

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4
5 (213) 576-6911
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FILED
SEP 20 2000
DEPARTMENT OF REAL ESTATE

By *R. Mac Lennan*

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) DRE No. H-28259 LA
12 GASBARRO INVESTMENTS, INC.;)
13 and DAVID JOSEPH GASBARRO,)
14 individually and as)
15 designated officer of) STIPULATION AND AGREEMENT
16 Gasbarro Investments, Inc.,)
17 Respondents.)

18 It is hereby stipulated by and between GASBARRO
19 INVESTMENTS, INC., a California corporate broker, and DAVID
20 JOSEPH GASBARRO, individually and as designated officer of
21 Gasbarro Investments, Inc. (sometimes collectively referred to as
22 "Respondents"), and the Complainant, acting by and through
23 Elliott Mac Lennan, Counsel for the Department of Real Estate, as
24 follows for the purpose of settling and disposing of the
25 Accusation filed on November 2, 1999, in this matter:

26 1. All issues which were to be contested and all
27 evidence which was to be presented by Complainant and Respondents

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act ("APA"), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement (Stipulation).

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

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

22 4. This Stipulation is based on the allegations
23 contained in the Accusation. In the interest of expedience and
24 economy, Respondents choose not to contest these allegations, but
25 to remain silent and understand that, as a result thereof, these
26 allegations, without being admitted or denied, will serve as a
27 prima facie basis for the disciplinary action stipulated to



1 herein. The Real Estate Commissioner shall not be required to
2 provide further evidence to prove said allegations.

3 5. This Stipulation is based on Respondents decision
4 not to contest the allegations set forth in the Accusation and
5 the Desist and Refrain Order (H-28260) filed February 11, 2000,
6 as a result of the agreement negotiated between the parties.
7 This Stipulation is expressly limited to this proceeding and any
8 further proceeding initiated by or brought before the Department
9 of Real Estate based upon the facts and circumstances alleged in
10 the Accusation and the Desist and Refrain Order, and is made for
11 the sole purpose of reaching an agreed disposition of this
12 proceeding without a hearing. The decision of Respondents not to
13 contest the allegations is made solely for the purpose of
14 effectuating this Stipulation. It is the intent and
15 understanding of the parties that this Stipulation shall not be
16 binding or admissible against Respondents in any actions against
17 Respondents by third parties.

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



1 10159.2 of the Code and is a basis for the suspension or
2 revocation of Respondents' license and license rights as a
3 violation of the Real Estate Law pursuant to Section 10177(d) of
4 the Code

5 ORDER

6 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT
7 TO THE WRITTEN STIPULATION OF THE PARTIES:

8 I
9

10 All license and license rights of Respondents GASBARRO
11 INVESTMENTS, INC. and DAVID JOSEPH GASBARRO under the Real Estate
12 Law are suspended for a period of ninety (90) days from the
13 effective date of this Decision. Provided, however, that if
14 Respondents petition, the initial thirty (30) days of said
15 suspension (or a portion thereof) shall be permanently stayed
16 upon condition that:

17 1. Respondents pay a monetary penalty pursuant to Section
18 10175.2 of the Code of \$1,500 each, or 3,000 total.

19 2. Said payment shall be in the form of a cashier's check
20 or certified check made payable to the Recovery Account of the
21 Real Estate Fund. Said check must be delivered to the Department
22 prior to the effective date of the Decision.

23 3. If Respondents fail to pay the monetary penalty in
24 accordance with the terms of the Decision, the Commissioner, may,
25 without a hearing, order the immediate execution of all or any
26 part of the 30 day stayed suspension, in which a Respondent shall
27



1 not be entitled to any repayment nor credit, prorated or
2 otherwise, for money paid to the Department under the terms of
3 this Decision.

4 4. The remaining sixty (60) days of the ninety (90) day
5 suspension shall be stayed for two (2) years upon the following
6 terms and conditions:

7 (a) Respondents shall obey all laws, rules and
8 regulations governing the rights, duties and
9 responsibilities of a real estate licensee in the State
10 of California; and

11 (b) That no final subsequent determination be made
12 after hearing or upon stipulation, that cause for disciplinary
13 action occurred within two (2) years of the effective date of
14 this Decision. Should such a determination be made, the
15 Commissioner may, in her discretion, vacate and set aside the
16 stay order and reimpose all or a portion of the stayed
17 suspension. Should no such determination be made, the stay
18 imposed herein shall become permanent.

