounting  
10 of monies held in trust were violated. The violations are set  
11 forth specifically below.

12 4. Cause for discipline exists pursuant to section  
13 10177(d) as that section interacts with section 10085 and  
14 regulation 2970 by reason of the matters set forth in Finding 7  
15 (advance fee materials).

16 5. Cause for discipline exists pursuant to section  
17 10177(d) as that section interacts with section 10146 and  
18 regulation 2972 by reason of the matters set forth in Finding 7  
19 (send accountings of the fees).

20 6. Cause for discipline exists pursuant to section  
21 10177(d) and 10176(e) as those sections interact with regulation  
22 2835 by reason of the matters set forth in Findings 5 and 6  
23 (commingling).

24 7. Cause for discipline exists pursuant to section  
25 10177(d) as that section interacts with regulations 2831, 2831.1  
26 and 2831.2 by reason of the matters set forth in Findings 5-8  
27 (trust accounting requirements).

1           8.     Respondent was candid and forthcoming with  
2 Department representatives. He has no prior record of  
3 discipline, and stated that despite his belief in the lawfulness  
4 of his practices, he has ceased collecting the advance fees. All  
5 things considered, it is concluded that the public interest will  
6 be protected by the issuance of a restricted license to  
7 Respondent. The terms will include, however, the requirement  
8 that he submit to a follow-up audit at his own expense.

9                                 ORDER

10 All licenses and licensing rights of Respondent Golden State  
11 Mortgage Corporation and Clifford Edward Stanley under the Real  
12 Estate Law are revoked; provided, however, a restricted real  
13 estate broker license shall be issued to Respondent pursuant to  
14 Section 10156.5 of the Business and Professions Code if  
15 Respondent makes application thereof and pays to the Department  
16 of Real Estate the appropriate fee for the restricted license  
17 within 90 days from the effective date of this Decision. The  
18 restricted license issued to Respondent shall be subject to all  
19 of the provisions of Section 10156.7 of the Business and  
20 Professions Code and to the following limitations, conditions  
21 and restrictions imposed under authority of Section 10156.6 of  
22 that Code:

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

1           2.    The restricted license issued to Respondent may  
2 be suspended prior to hearing by Order of the Real Estate  
3 Commissioner on evidence satisfactory to the Commissioner that  
4 Respondent has violated provisions of the California Real Estate  
5 Law, the Subdivided Lands Law, Regulations of the Real Estate  
6 Commissioner or conditions attaching to the restricted license.

7           3.    Respondent shall not be eligible to apply for the  
8 issuance of an unrestricted real estate license nor for the  
9 removal of any of the conditions, limitations or restrictions of  
10 a restricted license until two years have elapsed from the  
11 effective date of this Decision.

12           4.    Respondent shall report in writing to the  
13 Department of Real Estate as the Real Estate Commissioner shall  
14 direct by his Decision herein or by separate written order  
15 issued while the restricted license is in effect such  
16 information concerning Respondent's activities for which a real  
17 estate license is required as the Commissioner shall deem to be  
18 appropriate to protect the public interest. Such reports may  
19 include, but shall not be limited to, periodic independent  
20 accountings of trust funds in the custody and control of  
21 Respondent and periodic summaries of salient information  
22 concerning each real estate transaction in which the Respondent  
23 engaged during the period covered by the report.

24           5.    Pursuant to Section 10148 of the Business and  
25 Professions Code, Respondent shall pay the Commissioner's  
26 reasonable cost for: a) the audit which led to this disciplinary  
27 action and, b) a subsequent audit to determine if Respondent has



