

FLAS

FILED

OCT 31 2009

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
HOWARD LOUIS BIGLOW,
Respondent.

No. H-29695 LA

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 15, 2004, a Decision was rendered herein revoking the real estate broker license of Respondent effective November 29, 2004, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on January 18, 2005, and Respondent has operated as a restricted licensee since that time.

On December 12, 2006, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate broker license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement is granted and that a real estate broker license be issued to Respondent if
3 Respondent satisfies the following conditions within twelve (12) months from the date of this

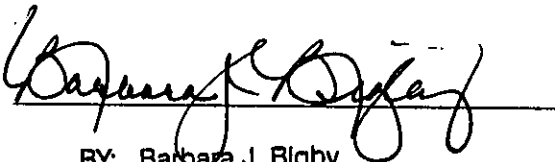
4 Order:

- 5 1. Submittal of a completed application and payment of the fee for a real
6 estate broker license.
7 2. Submittal of evidence of having, since the most recent issuance of an
8 original or renewal real estate license, taken and successfully completed the continuing education
9 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
10 license.

11 This Order shall be effective immediately.

12 DATED: 10-29-09

13 JEFF DAVI
14 Real Estate Commissioner

15 

16 BY: Barbara J. Bigby
17 Chief Deputy Commissioner

ELLIOTT MAC LENNAN, Counsel (SBN 66674)
Department of Real Estate
320 W. 4TH Street, Suite 350
Los Angeles, CA 90013-1105

DEPARTMENT OF REAL ESTATE

By K. Wiederholt

Telephone: (213) 576-6982 (Office)
-or- (213) 576-6911 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-29695 LA
OLD CITY MORTGAGE, a corporate real)	
estate broker; and, HOWARD LOUIS)	
BIGLOW, individually and as designated)	<u>STIPULATION</u>
officer of Old City Mortgage,)	<u>AND</u>
)	<u>AGREEMENT</u>
Respondents.)	

It is hereby stipulated by and between Respondents
OLD CITY MORTGAGE, a corporate real estate broker and HOWARD
LOUIS BIGLOW, individually and as designated officer of Old City
Mortgage (sometimes collectively referred to as "Respondents"),
represented by Frank M. Buda, Esq., and the Complainant, acting
by and through Elliott Mac Lennan, Counsel for the Department of
Real Estate, as follows for the purpose of settling and disposing
of the Accusation filed on September 19, 2002, in this matter:

1. All issues which were to be contested and all
evidence which was to be presented by Complainant and Respondents
at a formal hearing on the Accusation, which hearing was to be

1 held in accordance with the provisions of the Administrative
2 Procedure Act ("APA"), shall instead and in place thereof be
3 submitted solely on the basis of the provisions of this
4 Stipulation and Agreement ("Stipulation").

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

9 3. On October 29, 2002, Respondents filed a Notice of
10 Defense pursuant to Section 11506 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notice of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notice of Defense they
15 thereby waive their right to require the Commissioner to prove
16 the allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that they will
18 waive other rights afforded to them in connection with the
19 hearing such as the right to present evidence in their defense
20 the right to cross-examine witnesses.

22 4. This Stipulation is based on the factual
23 allegations contained in the Accusation. In the interest of
24 expedience and economy, Respondents choose not to contest these
25 allegations, but to remain silent and understand that, as a
26 result thereof, these factual allegations, without being admitted
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or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to provide further evidence to prove said factual allegations.

5. This Stipulation and Respondents decision not to contest the Accusation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate ("Department"), the state or federal government, or any agency of this state, another state or federal government is involved.

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

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Department of Real

1 Estate with respect to any matters which were not specifically
2 alleged to be causes for Accusations in this proceeding but do
3 constitute a bar, estoppel and merger as to any allegations
4 actually contained in the Accusations against Respondent herein.

5 8. Respondents understand that by agreeing to this
6 Stipulation, Respondents agree to pay, pursuant to Business and
7 Professions Code Section 10148, the cost of the audit (Old City
8 Mortgage - LA 010152) which led to this disciplinary action. The
9 amount of said cost is \$9,981.71.