19 5. Pursuant to Section 10148 of the Business and
20 Professions Code, Respondents GASBARRO INVESTMENTS, INC. and
21 DAVID JOSEPH GASBARRO shall jointly or severally, pay the
22 Commissioner's reasonable cost for a subsequent audit to
23 determine if Respondents are now in compliance with the Real
24 Estate Law. In calculating the amount of the Commissioner's
25 reasonable cost for the subsequent audit, the Commissioner may
26 use the estimated average hourly salary for all persons
27 performing audits of real estate brokers, and shall include an



1 allocation for travel time to and from the auditor's place of
2 work. Said amount for the subsequent audit shall not exceed
3 \$7,800.

4 6. Respondents GASBARRO INVESTMENTS, INC. and DAVID
5 JOSEPH GASBARRO shall pay the cost of the subsequent audit .
6 within 45 days of receiving an invoice from the Real Estate
7 Commissioner detailing the activities performed during the audit
8 and the amount of time spent performing those activities.

9 The Commissioner may suspend the licenses or license
10 rights of a Respondent pending a hearing held in accordance with
11 Section 11500, et seq., of the Government Code, if payment is not
12 timely made as provided for herein, or as provided for in a
13 subsequent agreement between the Respondents and the
14 Commissioner. The suspension shall remain in effect until
15 payment is made in full or until Respondents enter into an
16 agreement satisfactory to the Commissioner to provide for
17 payment, or until a decision providing otherwise is adopted
18 following a hearing held pursuant to this condition.

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EXECUTION OF THE STIPULATION

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3 We have read the Stipulation and Agreement and its
4 terms are understood by us and are agreeable and acceptable to
5 us. We understand that we are waiving rights given to us by the
6 California Administrative Procedure Act (including but not
7 limited to Sections 11506, 11508, 11509 and 11513 of the
8 Government Code), and we willingly, intelligently and voluntarily
9 waive those rights, including the right of requiring the
10 Commissioner to prove the allegations in the Accusation at a
11 hearing at which we would have the right to cross-examine
12 witnesses against us and to present evidence in defense and
13 mitigation of the charges.

14 Respondents can signify acceptance and approval of the
15 terms and conditions of this Stipulation and Agreement by faxing
16 a copy of its signature page, as actually signed by Respondents,
17 to the Department at the following telephone/fax number: (213)
18 576-6917. Respondents agree, acknowledge and understand that by
19 electronically sending to the Department a fax copy of their
20 actual signature as it appears on the Stipulation and Agreement,
21 that receipt of the faxed copy by the Department shall be as
22 binding on Respondents as if the Department had received the
23 original signed Stipulation and Agreement.

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DATED: 7/12/2000

David Joseph Gasbarro, President
GASBARRO INVESTMENTS, INC.
BY: DAVID JOSEPH GASBARRO,
President

DATED: 7/12/2000

David Joseph Gasbarro
DAVID JOSEPH GASBARRO, individually
and as designated officer of
Gasbarro Investments, Inc.,
Respondent

DATED: 7-3-2000

Frank Buda
FRANK BUDA, ESQ.
Counsel for Respondents

* * * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order and shall become effective at 12
o' clock noon on October 10, 2000.

IT IS SO ORDERED September 13, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

9

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 14 2000
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GASBARRO INVESTMENTS INC., et al.,

By K. Mederhoff

Case No. H-28259 LA

OAH No. L-2000040054

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 Office of Administrative Hearings, 320 W. Fourth St., Ste. 630, Los Angeles, CA on June 21, 2000, 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: April 13, 2000

By [Signature]
Counsel

cc: Gasbarro Investments Inc.
David Joseph Gasbarro
Frank M. Buda, Esq.
Sacto
OAH
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RE 501 (Rev. 8/97)

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ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911

FILED
FEB 15 2000
DEPARTMENT OF REAL ESTATE

By *K. Mederhold*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-28259 LA
GASBARRO INVESTMENTS, INC.;)	
and DAVID JOSEPH GASBARRO,)	<u>FIRST AMENDED ACCUSATION</u>
individually and as)	
designated officer of)	
Gasbarro Investments, Inc.,)	
Respondents.)	