1 corrected the trust fund violations found in the Legal  
2 Conclusions. In calculating the amount of the Commissioner's  
3 reasonable cost, the Commissioner may use the estimated average  
4 hourly salary for all persons performing audits of real estate  
5 brokers, and shall include an allocation for travel time to and  
6 from the auditor's place of work. Respondent shall pay such cost  
7 within 60 days of receiving an invoice from the Commissioner  
8 detailing the activities performed during the audit and the  
9 amount of time spent performing those activities. The  
10 Commissioner may suspend the restricted license issued to  
11 respondent pending a hearing held in accordance with Section  
12 11500, et seq., of the Government Code, if payment is not timely  
13 made as provided for herein, or as provided for in a subsequent  
14 agreement between the Respondent and the Commissioner. The  
15 suspension shall remain in effect until payment is made in full  
16 or until Respondent enters into an agreement satisfactory to the  
17 Commissioner to provide for payment, or until a decision  
18 providing otherwise is adopted following a hearing held pursuant  
19 to this condition.

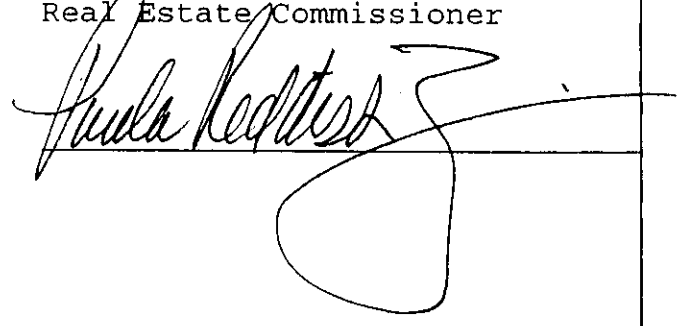
20           6.     Respondent shall, prior to and as a condition of  
21 the issuance of the restricted license, submit proof  
22 satisfactory to the Commissioner of having taken and  
23 successfully completed the continuing education course on trust  
24 fund accounting and handling specified in subdivision (a) of  
25 Section 10170.5 of the Business and Professions Code. Proof of  
26 satisfaction of this requirement includes evidence that  
27 Respondent has successfully completed the trust fund account and

1 handling continuing education course within 120 days prior to  
2 the effective date of the Decision in this matter.

3 This Decision shall become effective at 12 o'clock  
4 noon on AUGUST 4, 2003.

5 IT IS SO ORDERED June 23, 2003.

6 PAULA REDDISH ZINNEMANN  
7 Real Estate Commissioner

8   
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED

MAR 10 2003

DEPARTMENT OF REAL ESTATE

By Laurie L. Zinn

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
	)	
GOLDEN STATE MORTGAGE	)	No. H-8179 SF
CORPORATION AND	)	
CLIFFORD EDWARD STANLEY,	)	N-2002100369
	)	
Respondents.	)	

NOTICE

TO: GOLDEN STATE MORTGAGE CORPORATION and CLIFFORD EDWARD STANLEY, Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated February 21, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated February 21, 2003, is attached for your information.

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 February 3,

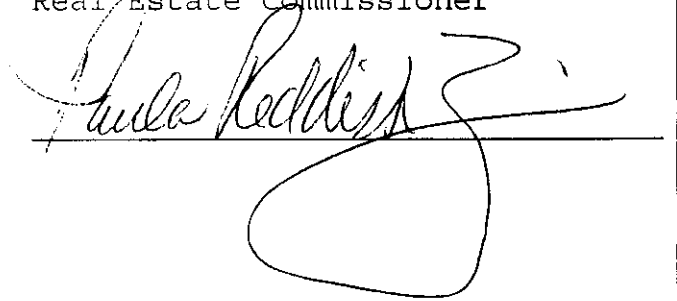
1 2003, and any written argument hereafter submitted on behalf of  
2 Respondents and Complainant.

3 Written argument of Respondents to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of February 3, 2003, at the Sacramento office  
6 of the Department of Real Estate unless an extension of the time  
7 is granted for good cause shown.

8 Written argument of Complainant to be considered by me  
9 must be submitted within 15 days after receipt of the argument of  
10 Respondent at the Sacramento office of the Department of Real  
11 Estate unless an extension of the time is granted for good cause  
12 shown.