10 9. Respondents have received, read, and understand the
11 "Notice Concerning Costs of Subsequent Audit"... Respondents
12 further understand that by agreeing to this Stipulation, the
13 findings set forth below in the Determination of Issues become
14 final, and the Commissioner may charge Respondents for the cost
15 of any subsequent audit conducted pursuant to Business and
16 Professions Code Section 10148 to determine if the violations
17 have been corrected. The maximum cost of the subsequent audit
18 will not exceed \$9,981.71.
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DETERMINATION OF ISSUES

By reason of the foregoing, it is stipulated and agreed that the following determination of issues shall be made:

I

The conduct of OLD CITY MORTGAGE, as described in Paragraph 4, is in violation of Section 10145, 10232(a)(2) &(3), 10232.4, 10234 and 10242, of the Business and Professions Code ("Code") and Sections 2831, 2832 and 2834 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Code Sections 10177(d) and 10177(g).

II

The conduct of HOWARD LOUIS BIGLOW, as described in Paragraph 4, constitutes a failure to keep Old City Mortgage in compliance with the Real Estate Law during the time that he was the officer designated by a corporate broker licensee in violation of Section 10159.2 of the Code. This conduct is a basis for the suspension or revocation of Respondent's license pursuant to Code Sections 10177(d) and 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

All licenses and licensing rights of Respondents OLD CITY MORTGAGE and HOWARD LOUIS BIGLOW, under the Real Estate Law are revoked; provided, however, restricted real estate broker licenses shall be issued to said Respondents, pursuant to Section 10156.5 of the Business and Professions Code if Respondents:

(A) Make application thereof and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision.

(B) Prior to and as a condition of the issuance of any restricted license, Respondents shall first provide evidence satisfactory to the Commissioner that the violations cited in the Determination of Issues, have been cured.

(C) Respondent HOWARD LOUIS BIGLOW shall, prior to and as a condition of the issuance of the restricted license, submit proof satisfactory to the Commissioner of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course

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

3 The restricted licenses issued to Respondents shall be
4 subject to all of the provisions of Section 10156.7 of the
5 Business and Professions Code and to the followings limitations,
6 conditions and restrictions imposed under authority of Section
7 10156.6 of that Code:

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

13 2. The restricted licenses issued to Respondents may
14 be suspended prior to hearing by Order of the Real Estate
15 Commissioner on evidence satisfactory to the Commissioner that a
16 Respondent has violated provisions of the California Real Estate
17 Law, the Subdivided Lands Law, Regulations of the Real Estate
18 Commissioner or conditions attaching to the restricted license.

19 3. Respondents shall not be eligible to apply for the
20 issuance of an unrestricted real estate license nor for the
21 removal of any of the conditions, limitations or restrictions of
22 a restricted license until two (2) years have elapsed from the
23 effective date of this Decision.

24 4. Respondent HOWARD LOUIS BIGLOW shall, within nine
25 (9) months from the issuance of a restricted license, present
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1 evidence satisfactory to the Real Estate Commissioner that
2 Respondent has, since the most recent issuance of an original or
3 renewal real estate license, taken and successfully completed the
4 continuing education requirements of Article 2.5 of Chapter 3 of
5 the Real Estate Law for renewal of a real estate license. If
6 Respondent fails to satisfy this condition, the Commissioner may
7 order the suspension of his license until the Respondent presents
8 such evidence. The Commissioner shall afford Respondent the
9 opportunity for a hearing pursuant to the Administrative
10 Procedure Act to present such evidence.

11 5. Respondent HOWARD LOUIS BIGLOW shall within six (6)
12 months from the effective date of the issuance of a restricted
13 license, take and pass the Professional Responsibility
14 Examination administered by the Department including the payment
15 of the appropriate examination fee. If Respondent fails to
16 satisfy this condition, the Commissioner may order suspension of
17 the restricted license until respondent passes the examination.

18 II

19 The restricted licenses issued to Respondents
20 OLD CITY MORTGAGE and HOWARD LOUIS BIGLOW pursuant to Paragraph I
21 above are suspended for a period of ninety (90) days from the
22 date of issuance; provided, however, that if Respondents'
23 petition said suspension (or a portion thereof) shall be stayed
24 for two (2) years upon condition that:

25 ///

1 1. Respondents pay a monetary penalty pursuant to
2 Section 10175.2 of the Business and Professions Code at a rate of
3 \$55.56 for each day of the suspension for a total monetary
4 penalty of \$5,000 for each Respondent, totaling \$10,000 for both
5 Respondents.