The Accusation filed November 2, 1999, is amended in its entirety as follows:

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against GASBARRO INVESTMENTS, INC., dba California Security Mortgage Company, and DAVID JOSEPH GASBARRO, individually and as designated officer of Gasbarro Investments, Inc., is informed and alleges in his official capacity as follows:

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1 GASBARRO INVESTMENTS, INC. (GII) and DAVID JOSEPH
2 GASBARRO (GASBARRO), individually and as designated officer of
3 Gasbarro Investments, Inc., sometimes collectively referred to as
4 Respondents, are presently licensed and/or have license rights
5 under the Real Estate Law (Part 1 of Division 4 of the California
6 Business and Professions Code).

2

8 All references to the "Code" are to the California
9 Business and Professions Code and all references to "Regulations"
10 are to Title 10, Chapter 6, California Code of Regulations.

3

12 At all times mentioned, GII was licensed by the
13 Department of Real Estate of the State of California (Department)
14 as a corporate real estate broker by and through GASBARRO as
15 designated officer. GII was originally licensed by the Department
16 on January 22, 1993.

4

18 At all times mentioned, GASBARRO was licensed by the
19 Department as designated officer of GII to qualify GII and to act
20 for GII as its real estate broker and, as provided by Section
21 10159.2 of the Code, was responsible for the supervision and
22 control of the activities conducted on behalf of GII by its
23 officers, managers and employees as necessary to secure full
24 compliance with the provisions of the Real Estate Law including
25 the supervision of the salespersons licensed to the corporation in
26 the performance of acts for which a real estate license is

27



1 required. GASBARRO was originally licensed as a real estate
2 broker on May 19, 1982.

3 5

4 Whenever reference is made in an allegation in the
5 Accusation to an act or omission of GII such allegation shall be
6 deemed to mean that the officers, directors, managers, employees,
7 agents and real estate licensees employed by or associated with
8 GII committed such act or omission, including GASBARRO, while
9 engaged in the furtherance of the business or operation of GII and
10 while acting within the course and scope of its corporate
11 authority, agency and employment.

12 6

13 At all times mentioned, in the City of Woodland Hills,
14 Los Angeles County, Respondents GII and GASBARRO acted as real
15 estate brokers within this meaning of Section 10131(d) of the
16 Code, including soliciting borrowers or lenders for or negotiating
17 loans collecting of payments for borrowers or lenders or note
18 holders in connection with loans secured directly or collaterally
19 by liens on real property or on a business opportunity. In
20 addition, Respondents conducted broker controlled escrows under
21 the exemption set forth in Section 17006(a)(4) of the California
22 Financial Code.

23 7

24 On April 5, 1999, the Department completed an audit
25 examination of the books and records of GII, dba California
26 Security Mortgage Company, pertaining to its mortgage and loan
27 activities described in Paragraph 6. The audit examination



1 covered a period of time beginning on October 1, 1996 and ending
2 on December 31, 1998. The audit examination revealed violations
3 of the Code and the Regulations as set forth in the following
4 paragraphs.

5 8

6 At all times mentioned, in connection with the
7 activities described in Paragraph 6, above, Respondent GII
8 accepted or received funds in trust (trust funds) from or on
9 behalf of actual or prospective borrowers and lenders. Thereafter
10 it made disposition of such funds. GII maintained two trust
11 accounts during the audit period at the Camarillo Community Bank,
12 Camarillo, California:

13 California Security Mortgage Company Payment Trust (T/A #1)
14 Account No. 2009099

15 (This account was used to remit monthly borrowers' payments to
16 lenders).

17 California Security Mortgage Company Escrow Trust (T/A #2)
18 Account No. 2009102

19 (This account was used for receipt and disbursement of escrow
20 funds for private investor loans).