13 DATED: March 4, 2003

14  
15 PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

16  
17   
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against :

GOLDEN STATE MORTGAGE  
CORPORATION AND  
CLIFFORD EDWARD STANLEY,

Respondents.

Case No. H-8179

OAH No. N2002100369

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on February 3, 2003.

David A. Peters, Staff Counsel, represented the Complainant.

Respondent Clifford Edward Stanley was present and represented himself and Golden State Mortgage Corporation.

Evidence was received and the matter was submitted on February 3, 2003.

**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. Golden State Mortgage Corporation (Golden) is a California real estate corporation. Its license was originally issued on July 6, 1984. Clifford Edward Stanley (Respondent) was originally issued a real estate broker's license on February 5, 1968 and is the designated broker-officer of Golden. His broker's license is currently scheduled to expire on February 4, 2005.

Respondent operates a mortgage loan brokerage business. The loans are arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation.

4. Beginning March 5, 2001, a Department auditor examined Respondent's accounting and other records covering the period from November 1, 1998 to March 31, 2001.

The examination was performed intermittently until October 30, 2001. The purpose was to determine whether Respondent properly handled and accounted for trust funds and otherwise complied with real estate law and regulations.

5. The auditor examined records concerning a bank account maintained by Respondent entitled Golden State Mortgage Corporation. It is a general business account and is used for activities including the collection, handling and deposit of fees collected from prospective borrowers. Respondent does not have a trust account.

During the time period covered by the audit, Respondent charged potential borrowers a non-refundable fee for initiating the loan application process. The amount depended upon whether or not a specific property was identified. If so, the fee was \$60.00. If not, the fee was \$410.00. These fees were deposited into his general business account.

6. Specifically, the auditor found that Respondent had collected the following fees prior to completing the loan process:

<u>DATE</u>	<u>BORROWER(S)</u>	<u>FEE</u>	<u>PROPERTY</u>
8-21-00	Dawn I. & Bow Kiam Aiu	\$410.00	10281 Ashdale Drive San Jose, CA
8-22-00	Nga Lee	\$410.00	2391 Cottle Avenue San Jose, CA
8-7-00	Abundio Estrada & Guillermina Valencia	\$470.00	247 N. Capitol Avenue #106, San Jose, CA

7. Licensees who wish to collect advance fees must obtain prior approval from the Department. As of January 24, 2003, neither Respondent nor any other representative on behalf of Golden had submitted advance fee materials to the Department for its review and approval.

8. Respondent maintained both to the auditor and at hearing that the fees he collected are not advance fees because they are collected for services performed by him in initiating the loan application process. He testified that he has a small office with two to four people and doesn't want to maintain a trust account. Only one-half of the applications he takes result in completed loans. To help reimburse himself for costs incurred assisting borrowers who do not complete a loan, he came up with this arrangement.

Respondent stated that he told clients up front about the fees and they agreed to pay them. In addition, he advised clients in writing via a form entitled "Residential Loan Application Supplement." The form contains the following language:

I/We certify that the statements made herein are true to the best of my/our knowledge and belief. I/We authorize you to proceed with the processing of my/our loan. I/we agree to pay for the loan application fee in the amount of \$ \_\_\_\_\_ which is not refundable.

9. Respondent stated that he does not agree with the Department's position that these are advance fees as described by statute. He believes that they are within the standard of the industry- like those charged by Wells Fargo Bank and Bank of America. Although Respondent understands the purpose of the advance fee law is to protect the public, he stated that he is an honest and truthful operator who makes a good faith effort to obtain loans for clients.

Respondent testified that he consulted his attorney several years ago who agreed with Respondent's interpretation. Nonetheless, Respondent represented that he wants to comply with the law and has stopped collecting the fees since advised by the Department that he was violating it.

