

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-27047 LA
MALCOLM BIRNIE BOOT,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On March 11, 1998, a Decision was rendered herein
revoking the real estate broker license of Respondent, but
granting Respondent the right to apply for and be issued a
restricted real estate broker license. Respondent did not
apply for a restricted real estate broker license.

On April 23, 1999, Respondent petitioned for
reinstatement of said license. Respondent withdrew his
petition on September 15, 1999.

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On March 6, 2001, Respondent again petitioned for reinstatement of said license and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate broker license, in that:

I

On or about April 16, 1997, an Order to Desist and Refrain was filed against Respondent and two other parties for numerous violations of the Real Estate Law, including violations of Business and Professions Code ("Code") Sections 10137, 10148, 10159.5 and 10162 and Sections 2715, 2731 and 2848 of Title 10, Chapter 6, California Code of Regulations ("Regulations").

II

In the 1998 Decision which revoked Respondent's real estate broker license, there was a Determination of Issues made that there was cause to revoke Respondent's license pursuant to Code Section 10177(d) for violations of the Real Estate Law.

1 Respondent was found to have violated Code Sections
2 10137, 10148 and 10162 and Regulation 2715.

3 III

4 In or about 1992, a civil court judgment was entered
5 against Respondent in the amount of \$4,024.34. Respondent has
6 not submitted proof that said judgment has been discharged.
7

8 In or about 1996, a civil court judgment was entered
9 against Respondent and other defendants in the amount of
10 \$23,000 for special damages, \$400,000 for general damages and
11 \$50,000 for punitive damages. Respondent has not submitted
12 proof that said judgment has been discharged.
13

14 This is cause to deny Respondent's petition
15 application pursuant to Regulation 2911(i).

16 IV

17 Respondent has not provided much recent evidence of
18 rehabilitation and a change in attitude from family members,
19 friends, or other persons familiar with Respondent's previous
20 conduct and subsequent attitudes and behavioral patterns.
21 Most of Respondent's reference letters are four (4) years old.
22 This is cause to deny Respondent's petition application
23 pursuant to Regulation 2911(m) (2).

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V

On October 12, 2001, Respondent had an interview with a Deputy Real Estate Commissioner. Respondent told the Deputy that he was not aware of his former employee's unlicensed activity, and did not take responsibility for the fact that he allowed and/or was the party responsible for the unlicensed activity. This is cause to deny Respondent's petition application pursuant to Regulation 2911(m)(1).

VI

Based on the serious nature of the conduct which led to the revocation of Respondent's real estate broker license, and the facts set forth in Paragraphs I, III, IV and V, a longer period of time is required to measure Respondent's rehabilitation. This is cause to deny Respondent's petition application pursuant to Regulation 2911(a).

I am satisfied, however, that it will not be against the public interest to issue a restricted real estate broker license to Respondent.

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

A restricted real estate broker license shall be issued to Respondent pursuant to Code Section 10156.5 if Respondent:

1 (a) Makes application therefor and pays the
2 appropriate fee for said license within one (1) year from
3 the date hereof.

4 (b) Submits evidence satisfactory to the Real Estate
5 Commissioner that Respondent has, since his license was
6 revoked, taken and passed the written examination required to
7 obtain a real estate broker license.

8 The restricted license issued to Respondent shall be
9 subject to all of the provisions of Code Section 10156.7 and to
10 the following limitations, conditions and restrictions imposed
11 under authority of Code Section 10156.6:

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

17 2. The restricted license issued to Respondent
18 may be suspended prior to hearing by Order of the Real Estate
19 Commissioner on evidence satisfactory to the Commissioner that
20 Respondent has violated provisions of the California Real
21 Estate Law, the Subdivided Lands Law, Regulations of the Real
22 Estate Commissioner or conditions attaching to the restricted
23 license.