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22 With respect to the trust funds referred to in Paragraph
23 8, GII:

24 (a) Permitted, allowed or caused the disbursement of
25 trust funds from T/A #1, where the disbursement of the funds
26 reduced the total of aggregate funds in T/A #1, to an amount
27 which, on September 30, 1998, was \$1,541.87, less than the



1 existing aggregate trust fund liability of GII to every principal
2 who was an owner of the funds, without first obtaining the prior
3 written consent of the owners of said funds, as required by
4 Section 10145 of the Code and Sections 2832.1 of the Regulations;

5 (b) Failed to maintain an adequate control record in
6 the form of a columnar record in chronological order of all trust
7 funds received into both trust accounts, as required by Sections
8 2831, 2950(d), and 2951 of the Regulations;

9 (c) Failed to maintain an accurate and complete
10 separate record for each beneficiary or transaction, thereby
11 failing to account for all trust funds received, deposited, and
12 disbursed by both trust accounts as required by Sections 2831.1,
13 2950(d) and 2951 of the Regulations; and

14 (d) Failed to perform an accurate monthly
15 reconciliation of the balance of all separate beneficiary or
16 transaction records maintained pursuant to Section 2831.1 of the
17 Regulations with the record of all trust funds received and
18 disbursed by both trust accounts, as required by Sections 2831.2,
19 2950(d) and 2951 of the Regulations.

20 10

21 The conduct of Respondent GII, described in Paragraph 9,
22 above, violated the Code and the Regulations now set forth:

23 PARAGRAPH

24 PROVISIONS VIOLATED

25 9(a)

26 Section 10145 of the Code, and
27 Sections 2832.1 of the Regulations

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9(b) Section 10145 of the Code, and
Sections 2831, 2950(d), and 2951 of
the Regulations

9(c) Section 10145 of the Code, and
Sections 2831.1, 2950(d) and 2951 of
the Regulations

9(d) Section 10145 of the Code, and
Sections 2831.2, 2950(d) and 2951 of
the Regulations

Each of the foregoing violations separately constitutes cause for
the suspension or revocation of the real estate license and
license rights of GII under Section 10177(d) of the Code.

11

The audit examination revealed that GII and GASBARRO
failed to place all funds received for the purchase of promissory
notes secured directly or collaterally by liens on real property
from lender-purchasers Alvarado Enterprises, Accratronics,
Altschuler, Stahl, Wayne, Marzaro, Smerke, Fisch, and Ringger,
into a neutral escrow depository where the delivery of the
promissory notes did not occur simultaneously with the receipt of
said funds. This conduct constitutes a violation of Section
10145(b) of the Code and is cause to suspend or revoke the real
estate license and license rights of GII and GASBARRO under
Section 10177(d).

1 The audit examination revealed that Respondents GII and
 2 GASBARRO, through express or implied representations that said
 3 Respondents were engaging in acts for which a real estate license
 4 is required by subdivision (d) or (e) of Section 10131, as
 5 borrower or co-borrower, solicited and accepted funds for their
 6 use and benefit from investors for whole or fractional interests
 7 in loans to be secured by liens on real property listed below and,
 8 in connection therewith, failed to submit to the Department the
 9 statement required by subdivision (a) Section 10231.2 of the Code,
 10 for any of said loans described in this paragraph, as required by
 11 Section 10231.2 of the Code.

12 a. The Woodson Loan #1534, for the real property commonly
 13 known as 6419 Tujunga;

14 b. The J. Lewis Enterprises/Sunnyside Investments Loan
 15 #1586, for the real property commonly known as 2416 1/2 E. 43rd
 16 St.; and,

17 c. The Stahl Loan #1586A, for the real property commonly
 18 known as 2416 1/2 E. 43rd St.

19 This conduct constitutes a violation of Section 10231.2
 20 of the Code and is cause to suspend or revoke the real estate
 21 license and license rights of Respondents GII and GASBARRO under
 22 Section 10177(d).

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10236.4 of the Code. This conduct constitutes a violation of
1 Section 10236.4 of the Code and is cause to suspend or revoke the
2 real estate license and license rights of GII under Section
3 10177(d).

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5 16

6 The audit revealed that GII and GASBARRO failed to
7 advise all parties to GII's escrow operation of their interest in
8 the escrow holder. This conduct is a violation of Regulation
9 2950(h) and is cause to suspend or revoke GII and GASBARRO
10 licenses and license rights under Section 10177(d) of the Code.

11 17

12 The audit lastly revealed that Respondents GII and
13 GASBARRO failed to provide all principals in the escrow with an
14 escrow closing statement containing all the receipts and
15 disbursements together with the name of the person to whom any
16 such disbursement was made, as required by 2950(i). This conduct
17 is cause to suspend or revoke Respondents GII and GASBARRO
18 licenses and license rights under Section 10177(d) of the Code.