6 2. Said payment shall be in the form of a cashier's
7 check or certified check made payable to the Recovery Account of
8 the Real Estate Fund. Said check must be received by the
9 Department prior to the effective date of the Decision in this
10 matter.

11 3. No further cause for disciplinary action against
12 the real estate license of Respondents occur within two (2) years
13 from the effective date of the Decision in this matter.

14 4. If Respondents fail to pay the monetary penalty in
15 accordance with the terms and conditions of the Decision, the
16 Commissioner may, without a hearing, order the immediate
17 execution of all or any part of the stayed suspension in which
18 event Respondents shall not be entitled to any repayment nor
19 credit, prorated or otherwise, for money paid to the Department
20 under the terms of this Decision.

21 5. If Respondents pay the monetary penalty and if no
22 further cause for disciplinary action against the real estate
23 licenses of Respondents occur within two (2) years from the
24 effective date of the Decision, the stay hereby granted shall
25 become permanent.
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III

Pursuant to Section 10148 of the Business and Professions Code, Respondents shall pay the Commissioner's reasonable cost for (a) the audits which led to this disciplinary action and (b) a subsequent audits to determine if Respondent OLD CITY MORTGAGE and HOWARD LOUIS BIGLOW are now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is \$9,981.71. (Old City Mortgage - LA 010152). 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. Said amount for the prior and subsequent audits shall not exceed \$19,963.42. Respondents are jointly and severally liable for the cost of the audits.

Respondents 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 license of Respondents 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 Respondents and the Commissioner. The suspension shall

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

6 IV

7 So long as OLD CITY MORTGAGE has a restricted real
8 estate license, OLD CITY MORTGAGE shall submit to the Department
9 of Real Estate a Quarterly Trust Fund Position Statement as of
10 the last day of each March, June, September and December. The
11 Position Statement shall be submitted to the Manager of the
12 Department's Crisis Response Team in Los Angeles office not later
13 than 60 days following the last day of each calendar quarter.
14 The Position Statement shall include the information and
15 documents specified below and be verified as true and accurate by
16 Respondent OLD CITY MORTGAGE under penalty of perjury. If said
17 Respondent OLD CITY MORTGAGE has no trust fund liability as of
18 the last day of the calendar quarter, the Position Statement
19 shall so state.
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The Position Statement shall consist of the following:

(1) A schedule of trust fund accountability with the following information concerning funds held by Respondent OLD CITY MORTGAGE as agent or trustee to the owner(s) of said funds:

(a) Account number and depositories.

(b) Names of principals and beneficiaries.

(c) Trust fund liability to (b).

(2) A report of trust funds in the custody and control of Respondent as of the accounting date consisting of:

(a) A copy of Respondent's trust accounts' bank statements (listed above as (1)(a)) showing the balance of funds in the accounts as of the accounting date.

(b) A schedule of uncleared checks drawn on the accounts adjusting the accounts to their true balance as of the accounting date.

(3) A copy of Respondent's (a) trust funds records maintained pursuant to Section 2831 of the Regulations, (b) separate records maintained pursuant to Section 2831.1 of the Regulations and (c) reconciliation maintained pursuant to Section 2831.2 of the Regulations.

(4) A statement explaining any discrepancy between the total liability shown under (1) above and the adjusted trust accounts' balances shown under (2) above.

DATED: 8-3-04

e7
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

We have read the Stipulation, and have discussed it with our counsel. Its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of its signature page, as actually signed by Respondents, to the Department at the following telephone/fax number: Elliott Mac Lennan at (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signature as they appear on the Stipulation, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation.