24 ///

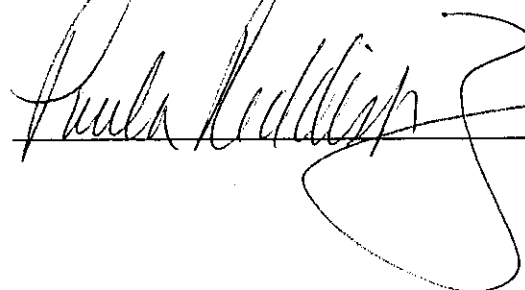
1 3. Respondent shall not be eligible to apply for
2 the issuance of an unrestricted real estate license nor for the
3 removal of any of the conditions, limitations or restrictions
4 of a restricted license until two (2) years have elapsed from
5 the effective date of this Decision.
6

7 4. Respondent shall within nine (9) months from the
8 date of issuance of a restricted license, submit evidence
9 satisfactory to the Real Estate Commissioner that Respondent
10 has taken and successfully completed the continuing education
11 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
12 for renewal of a real estate license. If Respondent fails to
13 satisfy this condition, the Commissioner may order the
14 suspension of the restricted license until the Respondent
15 presents such evidence. The Commissioner shall afford
16 Respondent the opportunity for a hearing pursuant to the
17 Administrative Procedure Act to present such evidence.
18

19 This Order shall become effective at 12 o'clock noon
20 on May 9, 2002.
21

22 DATED: April 4, 2002.

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 
26

27 cc: Malcolm Birnie Boot
3603 Ottawa Circle
Las Vegas, NV 89109

FILED
MAR 17 1998
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Sandra B. Crane

* * * * *

In the Matter of the Accusation of

MALCOLM BIRNIE BOOT,
Individually doing
business as The Boot Group,

No. H-27047 LA

L-1997050395

Respondent(s).

DECISION

The Proposed Decision dated February 23, 1998,
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 April 7, 1998.

IT IS SO ORDERED

3/11/98

JIM ANTT, JR.
Real Estate Commissioner

Jm Antt Jr

In the Matter of the Accusation)	No. H 27047 LA
of)	
MALCOLM BIRNIE BOOT,)	
Individually doing)	
business as The Boot)	OAH NO. L-1997050395
Group,)	
)	
)	
Respondent.)	
)	

On November 19 and 20, 1997, and on January 23, 1998, at Los Angeles, California, Joseph D. Montoya, Administrative Law Judge ("ALJ"), Office of Administrative Hearings, State of California, heard this matter.

After hearing evidence and argument, the administrative law judge submitted the matter for decision on the hearing date.

1. The Accusation was filed by Thomas J. McCrady while he was acting in his official capacity as a Deputy Real Estate Commissioner, Department of Real Estate ("the Department"), State of California.

(B) Over the years, Respondent has used a number of licensed fictitious names. Since October 1992, he has been licensed by the Department to use the fictitious business name "The Boot Group".

(C) Respondent has never obtained a license to utilize the business name "Home Funding of America".

3. Respondent has had a business relationship with one Raymond LeBlanc since at least 1990. Mr. LeBlanc has also used the name Raymond Gold on a routine basis, and he will be referred to by that name hereafter. The relationship between the two men has had many twists and turns; at times they have worked with each other, at other times at odds with each other.

4. Since at least 1995 Mr. Gold has operated a mortgage brokering business within the meaning of Business and Professions Code section 10131(d).¹ That business was known as Home Funding of America (hereafter "HFA"). However, Mr. Gold has never been licensed by the Department in any capacity, let alone to operate a mortgage loan business.

5. In 1995 Mr. Gold, in concert with one Lee Taylor, solicited potential borrowers and negotiated with them. They did so with the intent to induce them to borrow monies, the repayment of which would be secured by real property. Those transactions and borrowers are described as follows:

(A) On or about April 13, 1995, with borrower Dorothy Peoples, to make a loan secured by her property located at 11125 South Denker Avenue, Los Angeles, California;

(B) On or about May 17, 1995, with borrower Kenneth Granillo, to make a loan secured by his property located at 11090 Plainview Avenue, Tujunga, California;

(C) On or about September 1995, with borrower Phillip Tjan, to make a loan secured by his property located at 1824 Garvey Avenue, number 5, Alhambra, California.