#### LEGAL CONCLUSIONS

1. It is unlawful for a real estate licensee to charge advance fees unless the charge is pre-approved by the Department. The pre-approved advance fees are trust funds and must be held in trust accounts for the benefit of the principal.<sup>1</sup>

The term "advance fee" is defined in Business and Professions Code<sup>2</sup> section 10026 as follows:

...a fee claimed, demanded, charged, received collected or contracted for a listing, advertisement or offer to sell or lease property other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, or soliciting borrowers or lenders for, or to negotiate loans on, business opportunities or real estate.

2. The issue of whether a licensee can lawfully charge and collect a fee for time spent preparing a loan application package was addressed in *Nelson v. Department of Real Estate* (1984) 161 Cal. App. 3d 939.

Nelson's company contracted with clients pursuant to an "Agreement for Financial Services." The agreement included provisions for payment of different types of fees. For example, there was a \$1000.00 fee, payable in advance, for "the time involved to appraise

---

<sup>1</sup> Business and Professions Code section 10146.

<sup>2</sup> All statutory references are to the Business and Professions Code.

the feasibility of the loan requested and for the time involved in reviewing the details of this loan with a potential lender or lenders.” (pg. 939)

The Court found that, despite the fact that they were broken down into components and were nonrefundable, the fees constituted advance fees pursuant to the statute. The Court also noted that the would-be borrowers had not engaged the licensees to simply assemble loan packages, but to actually obtain loans. It described the statutory and regulatory scheme as one designed to protect potential borrowers from fraud. Finally, the Court confirmed that any fees so collected were required to be held in trust.

3. There is no significant difference between the fees charged and collected by Respondent and those described in *Nelson*. Respondent has violated real estate law and regulation by collecting advance fees without prior permission, not holding the fees in a trust account and co-mingling the fees with non-trust funds. In addition, regulations governing the accounting of monies held in trust were violated. The violations are set forth specifically below.

4. Cause for discipline exists pursuant to section 10177(d) as that section interacts with section 10085 and regulation 2970 by reason of the matters set forth in Finding 7 (advance fee materials).

5. Cause for discipline exists pursuant to section 10177(d) as that section interacts with section 10146 and regulation 2972 by reason of the matters set forth in Finding 7 (send accountings of the fees).

6. Cause for discipline exists pursuant to section 10177(d) and 10177(e) as those sections interact with regulation 2835 by reason of the matters set forth in Findings 5 and 6 (commingling).

7. Cause for discipline exists pursuant to section 10177(d) as that section interacts with regulations 2831, 2831.1 and 2831.2 by reason of the matters set forth in Findings 5-8 (trust accounting requirements).

8. Respondent was candid and forthcoming with Department representatives. He has no prior record of discipline, and stated that despite his belief in the lawfulness of his practices, he has ceased collecting the advance fees. All things considered, it is concluded that the public interest will be protected by the issuance of a restricted license to Respondent. The terms will include, however, the requirement that he submit to a follow-up audit at his own expense.

#### ORDER

All licenses and licensing rights of Respondent Golden State Mortgage Corporation/ Clifford Edward Stanley 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

NOT RECORDED





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 years 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.

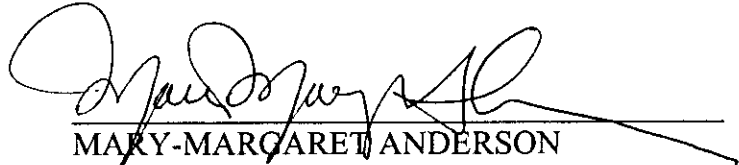
Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

5. Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and, b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Legal Conclusions. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondent shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may suspend the restricted license issued to respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the

NOT ADOPTEE

Commissioner. The suspension shall remain in effect until payment is made in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

DATED: February 21, 2003

  
MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

NOT ADOPTED

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE NOV 13 2002  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GOLDEN STATE MORTGAGE  
CORPORATION, AND  
CLIFFORD EDWARD STANLEY,

}

Case No. H-8179 SF

OAH No. N-2002100369

By Laurie G. Jia

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

OFFICE OF ADMINISTRATIVE HEARING, THE ELIHU HARRIS STATE BUILDING,  
1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612

on FEBRUARY 3 & 4, 2003, 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.