///

1
2 DATED: _____

3 OLD CITY MORTGAGE, a corporate real
4 estate broker,
5 BY: HOWARD LOUIS BIGLOW, D.O.,
6 Respondent

7 DATED: _____

8 HOWARD LOUIS BIGLOW, individually
9 and as designated officer of Old
10 City Mortgage, Respondent

11 DATED: _____


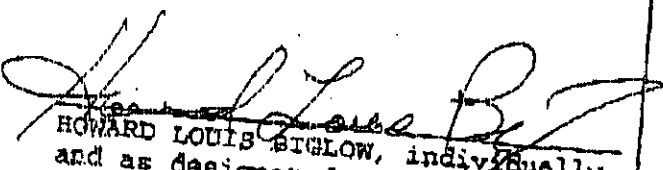
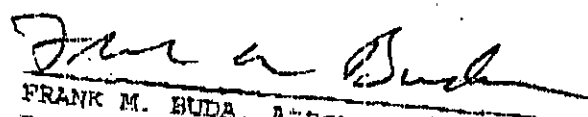
12 FRANK M. BUDA, Attorney for
13 Respondents
14 Approved as to form

15 * * *

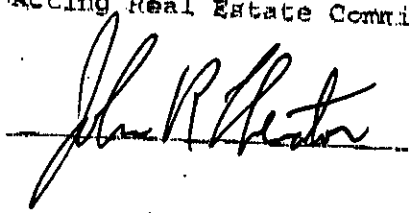
16 The foregoing Stipulation and Agreement is hereby
17 adopted as my Decision as to Respondents OLD CITY MORTGAGE and
18 HOWARD LOUIS BIGLOW, individually and as designated officer of
19 Old City Mortgage and shall become effective at 12 o'clock noon
20 on _____, 2004.

21 IT IS SO ORDERED _____, 2004.

22 JOHN R. LIBERATOR
23 Acting Real Estate Commissioner
24
25
26
27

1
2 DATED: 8/13/043
4 
5 OLD CITY MORTGAGE, a corporate real
6 estate broker,
7 BY: HOWARD LOUIS BIGLOW, D.O.,
8 Respondent9
10 DATED: 8/13/0411
12 
13 HOWARD LOUIS BIGLOW, individually
14 and as designated officer of Old
15 City Mortgage, Respondent16
17 DATED: 8-13-0718
19 
20 FRANK M. BUDA, Attorney for
21 Respondents
22 Approved as to form
23
24 * * *25
26 The foregoing Stipulation and Agreement is hereby
27 adopted as my Decision as to Respondents OLD CITY MORTGAGE and
HOWARD LOUIS BIGLOW, individually and as designated officer of
Old City Mortgage and shall become effective at 12 o'clock noon
on NOV 29, 2004.

IT IS SO ORDERED Oct. 15, 2004.

28
29 JOHN R. LIBERATOR
30 Acting Real Estate Commissioner
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32 
33
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Handwritten initials: "Jude 2/03"

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

FILED
JAN 30 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By K. Hudebols

OLD CITY MORTGAGE, et al.,

Case No. H-29695 LA

OAH No. L-2002120736

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 West Fourth Street, Ste. 630, Los Angeles, CA** on **July 14-16, 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.

DEPARTMENT OF REAL ESTATE

Dated: January 30, 2003

By Elliott Mac Lennan
ELLIOTT MAC LENNAN, Counsel

cc: Old City Mortgage/Howard L. Biglow
Frank M. Buda, Esq.
Sacto/OAH/

Handwritten signature

ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105

(213) 576-6911

FILED
SEP 19 2002
DEPARTMENT OF REAL ESTATE

By *K. K. K. K. K.*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-29695 LA
)
OLD CITY MORTGAGE, a corporate)
real estate broker; and,) A C C U S A T I O N
HOWARD LOUIS BIGLOW, individually)
and as designated officer,)
of Old City Mortgage,)
)
)
)
Respondents.)

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against OLD CITY MORTGAGE, a corporate real estate broker; and,
HOWARD LOUIS BIGLOW, individually and as designated officer of
Old City Mortgage, alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official
capacity as a Deputy Real Estate Commissioner of the State of
California, makes this Accusation against OLD CITY MORTGAGE

1 ("OCM"), and HOWARD L. BIGLOW, individually and as designated
2 officer of Old City Mortgage ("BIGLOW").

3 2.

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

8 3.

9 OCM and BIGLOW (sometimes hereinafter referred to as
10 Respondents) are presently licensed or have license rights under
11 the Real Estate Law (Part 1 of Division 4 of the Business and
12 Professions Code, hereinafter "Code").