6. (A) In the course of the transactions referred to in Finding 5, Mr. Gold and Mr. Taylor failed to provide mortgage loan disclosure statements to the borrowers. Such constituted three separate violations of Code section 10240, and Title 10, California Code of Regulations ("CCR"), section 2840.

(B) Further, in the course of those transactions, Gold and Taylor made misrepresentations of material facts to the borrowers, and otherwise acted in a dishonest manner.

7. During 1995 Mr. Gold, using the HFA fictitious name, circulated and published a flier which solicited potential borrowers. That flier was misleading within the meaning of the

¹ Hereafter all statutory references shall be to the Business and Professions Code, cited as "Code", unless otherwise noted.

Commissioner's regulations, in the following manner:

(A) The flier violated CCR section 2848(9) in that it did not state how market value would be computed for purposes of any loan transaction, although it stated that loans were available to a percentage of a property's market value;

(B) The flier violated CCR section 2848(5) in that it did not state the simple annual interest rate, annual percentage rate, and amount and period of payments in connection with its statement of a specific installment in repayment;

(C) The flier did not state that the examples of monthly payments could rise if the loan ultimately made were a variable loan.

8. In the course of the transactions referred to in Findings 5 through 7, Gold purported to be operating under Respondent's real estate license. Such representations were made to at least one borrower, and to potential lenders in the transactions.

9. (A) However, it has not been established by clear and convincing evidence to a reasonable certainty that Respondent authorized Gold or Taylor to use his name or license number.

(B) As a result, it has not been established that Respondent, directly or indirectly, through himself or others, committed the violations of the Real Estate Law and the Commissioner's Regulations which are described in Findings 5 through 7.

10. During 1996 the Department undertook an investigation of the transactions described in Findings 5 through 7. In the course of that investigation, the Department discovered that Respondent had violated the Real Estate Law and the Commissioner's Regulations, as follows:

(A) As of June 7, 1996, Respondent was in violation of Section 10162, in that he did not have a proper place of business as required by that statute. Instead, his address of record was a commercial mailbox service;

(B) As of June 7, 1996, Respondent had vacated his licensed branch office located at 971 North La Cienega Boulevard, number 209, in Los Angeles, California, without informing the Department, in willful violation of CCR section 2715;

11. (A) On or about June 10, 1996, an auditor employed by the Department requested that Respondent provide copies of various business records which might be relevant to the Department's investigation of Mr. Gold's activities. That request

was made in writing. Respondent did not properly respond to that request.

(B) Thereafter, the Department issued a subpoena duces tecum to Respondent, which sought records that might be relevant to the investigation of Mr. Gold's activities. Respondent did not properly respond to that subpoena.

(C) The aforementioned conduct constituted a violation of Code section 10148.

12. In mitigation of his violations Respondent has been a licensee since 1978. During that period he had no other discipline. There was no evidence of any harm to the public as a result of the violations found herein.

13. As to any allegations of the Accusation upon which findings have not been expressly made herein, such are deemed unproven or to be surplusage.

DETERMINATION OF ISSUES

1. Cause exists to suspend or revoke the Respondent's license pursuant to Section 10177(d) of the Business and Professions Code, for violations of the Code and for violations of Title 10 of the CCR, based on Findings 10 and 11.

2. There are mitigating facts to be considered when imposing discipline, based on Finding 12.

3. The Administrative Law Judge concludes that while Respondent should be disciplined for his violations, he should be allowed to continue in his licensed activities. That conclusion is based in part upon a determination that such an outcome would not be contrary to the public interest. Therefore, it is determined that Respondent's license should be revoked, the revocation stayed, subject to the Respondent being placed on probation and actually suspended.