Dated: NOVEMBER 13, 2002

DEPARTMENT OF REAL ESTATE

By David A. Peters  
DAVID A. PETERS (27)

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

3 Telephone: (916) 227-0789  
4 -or- (916) 227-0781 (Direct)

FILED  
AUG 26 2002

DEPARTMENT OF REAL ESTATE

By Lauria B...

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 GOLDEN STATE MORTGAGE ) No. H- 8179 SF  
CORPORATION, and ) ACCUSATION  
13 CLIFFORD EDWARD STANLEY )  
14 Respondent. )

15  
16 The Complainant, Les R. Bettencourt, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against GOLDEN STATE MORTGAGE CORPORATION  
19 (hereinafter "Respondent GOLDEN") and CLIFFORD EDWARD STANLEY  
20 (hereinafter "Respondent STANLEY"), is informed and alleges as  
21 follows:

22 I

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

26 ///

27 ///

1 II

2 Respondent GOLDEN and Respondent STANLEY are presently  
3 licensed and/or have license rights under the Real Estate Law,  
4 (Part 1 of Division 4 of the California Business and Professions  
5 Code (hereinafter "the Code") as follows:

6 GOLDEN STATE MORTGAGE CORPORATION - as a real estate  
7 broker corporation.

8 CLIFFORD EDWARD STANLEY - as a real estate broker and  
9 as designated broker-officer of Respondent GOLDEN.

10 III

11 Whenever reference is made in an allegation in this  
12 Accusation to an act or omission of "Respondents", such  
13 allegation shall be deemed to mean the act or omission of each  
14 of the Respondents named in the caption hereof, acting  
15 individually, jointly and severally.

16 IV

17 At all times herein mentioned, Respondents engaged in  
18 the business of, acted in the capacity of, advertised or assumed  
19 to act as a real estate broker in the State of California within  
20 the meaning of Sections 10131(d) and 10131.2 of the Code,  
21 including the operation and conduct of a mortgage loan brokerage  
22 business with the public wherein lenders and borrowers were  
23 solicited for loans secured directly or collaterally by liens on  
24 real property or a business opportunity, wherein such loans were  
25 arranged, negotiated, processed, and consummated on behalf of  
26 others for compensation or in expectation of compensation, and  
27 also including the operation of an advance fee mortgage loan

1 brokerage business with the public wherein Respondents charged,  
2 received, collected and contracted for the collection of an  
3 advance fee in connection with employment undertaken to obtain  
4 loans secured by a lien on real property or a business  
5 opportunity.

6 V

7 Beginning on or about March 5, 2001, the Department  
8 conducted an audit of Respondents' mortgage loan brokerage  
9 activities for the time period November 1, 1998 through on or  
10 after March 31, 2001 as set forth in Audit No. 0K-00-0022 dated  
11 October 30, 2001.

12 VI

13 Within the three-year period immediately preceding the  
14 filing of this Accusation, and continuing through the present as  
15 described in Paragraph IV above, Respondents engaged in the  
16 business of claiming, demanding, charging, receiving, collecting  
17 or contracting for the collection of advance fees within the  
18 meaning of Section 10026 of the Code and Section 10131.2 of the  
19 Code including, but not limited to, the following transactions:

<u>BORROWER(S)</u>	<u>ADVANCE FEE</u>	<u>PROPERTY</u>
21 Dawn L. & Bow Kiam 22 Aiu	\$410.00	10281 Ashdale Drive San Jose, California
23 Nga Lee	\$410.00	2391 Cottle Avenue San Jose, California
24 Abundio Estrada & 25 Guillermina Valencia	\$470.00	247 North Capitol Avenue, #106 San Jose, California

26 Said loans were to be secured by liens upon the real  
27 property described above.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

VII

In connection with the transactions described in Paragraph VI above, Respondents collected advance fees within the meaning of Section 10026 of the Code in the amount of \$1,290.00.