19 18

20 The overall conduct of Respondents GII and GASBARRO,
21 jointly and severally, constitutes negligence and/or incompetence.
22 This conduct and violations are cause to suspend or revoke the
23 real estate license and license rights of said Respondents under
24 Section 10177(g) of the Code.

25 19

26 The conduct of Respondent GASBARRO, constitutes a
27 failure on his part, as officer designated by a corporate broker



1 licensee, to exercise reasonable supervision and control over the
2 licensed activities of GII and to keep it in compliance with the
3 Real Estate Law, is cause for the suspension or revocation of the
4 real estate license and license rights of GASBARRO under Sections
5 10159.2, 10177(d) and 10177(h) of the Code.

6 WHEREFORE, Complainant prays that a hearing be conducted
7 on the allegations made by the Accusation and, that upon proof
8 thereof, a decision be rendered imposing disciplinary action
9 against the license and license rights of GASBARRO INVESTMENTS,
10 INC., and DAVID JOSEPH GASBARRO, individually and as designated
11 officer of Gasbarro Investments, Inc., under the Real Estate Law
12 (Part 1 of Division 4 of the Business and Professions Code) and
13 for such other and further relief as may be proper under other
14 applicable provisions of law.

15 Dated at Los Angeles, California
16 this 15th day of February, 2000.

17 THOMAS MC CRADY

18 Deputy Real Estate Commissioner

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24 cc: Gasbarro Investments, Inc.
25 c/o David J. Gasbarro, D.O.
26 Sacto.
27 PI



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ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911

FILED
NOV - 2 1999
DEPARTMENT OF REAL ESTATE

By *K. Mederholt*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of) No. H-28259 LA
)
GASBARRO INVESTMENTS, INC.;)
) and DAVID JOSEPH GASBARRO,) **A C C U S A T I O N**
) individually and as)
) designated officer of)
) Gasbarro Investments, Inc.,)
)
) Respondents.)
)

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against GASBARRO INVESTMENTS, INC., dba California Security Mortgage Company, and DAVID JOSEPH GASBARRO, individually and as designated officer of Gasbarro Investments, Inc., is informed and alleges in his official capacity as follows:

1

GASBARRO INVESTMENTS, INC. (GII) and DAVID JOSEPH GASBARRO (GASBARRO), individually and as designated officer of Gasbarro Investments, Inc., sometimes collectively referred to as

1 Respondents, are presently licensed and/or have license rights
2 under the Real Estate Law (Part 1 of Division 4 of the California
3 Business and Professions Code).

4 2

5 All references to the "Code" are to the California
6 Business and Professions Code and all references to "Regulations"
7 are to Title 10, Chapter 6, California Code of Regulations.

8 3

9 At all times mentioned, GII was licensed by the
10 Department of Real Estate of the State of California (Department)
11 as a corporate real estate broker by and through GASBARRO as
12 designated officer. GII was originally licensed by the Department
13 on January 22, 1993.

14 4

15 At all times mentioned, GASBARRO was licensed by the
16 Department as designated officer of GII to qualify GII and to act
17 for GII as its real estate broker and, as provided by Section
18 10159.2 of the Code, was responsible for the supervision and
19 control of the activities conducted on behalf of GII by its
20 officers, managers and employees as necessary to secure full
21 compliance with the provisions of the Real Estate Law including
22 the supervision of the salespersons licensed to the corporation in
23 the performance of acts for which a real estate license is
24 required. GASBARRO was originally licensed as a real estate
25 broker on May 19, 1982.

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27 /



1 Whenever reference is made in an allegation in the
2 Accusation to an act or omission of GII such allegation shall be
3 deemed to mean that the officers, directors, managers, employees,
4 agents and real estate licensees employed by or associated with
5 GII committed such act or omission, including GASBARRO, while
6 engaged in the furtherance of the business or operation of GII and
7 while acting within the course and scope of its corporate
8 authority, agency and employment.
9

6

10 At all times mentioned, in the City of Woodland Hills,
11 Los Angeles County, Respondents GII and GASBARRO acted as real
12 estate brokers within this meaning of Section 10131(d) of the
13 Code, including soliciting borrowers or lenders for or negotiating
14 loans collecting of payments for borrowers or lenders or note
15 holders in connection with loans secured directly or collaterally
16 by liens on real property or on a business opportunity. In
17 addition, Respondents conducted broker controlled escrows under
18 the exemption set forth in Section 17006(a)(4) of the California
19 Financial Code.
20

7

21 On April 5, 1999, the Department completed a field audit
22 examination of the books and records of GII, dba California
23 Security Mortgage Company, pertaining to its mortgage and loan
24 activities described in Paragraph 6. The audit examination
25 covered a period of time beginning on October 1, 1996 and ending
26 on December 31, 1998. The audit examination revealed violations
27



1 of the Code and the Regulations as set forth in the following
2 paragraphs.