Discussion and Rationale:

Complainant must prove his case by clear and convincing evidence, to a reasonable certainty. (Realty Projects, Inc. v. Smith (1973) 32 Cal. App. 3d 204; see Eittinger v. Bd. of Med. Quality Assurance (1982) 135 Cal. App. 3d 853.) While there was evidence that Respondent might have authorized Mr. Gold's illegal acts, there was conflicting evidence as well. Had this case been controlled by the traditional preponderance of the evidence test (Evidence Code, section 115), then Complainant might well have

prevailed on the claims that Respondent employed Mr. Gold and otherwise operated HFA.

Plainly, Respondent had a years-long relationship with Gold. At one point, in approximately 1992 and 1993, they were doing business together. However, the evidence that they did business together in 1995--the period when the wrongdoing described in Findings 5 to 7 occurred--was not clear and convincing. None of the complaining witnesses ever met Mr. Boot. One claimed to recognize his voice from a single telephone call, but that could hardly prove his involvement in the transaction. That was especially so because Ms. Aguilar, who supposedly participated in that telephone call, attested she had never spoken to Respondent on the phone.

It should be noted that Mr. Boot's signature was not found on any documentation relevant to the improper transactions, including paperwork obtained from the escrow companies. Any person who had ever worked closely with Respondent could have obtained his license number, and could have used it without consent. And, it should be noted that Respondent had never been shy about designating business names; during some fifteen years of business he had licensed four other names.

To be sure, there was evidence that Respondent had allowed Gold to use his license. Respondent visited Gold's office on three or four occasions in early 1996. And, the escrow officer, Ms. Aguilar, had heard Respondent lay claim to monies from deals that had closed. However, that evidence did not amount to "clear and convincing" evidence in light of all the other facts and circumstances.

There is no doubt that Mr. Boot violated statutes and rules regarding his office location. He behaved in a cavalier manner regarding his professional whereabouts. He also failed to respond to the Department's request for documents, or its subpoena, in a timely or complete manner. Of course, if he had no documents to provide, he could not do so. But, a more complete and timely response could have, and should have, been made by him.

There were mitigating factors. It was obvious that at times relevant to the established violations Mr. Boot's business was in some disarray, and he was having financial and health problems. And, most importantly, he otherwise has a clean record for the first seventeen years of professional activity.

None of the foregoing is meant to excuse Respondent's lapses. Those lapses constitute professional failings which portend larger problems unless the errant behaviour is curbed.

The purpose of this proceeding is to protect the public, and not to punish the Respondent. (Camacho v. Youde (1979) 95 Cal.

App. 3d 161, 164.) Given this rule, the mitigating factors, and the lack of public harm from the established wrongdoing, it was determined that Respondent should be placed in a probationary status. Hopefully, this will bring home to him the serious nature of his failings, and the consequences of any further transgressions.

ORDER

All licenses and licensing rights of Respondent Malcolm Birnie Boot under the Real Estate Law are revoked; provided, however, a restricted real estate broker's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor 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:

A. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for thirty (30) days from the date of issuance of said restricted license.

B. 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.

C. 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.

D. 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 three (3) year(s) has/have elapsed from the effective date of this Decision.

E. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license,

taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

F. 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.

February 23, 1998



Joseph D. Montoya,
Administrative Law Judge

Sacto. Jan

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

FILED
NOV 21 1997

In the Matter of the Accusation of) Case No. H-27047 LA
MALCOLM BIRNIE BOOT,) OAH No. L-1997050395
etc.,)
Respondent.)