13 4.

14 At all time herein mentioned, BIGLOW was licensed by
15 the Department as the designated officer of OCM to qualify it
16 and to act for it as a real estate broker and, as provided by
17 Code Section 10159.2, was responsible for the supervision and
18 control of the activities conducted on behalf of OCM by its
19 officers, managers and employees as necessary to secure full
20 compliance with the provisions of the Real Estate Law including
21 the supervision of the salespersons licensed to the corporation
22 in the performance of acts for which a real estate license is
23 required. BIGLOW was originally licensed as a real estate
24 broker on July 28, 1977. OCM'S corporate real estate broker
25 license was originally issued on June 6, 1988, under License
26
27

1 I.D. NO. 992119. This license expired on June 5, 1992. OCM'S
2 corporate real estate broker license was subsequently issued
3 again on July 23, 1993, under License I.D. NO. 01160664.

4 5.

5 PRIOR DISCIPLINE

6 On December 31, 1986, in Case No. H-22748 LA, an ORDER
7 TO DESIST AND REFRAIN was filed against respondent HOWARD L.
8 BIGLOW dba City Mortgage under Section 10086 of the Code
9 (Engaging in Prohibited Activity, Order to Desist and Refrain)
10 for violations of Sections 2725, 2830, 2831, 2831.1, 2832.1 and
11 2834 of Title 10, Chapter 6, California Code of Regulations.

12 6.

13 Whenever reference is made in an allegation in the
14 Accusation to an act or omission of OCM, such allegation shall
15 be deemed to mean that the officers, directors, managers,
16 employees, agents and real estate licensees employed by or
17 associated with OCM, including BIGLOW, committed such act or
18 omission while engaged in the furtherance of OCM's business or
19 operation and while acting within the course and scope of OCM's
20 corporate authority, agency and employment.

21 7.

22 At all times herein mentioned, OCM, on behalf of
23 others in expectation of compensation, engaged in the business,
24 acted in the capacity of, advertised or assumed to act as a real
25 estate broker within the meaning of:
26
27

1 A. Section 10131(d) of the Code. OCM operated as a
2 mortgage and loan broker, including soliciting borrowers and
3 lenders and negotiating and servicing loans on real property;
4 and,

5 B. In addition, OCM conducted broker-controlled
6 escrows through its escrow division under the exemption set
7 forth in Section 17006(a)(4) of the California Financial Code
8 for real estate brokers performing escrows incidental to a real
9 estate transaction where the broker is a party and where the
10 broker is performing acts for which a real estate license is
11 required.

12 FIRST CAUSE OF ACCUSATION

13 (Audit)

14 8.

15 On January 16, 2002, the Department completed an audit
16 examination of the books and records of OCM pertaining to its
17 mortgage and loan brokerage and escrow activities requiring a
18 real estate license as described in Paragraph 7. The audit
19 examination covered a period of time beginning on October 1,
20 1999 to September 30, 2001. The audit examination revealed
21 violations of the Code and the Regulations as set forth below,
22 and more fully discussed in Audit Report LA 010152 and exhibits
23 and workpapers attached to said audit report.
24

25 ///

26 ///

At all times mentioned, in connection with the activities described in Paragraph 7, above, OCM accepted or received funds in trust (trust funds) from or on behalf of borrowers and lenders, and thereafter made disposition of such funds. OCM maintained the following trust accounts during the audit period into which were deposited certain of these funds at:

"Old City Mortgage Inc. Collection Account (B/A #1)
Account No. 10035856"
Rancho Bank
San Dimas, California
(Primary Loan Servicing Account)

"Old City Mortgage Inc. Collection Account (B/A #2)
Account No. 089-2524866"
Wells Fargo Bank
West Covina, California
(Prior Loan Servicing Account)

"Old City Mortgage Inc. Escrow Trust Account (B/A #3)
Account No. 10043638"
Rancho Bank
San Dimas, California
(Primary Escrow Account)

"Old City Mortgage Inc. Escrow Trust Account (B/A #4)
Account No. 089-2515069"
Wells Fargo Bank
(Prior Escrow Account)
West Covina, California

"Old City Mortgage Inc. (B/A #5)
Account No. 10043638"
Rancho Bank
San Dimas, California
(Howard Louis Biglow Personal Account)