VIII

In connection with the collection and handling of said advance fees, Respondents failed to cause the advance fee contracts and all materials used in obtaining said advance fee agreements to be submitted to the Department of Real Estate prior to use as required by Section 10085 of the Code and Section 2970 of Title 10, California Code of Regulations (hereinafter "the Regulations").

IX

In connection with the collection and handling of said advance fees, Respondents failed to send accountings to individuals from whom advanced fees were collected showing the disposition of such fees pursuant to Section 10146 of the Code and Section 2972 of the Regulations.

X

The advance fees described herein above, were trust funds within the meaning of Section 10145 and 10146 of the Code.

XI

Respondents failed to deposit said collected advance fee trust funds in a trust account with a bank or other depository as required by Sections 10145 and 10146 of the Code.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XII

In connection with the receipt of said advance fee trust funds, Respondents commingled their own money with the money of others which was received and held by Respondents in violation of Section 10176(e) of the Code and Section 2835 of the Regulations.

XIII

In connection with the receipt and disbursement of said advance fee trust funds, Respondents failed to maintain adequate columnar records of all trust funds received and disbursed in the manner required by Section 2831 of the Regulations.

XIV

In connection with the receipt and disbursement of said advance fee trust funds, Respondents failed to adequately maintain a separate record for each beneficiary or transaction accounting therein for all said trust funds received, deposited, and disbursed in the manner required by Section 2831.1 of the Regulations.

XV

In connection with the receipt and disbursement of said advance fee trust funds, Respondents failed to adequately maintain and perform a reconciliation with the records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations in conformance with Section 2831.2 of the Regulations.

///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XVI

In connection with the transactions described in Paragraph VI above, Respondents in order to induce the Borrowers into entering into said transactions represented to the Borrowers the material fact that Respondent GOLDEN was the lender. Respondents' representations were false or misleading and were known by Respondents to be false and misleading when made or were made by Respondents with no reasonable grounds for believing said representations to be true. In truth and in fact Respondent GOLDEN was not the lender in said transactions.

XVII

The facts alleged above, are grounds for the suspension or revocation of Respondents' licenses and/or license rights under the following sections of the Code and Regulations:

(1) As to Paragraph VIII, under Sections 10085 and 10177(d) of the Code in conjunction with Section 2970 of the Regulations;

(2) As to Paragraph IX, under Sections 10146 and 10177(d) of the Code in conjunction with Section 2972 of the Regulations;

(3) As to Paragraph XII, under Section 10176(e) of the Code and Section 10177(d) of the Code in conjunction with Section 2835 of the Regulations;

(4) As to Paragraph XIII, under Section 10177(d) of the Code in conjunction with Section 2831 of the Regulations;


(5) As to Paragraph XIV, under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;

1 (6) As to Paragraph XV, under Section 10177(d) of the  
2 Code in conjunction with Section 2831.2 of the Regulations; and

3 (7) As to Paragraph XVI, under Section 10176(i) of  
4 the Code.

5 In the alternative the acts and/or omissions of  
6 Respondent STANLEY described above, constitute failure of the  
7 part of Respondent STANLEY, as the designated broker-officer for  
8 Respondent GOLDEN, to exercise reasonable supervision and  
9 control over the licensed activities of Respondent GOLDEN  
10 required by Section 10159.2 of the Code, and is cause for the  
11 suspension or revocation of Respondent STANLEY's license and or  
12 license rights under Section 10177(h) of the Code.

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

20  
21   
22 LES R. BETTENCOURT  
23 Deputy Real Estate Commissioner

24 Dated at Oakland, California,  
25 this 21st day of August, 2002.  
26  
27