3 8

4 At all times mentioned, in connection with the
5 activities described in Paragraph 6, above, Respondent GII
6 accepted or received funds in trust (trust funds) from or on
7 behalf of actual or prospective borrowers and lenders. Thereafter
8 it made disposition of such funds. GII maintained two trust
9 accounts during the audit period at the Camarillo Community Bank,
10 Camarillo, California:

11 California Security Mortgage Company Payment Trust (T/A #1)
12 Account No. 2009099

13 (This account was used to remit monthly borrowers' payment to
14 lenders).

15 California Security Mortgage Company Escrow Trust (T/A #2)
16 Account No. 2009102

17 (This account was used for receipt and disbursement of escrow
18 funds for private investor loans).

19 9

20 With respect to the trust funds referred to in Paragraph
21 8, GII:

22 (a) Permitted, allowed or caused the disbursement of
23 trust funds from the payment trust account, T/A #1, where the
24 disbursement of the funds reduced the total of aggregate funds in
25 the payment trust account, to an amount which, on September 30,
26 1998, was \$1,541.87, less than the existing aggregate trust fund
27 liability of GII to every principal who was an owner of the funds,
without first obtaining the prior written consent of the owners of



1 the funds, as required by Section 10145 of the Code and Section
2 2832.1 of the Regulations;

3 (b) Failed to maintain an adequate control record in
4 the form of a columnar record in chronological order of all trust
5 funds received into both trust accounts, as required by Sections
6 2831, 2950(d), and 2951 of the Regulations;

7 (c) Failed to maintain an accurate and complete
8 separate record for each beneficiary or transaction, thereby
9 failing to account for all trust funds received, deposited, and
10 disbursed by both trust accounts as required by Sections 2831.1,
11 2950(d) and 2951 of the Regulations; and

12 (d) Failed to perform an accurate monthly
13 reconciliation of the balance of all separate beneficiary or
14 transaction records maintained pursuant to Section 2831.1 of the
15 Regulations with the record of all trust funds received and
16 disbursed by the escrow trust account. T/A #2, as required by
17 Sections 2831.2, 2950(d) and 2951 of the Regulations.

18 10

19 The conduct of Respondents GII, described in Paragraph
20 9, above, violated the Code and the Regulations now set forth:

21 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
22 9(a)	Section 10145 of the Code, and 23 Section 2832.1 of the Regulations
24 9(b)	Section 10145 of the Code, and 25 Sections 2831, 2950(d), and 2951 of 26 the Regulations

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9(c) Section 10145 of the Code, and
Sections 2831.1, 2950(d) and 2951 of
the Regulations

9(d) Section 10145 of the Code, and
Sections 2831.2, 2950(d) and 2951 of
the Regulations

Each of the foregoing violations separately constitutes cause for
the suspension or revocation of the real estate license and
license rights of GII under Section 10177(d) of the Code.

11

While acting as a principals, GII and GASBARRO failed to
place all funds received from lenders for the purchase of
promissory notes secured directly or collaterally by liens on real
property from lender-purchasers Alvarado Enterprises,
Accratronics, Altschuler, Stahl, Wayne, Marzaro, Smerke, Fisch,
and Ringger, into a neutral escrow depository where the delivery
of the promissory notes did not occur simultaneously with the
receipt of said funds, as required by Section 10145(b) of the
Code.

12

The audit examination revealed that Respondents GII and
GASBARRO, as borrowers or co-borrowers, solicited and accepted
private funds from investors for whole or fractional interests in
loans to be secured directly by trust deeds in the name of such

1 investors as beneficiaries encumbering real property, for the real
2 property listed below where Respondents failed to submit to the
3 Department the statement required by Section 10231.2 of the Code,
4 the Lender Purchaser Disclosure Statement, for any of the loans
5 described in this paragraph:

6 The Woodson Loan #1534, for the real property commonly known
7 as 6419 Tujunga;

8 The J. Lewis Enterprises/Sunnyside Investments Loan #1586,
9 for the real property commonly known as 2416 1/2 E. 43rd St.; and,

10 The Stahl Loan #1586A, for the real property commonly known
11 as 2416 1/2 E. 43rd St.

12 This conduct constitutes a violation of Section 10231.2
13 of the Code and is cause to suspend or revoke the real estate
14 license and license rights of Respondents GII and GASBARRO under
15 Section 10177(d).