1 With respect to the trust funds referred to in
2 Paragraph 9, it is alleged that:
3

4 (a) Failed to place trust funds, including earnest
5 money deposits, accepted on behalf of another into the hands of
6 the owner of the funds, a neutral escrow depository or into a
7 trust fund account in the name of the trustee at a bank or other
8 financial institution not later than three business days
9 following receipt of the funds by the broker or by the broker's
10 salesperson, as required by Code Section 10145 and Regulation
11 2832. At the time of the audit, B/A #1 and B/A #2, the Loan
12 Servicing Trust Accounts, used for the collection of borrower's
13 loan payments and for loan payoffs, were not designated as trust
14 accounts.
15

16 (b) Failed to maintain an adequate control record in
17 the form of a columnar record in chronological order of all
18 trust funds received for B/A #1 and B/A #2, as required by Code
19 Section 10145 and Regulation 2831.

20 (c) Permitted three unlicensed persons who were not
21 bonded, Robin Browning, the escrow officer, Leslie Albert, the
22 Loan Servicing Manager, and Bridgette Moyer, vice-president, to
23 be authorized signatories on B/A #1 and B/A #2, in violation of
24 Code Section 10145 and Regulation 2834.

25 (d) Failed to notify the Department of the termination
26 of three salespersons, John Bonner, Russell Moran, and Randy
27

1 Rudnick, as required by Code Section 10161.8 and Regulation
2 2752.

3 (e) Failed to provide the Department with timely or
4 accurate Quarterly and Annual Trust Fund Status Reports after
5 meeting the loan servicing threshold criteria, as required by
6 Code Section 10232(a)(2)&(3). Within a twelve (12) month
7 period, from January 1, 2001 to September 30, 2001, OCM
8 collected:

9 (1) \$250,000 or more, to wit, \$656,170 on behalf of owners
10 of promissory notes or real property sales contracts, or both,
11 in violation of Code Section 10232(a)(2); and

12 (2) \$250,000 or more, to wit, \$656,170 on behalf of
13 obligors of promissory notes or lenders of real property sales
14 contracts, or both, in violation of Code Section 10232(a)(3);
15 where

16 (3) said promissory notes or real property sales contracts
17 are secured directly or collaterally by liens on real property.

18 (f) Failed to provide or deliver a statement in
19 writing, to wit, a Lender/Purchaser Disclosure Statement,
20 containing all the information required by Code Section 10232.5
21 to loan purchasers Salita, Shaffman and Bartley, for loan
22 numbers 520, 583 and 584, before said loan purchasers became
23 obligated to make the purchase before the receipt by or on
24 behalf of the broker of any funds from said purchasers for these
25
26
27

1 multi-lender loans, in violation of Code Sections 10232.4 and
2 10229(k).

3 (g) (1) Failed to record trust deeds or assignments
4 naming the lenders as beneficiaries for sales of multi-lender
5 loans to lender-purchasers Salita and Shaffman for borrower
6 Harrelson; Hart, Salita and Arak for borrower Story; and,
7 Shaffman and Salita for borrower Story, secured by trust deeds
8 on real property, within ten (10) working days after receipt of
9 funds from the lenders, in violation of Code Section 10234.

10 (g) (2) Recorded the trust deeds in OCM's name before
11 recording the corporate assignments in the lender-purchasers
12 named in Paragraph (g) (1), in violation of Code Section 10234.

13 (h) Failed to provide and/or maintain a statement in
14 writing containing all the information required by Code Section
15 10241 to various borrowers including but not limited to Thomas
16 and Sonia Usher, and Larry and Jeremie Gallardo, before these
17 borrowers became obligated to perform under the terms of their
18 respective loans, as required by Code Section 10240.

19 Additionally, rebates from lenders for Yield Spread Premiums
20 were not timely disclosed in the Mortgage Loan Disclosure
21 Statements/Good Faith Estimates provided to the aforesaid
22 borrowers.
23

24 (i) Charged expenses to borrower Gladys Monterroza,
25 and Sean and Gloria Alger ("Algers"), in excess of the maximum
26 permissible amount allowable. Gladys Monterroza was overcharged
27

1 \$2,780. The Algiers were overcharged \$269, in violation of Code
2 Section 10242.