DEPARTMENT OF REAL ESTATE
By Laura B. Dime

NOTICE OF FURTHER HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California, on JANUARY 23, 1998, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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

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

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOV 21 1997

DEPARTMENT OF REAL ESTATE

By: Sean Crahan
SEAN CRAHAN, Counsel

cc: Malcolm Birnie Boot
ALJ Montoya
Sacto., OAH, AK

RE 501 (Rev. 8/97)

Sacto May

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

FILED
JUN 27 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-27047 LA
MALCOLM BIRNIE BOOT, etc.,) OAH No. L-1997050395
Respondent.)
By *Laura B. Aron*

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 107 South Broadway, 2nd Floor, Los Angeles, California NOVEMBER 19 & 20, 1997, at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

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

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

Dated: JUN 27 1997

DEPARTMENT OF REAL ESTATE

By: *Sean Crahan*

SEAN CRAHAN, Counsel

cc: Malcolm Birnie Boot
Sacto.
OAH

RE 501 (Mac 8/92lbo)

SEAN [unclear] Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
MAR 11 1997
DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-27047 LA
)	
MALCOLM BIRNIE BOOT, individually)	A C C U S A T I O N
and dba The Boot Group,)	
)	
Respondent.)	

The Complainant, Thomas Mc Crady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MALCOLM BIRNIE BOOT, individually and doing business as The Boot Group, alleges as follows:

1.

The Complainant, Thomas Mc Crady, a deputy real estate commissioner, brings this Accusation in his official capacity.

2.

MALCOLM BIRNIE BOOT, (hereafter 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 (hereafter cited as the Code). At all times herein mentioned, Respondent was and is licensed by the Department of Real Estate of

1 the State of California (hereafter the Department) as a real estate
2 broker, individually and doing business as The Boot Group.

3 3.

4 (a) At no time herein mentioned was Lee Taylor
5 (hereafter Taylor) or Raymond Gold (hereafter Gold) licensed by the
6 Department as a real estate broker or real estate salesperson.

7 (b) At no time herein mentioned was the name "Home
8 Funding of America" (hereafter HFA) licensed by the Department.

9 4.

10 All references to Regulations hereinbelow shall refer to
11 regulations set forth in Title 10, Chapter 6 of the California Code
12 of Regulations.

13 5.

14 Respondent, doing business as HFA, was engaged in the
15 mortgage loan brokerage business as defined by Code Section
16 10131(d) in that HFA, for or in expectation of compensation,
17 solicited and negotiated with borrowers for loans from third-party
18 lenders secured by real property (secured loans). Respondent,
19 doing business as HFA, employed or compensated Taylor and Gold to
20 solicit and negotiate with borrowers for secured loans in the
21 following transactions:

22 Applied:	Borrower:	Property:
23 4-13-95	Dorothey L. Peoples	11125 S. Denker Ave., Los Angeles.
24 5-17-95	Kenneth Granillo	11090 Plainview Ave., Tujunga.
25 9-95	Phillip Tjan	1824 Garvey Avenue #5.. Alhambra.

26 6.

27 Respondent failed to provide a Mortgage Loan Disclosure

1 Statement (Borrower) to any of the borrowers identified in
2 paragraph 5 above in willful violation of Code Section 10240 and
3 Regulation 2840.

4 7.

5 In 1995, Respondent, doing business as HFA, caused or
6 allowed the issuance and circulation of a flier to borrowers
7 advertising the availability of mortgage loans under the heading
8 "HOME FUNDING OF AMERICA introduces 'The Second Chance Loan'..."
9 Said advertisement provided:

10 (a) "NO HOMEOWNER REFUSED (70% LTV)" This quotation
11 constitutes a representation that loans are available at or to a
12 maximum percentage of market value and is deemed misleading by
13 Regulation 2848(9) because the advertisement contained no
14 disclosure as to how market value would be determined for purposes
15 of a loan transaction.

16 (b) "IN OTHER WORDS IF YOU HAVE AN EXISTING LOAN OF
17 \$100,000 YOU COULD BE PAYING AS LITTLE AS *** \$357.72 PER MONTH ***
18 This quotation is deemed misleading by Regulation 2848(5) because
19 it fails to show the simple annual interest rate, annual percentage
20 rate, number, amount and period of payments scheduled to the date
21 of maturity, balance due at maturity.