16 13

17 The audit examination also revealed, that GII met the
18 criteria as a threshold broker, as described in Section 10232 of
19 the Code, yet failed to provide the Department with timely or
20 accurate Quarterly and Annual Trust Fund Status Reports. This
21 conduct constitutes a violation of Section 10229(i)(3) (multi-
22 lenders notes secured directly by an interest in the same real
23 property), and Sections 10232.2 and 10232.25 of the Code and is
24 cause to suspend or revoke the real estate license and license
25 rights of GII under Section 10177(d).

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1 The conduct of Respondents GII and GASBARRO, as
2 described in the audit report, in (a) failing to name the lenders
3 as beneficiaries of the multi-lender loans for loans #1613 and
4 #1617, without first having obtained said lenders written
5 authorization, and (b) in failing to record trust deeds or trust
6 deed assignments in favor of the lenders in loans #1610, 1613,
7 #1615 and #1617, within ten days following the release of lender
8 funds is cause to suspend or revoke the real estate licenses and
9 license rights of Respondents GII and GASBARRO pursuant to Section
10 10234 of the Code.

11 The audit revealed that Respondents GII and GASBARRO
12 failed to display the Department's license information and
13 telephone number on all advertisements where there is a
14 solicitation for borrowers or potential investors, to wit, on
15 Mortgage Loan Disclose Statements and the Lender Purchaser
16 Disclosure Statements. This conduct constitutes a violation of
17 Section 10236.4 of the Code and is cause to suspend or revoke the
18 real estate license and license rights of GII and GASBARRO under
19 Section 10177(d).

20 The audit furthermore revealed that Respondents GII and
21 GASBARRO failed to advise all parties to the escrow operation of
22 GII of its ownership of said escrow company, in violation of
23 Regulation 2950(h). This conduct is cause to suspend or revoke
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1 Respondents GII and GASBARRO licenses and license rights under
2 Section 10177(d) of the Code.

3 17

4 The audit lastly revealed that Respondents GII and
5 GASBARRO failed to provide all principals in the escrow with an
6 escrow closing statement containing all the receipts and
7 disbursements together with the name of the person to whom any
8 such disbursement was made, in violation of Regulation 2950(i).
9 This conduct is cause to suspend or revoke Respondents GII and
10 GASBARRO licenses and license rights under Section 10177(d) of the
11 Code.

12 18

13 The overall conduct of Respondents GII and GASBARRO,
14 jointly and severally, constitutes negligence and/or incompetence.
15 This conduct and violations are cause to suspend or revoke the
16 real estate license and license rights of said Respondents under
17 Section 10177(g) of the Code.

18 19

19 The conduct of Respondent GASBARRO, constitutes a
20 failure on his part, as officer designated by a corporate broker
21 licensee, to exercise reasonable supervision and control over the
22 licensed activities of GII and to keep it in compliance with the
23 Real Estate Law, is cause for the suspension or revocation of the
24 real estate license and license rights of GASBARRO under Section
25 10159.2 of the Code.

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27



1 WHEREFORE, Complainant prays that a hearing be conducted
2 on the allegations made by the Accusation and, that upon proof
3 thereof, a decision be rendered imposing disciplinary action
4 against the license and license rights of GASBARRO INVESTMENTS,
5 INC., and DAVID JOSEPH GASBARRO, individually and as designated
6 officer of Gasbarro Investments, Inc., under the Real Estate Law
7 (Part 1 of Division 4 of the Business and Professions Code) and
8 for such other and further relief as may be proper under other
9 applicable provisions of law.

10 Dated at Los Angeles, California
11 this 2nd day of November, 1999.

12 THOMAS MC CRADY
13 Deputy Real Estate Commissioner

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23 cc: Gasbarro Investments, Inc.
24 c/o David J. Gasbarro, D.O.
25 Sacto.
26 PI
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