3 (j) Failed to submit to the Department a notice within
4 thirty (30) days of selling or offering to sell OCM's first
5 multi-lender note secured directly by an interest in the same
6 real property, as required by Code Section 10229(a). On or about
7 June 22, 1998, OCM made or arranged its first multi-lender loan
8 transaction in the amount of \$50,000 for borrower William and
9 Marina Hawkins on behalf of purchaser-lenders Salita, Shaffman
10 and Bartley.

11 (k) Failed to deposit multi-lender funds for trust
12 deed purchases into a designated trust fund account in the name
13 of the broker as trustee, as required by Code Section
14 10229(i)(2). OCM deposited multi-lender funds for trust deed
15 purchases into B/A #5, BIGLOW's personal checking account that
16 was not designated as a trust account.

17 (l) Failed to maintain OCM's books and records in a
18 manner that readily identifies the identity of all funds
19 received and disbursed for lender, purchaser or investor trust
20 deed transactions, thereby failing to account for all trust
21 funds deposited into B/A #5, as required by Code Section
22 10229(i)(3). Separate records for each beneficiary, to wit,
23 each for investor, lender or purchaser of trust deeds for multi-
24 lender loans, including investors Shaffman, Bartley, and Cole,
25 were not maintained.
26
27

1 (m) Transferred multi-lender loan payoff funds
2 accepted on behalf of prospective lenders, purchasers or
3 investors, to wit, investors Shaffman and Grumet, to be
4 deposited into an account that had not been designated as a
5 trust account, in violation of Code Section 10229(j)(1)(A). OCM
6 transferred multi-lender loan payoff funds from its loan
7 servicing account, B/A #1 to BIGLOW's personal checking account,
8 B/A #5. BIGLOW deposited loan payoffs for multi-lender loans
9 into his checking account thus using his checking account as a
10 temporary suspense account for those lender-purchasers waiting
11 for BIGLOW to locate for them another to multi-lender loan to
12 purchase.

13 (n) Commingled investor Salita's multi-lender payoff
14 funds with BIGLOW's personal funds, in violation of Code Section
15 10229(j)(1)(B). OCM commingled Salita's funds by depositing
16 them into BIGLOW's personal checking account, B/A #5. This
17 commingling occurred while BIGLOW place loan payoffs from
18 matured loans into his personal checking account until such time
19 as he could rollover the payoffs into another loan for the
20 respective lender, purchaser or investor.

22 (o) As servicing agent for the investing lenders or
23 purchasers for the multi-lender notes, failed to provide the
24 Department the independent certified accountant's report after
25 meeting the loan servicing threshold criteria, as required by
26 Code Section 10229(j)(3). Within a three (3) consecutive month
27

1 period from January 1, 2001 to March 31 30, 2001, OCM met the
2 threshold criteria by collecting payments due from borrowers
3 exceeding \$125,000. During this period, OCM collected \$199,200.

4 11.

5 The conduct of Respondent OCM, described in Paragraph
6 10, violated the Code and the Regulations as set forth below:

7 PARAGRAPH

8 PROVISIONS VIOLATED

9 10(a)

Code Section 10145 and
Regulation 2832

10 10(b)

Code Section 10145 and
Regulation 2831

11 10(c)

Code Section 10145 and
Regulation 2834

12 10(d)

Code Section 10161.8 and
Regulation 2752

13 10(e)

Code Section 10232(a)(2)&(3)

14 10(f)

Code Sections 10232.4 and
10229(k)

15 10(g)

Code Section 10234

16 10(h)

Code Section 10240

17 10(i)

Code Section 10242

18 10(j)

Code Section 10229(a)

1 10(k)

Code Section 10229(i) (2)

2 10(l)

Code Section 10229(i) (3)

3 10(m)

Code Section 10229(j) (1) (A)

4 10(n)

Code Section 10229(j) (1) (B)

5 10(o)

Code Sections 10229(j) (3)

6
7 Each of the foregoing violations separately constitutes cause
8 for the suspension or revocation of the real estate license and
9 license rights of OCM under the provisions of Code Sections
10 10177(d), 10176(e) and/or 10177(g).