22 (c) Said advertisement was further deceptive because the
23 examples of monthly payments did not state that the payments could
24 become higher if the terms of the promissory note provided for an
25 adjustable rate.

26 8.

27 (a) As of on or about June 7, 1996, Respondent failed to

1 maintain a place of business in violation of Code Section 10162.
2 Respondent's main office address, as provided by Respondent to the
3 Department, was 270 North Cannon Drive, #1165, Beverly Hills,
4 California. 270 North Cannon Drive, is the location of a
5 commercial postal service and not an office maintained by
6 Respondent within the meaning of Code Section 10162.

7 (b) On or about February 14, 1996, respondent obtained a
8 branch office license for 971 North La Cienega, #209, Los Angeles,
9 California. As of on or about June 7, 1996, respondent had vacated
10 that address but failed to inform the Department in willful
11 violation of Regulation 2715.

12 (c) On or about June 10, 1996, an auditor from the
13 Department requested in writing specified records to be provided to
14 the Department for examination. On or about October 31, 1996, the
15 Department issued to Respondent a subpoena duces tecum for the
16 production of specified records to be produced by November 12,
17 1996. Respondent failed and refused to provide the documents
18 pursuant to either request for production.

19 9.

20 Respondent knew or should have known that Taylor, Gold
21 and HFA were unlicensed but that Taylor and Gold were soliciting
22 borrowers or lenders for secured loans. Respondent failed to
23 require that Taylor and Gold obtain real estate license prior to
24 permitting Taylor, Gold and HFA to use respondent's license.

25 10.

26 The conduct or omissions of Respondent as set forth above
27 subject his real estate licenses and license rights to suspension



1 or revocation under the following Code Sections:

2 (a) Code Section 10137 for employing or compensating
3 Taylor and Gold for acts requiring a real estate license, as set
4 forth in paragraph 5 above.

5 (b). Code Section 10177(d) for willful violations of the
6 following Code Sections and Regulations:

7 (i) Code Section 10148 for failure to deliver
8 documents to the Department pursuant to its request, as set forth
9 above in paragraph 8(c) above.

10 (ii) Code Section 10159.5 and Regulation 2731 for
11 using an unlicensed fictitious business name as set forth in
12 paragraphs 4(a) 5 and 7 above.

13 (iii) Code Section 10162 for failing to maintain a
14 place of business, as set forth in paragraph 8(a) above.

15 (iv) Regulation 2715 for failure to inform the
16 Department of the closure of a branch office, as set forth in
17 paragraph 8(b) above.

18 (v) Code Section 10240 and Regulation 2840 for
19 failing to provide a Mortgage Loan Disclosure Statement (Borrower)
20 to any of the borrowers identified in paragraph 5 above, as set
21 forth in paragraph 6 above.

22 (vi) Regulation 2848 for issuance of advertising
23 deemed misleading, as set forth in paragraph 7 above.

24 (c) Code Section 10177(g) for negligence in operating
25 the business of HFA.

26 WHEREFORE, Complainant prays that a hearing be
27 conducted on the allegations of this Accusation and, that upon

1 proof thereof, a decision be rendered imposing disciplinary action
2 against all licenses and license rights of Respondent MALCOLM
3 BIRNIE BOOT, individually and doing business as The Boot Group,
4 under the Real Estate Law (Part 1 of Division 4 of the Business and
5 Professions Code), and for such other and further relief as may be
6 proper under other applicable provisions of law.

7 Dated at Los Angeles, California this 11th day of
8 March, 1997.

9 THOMAS McGRADY

10 Thomas Mc Crady,
11 Deputy Real Estate Commissioner
12
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19
20
21
22

23 cc: Malcolm Birnie Boot
24 Sacto
25 AK

26 SC/sc
27