11
12
13 SECOND CAUSE OF ACCUSATION

14 (Advertising violations)

15 12.

16 OCM's one-page advertising flyer representing a
17 "2.950% 30 Year COFI ARM" states that OCM was established in
18 1965, to wit "EST. 1965". In fact OCM was originally licensed
19 on June 6, 1988. OCM's corporate license expired on June 5,
20 1992. OCM was again licensed as a corporate real estate broker
21 on July 23, 1993. "EST. 1965" constitutes misleading
22 advertising, in violation of Code Section 10235 and Regulation
23 2848.

24 ///

25 ///

26
27 13.

1 OCM's flyer advertises a "COFI ARM". "COFI" stands
2 for Cost of Funds Index, a technical industry term. "ARM"
3 refers to an adjustable rate loan. The claim "Take Cash Out To
4 Consolidate Your Bills Compare The Payments And Enjoy The
5 Savings" is false, misleading or deceptive in itself or through
6 the omission of information necessary to make a representation
7 not misleading in the context in which it is used, in violation
8 of Code Section 10235 and Regulation 2848. Such a claim is
9 misleading because any potential initial savings in payments may
10 be offset by future interest rate increases and possible loss of
11 equity due to negative amortization caused by deferred interest.

12 14.

13 OCM's one-page advertising flyer represents a specific
14 payment under the category "NEW PAYMENT" on the right-hand side
15 of the flyer. This representation requires an equally prominent
16 disclosure of the following information about the loan:

- 17 (a) Principal Amount
18 (b) Simple annual interest rate
19 (c) Annual percentage rate
20 (d) Number, amount and period of payments scheduled to the
21 date of maturity; and
22 (e) Balance due at maturity (balloon payment) if not fully
23 amortized.
24

25 OCM advertises an adjustable rate loan. Accordingly,
26 OCM is required to disclose the period of time the initial
27

1 interest will be in effect for the adjustable rate loan, the
2 maximum interest rate, maturity, frequency and amount of the
3 interest rate increases, periodicity and amount of payments,
4 and, moreover, OCM is required to disclose if a borrower is
5 exposed to potential negative amortization of deferred interest
6 in the form of a balloon payment. None these terms for
7 adjustable rate mortgage advertised via the flyer are mentioned,
8 in violation of Code Section 10235 and Regulation 2848(5).

9 15.

10 OCM's one-page flyer representing a "2.950% 30 Year
11 COFI ARM". "COFI" stands for Cost of Funds Index, a technical
12 industry term. This constitutes a representation of a simple
13 annual interest rate without an equally prominent statement of
14 the Annual Percentage Rate ("APR"). OCM's representation of the
15 APR in the bottom left hand corner of the flyer fails to meet
16 the prominence disclosure requirements, in violation of Code
17 Section 10235 and Regulation 2848(16).
18

19 16.

20 OCM's one-page flyer statement in the bottom right
21 hand corner of the flyer, to wit, "CA LIC RE BKR #011606664" is
22 insufficient to satisfy disclosures requirements of Regulation
23 2847(3), in violation of Code Section 10235 and Regulation
24 2847(3). Moreover, the flyer recites an incorrect license
25 number for OCM.
26
27

THIRD CAUSE OF ACCUSATION

(Failure to supervise)

17.

The overall conduct of Respondent BIGLOW constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of OCM as required by Code Section 10159.2, and to keep it in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of BIGLOW pursuant to the provisions of Code Sections 10177(d) and/or 10177(h).

18.

The overall conduct of Respondent BIGLOW constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondent BIGLOW pursuant to Code Section 10177(g).

WHEREFORE, complainant prays that a hearing be conducted on the allegations of this Accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and licensing rights of Respondents OLD CITY MORTGAGE, a corporate real estate broker; HOWARD LOUIS BIGLOW, individually and as designated officer of Old City Mortgage, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further

1 relief as may be proper under other applicable provisions of
2 law.

3 Dated at Los Angeles, California

4 this 18th day of September 2002.
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7

8 
9 Deputy Real Estate Commissioner
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23 cc: Old City Mortgage
24 c/o Howard Louis Biglow D.O.
25 Maria Suarez
26 Ed Grant
27 Sacto
EC