

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982

FILED
NOV 20 2002
DEPARTMENT OF REAL ESTATE

By K. Muderholt

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 To:

12 OLD CITY MORTGAGE, a corporate)
13 real estate broker; and)
14 HOWARD LOUIS BIGLOW,)
15 individually and as designated)
16 officer of Old City Mortgage.)

No. H-29790 LA

ORDER TO DESIST

AND REFRAIN

17 The Real Estate Commissioner of the State of California
18 (hereinafter "Commissioner") has caused an investigation to be
19 made of you, OLD CITY MORTGAGE ("OCM"), and you, HOWARD LOUIS
20 BIGLOW ("BIGLOW"), and based upon the findings of that
21 investigation, as set forth below, is of the opinion that you
22 violated Section 10235 of the California Business and Professions
23 Code (hereinafter "Code") and Sections 2847(3), 2848, 2848(5) and
24 2848(16) of Title 10, Chapter 6, California Code of Regulations
25 (hereinafter "Regulations").
26
27

1 Furthermore, you, BIGLOW have violated Code Section
2 10159.2.

3 1.

4 At all times material herein, you, OCM, were and now
5 are licensed by the Department of Real Estate of the State of
6 California (hereinafter "Department") as a corporate real estate
7 broker through BIGLOW as the designated officer and broker
8 responsible, pursuant to the provisions of Code Section 10159.2,
9 for supervising the activities requiring a real estate license
10 conducted on behalf of OCM by OCM's officers, agents and
11 employees.

12 2.

13 At all times mentioned herein, you, BIGLOW, were and
14 now are licensed by the Department as a real estate broker,
15 individually and as the designated officer of OCM. As the
16 designated broker-officer, you, BIGLOW, are and at all times
17 material herein were responsible for the supervision of the
18 activities of the officers, agents and employees of OCM for which
19 a license is required pursuant to Code Section 10159.2.

20 3.

21 All further references to "you" include the parties
22 identified in Paragraphs 1 and 2 above, and also include the
23 officers, directors, employees, agents and real estate licensees
24 employed by or associated with said parties and who at all times
25 herein mentioned were engaged in the furtherance of the business
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1 or operations of said parties and who were acting within the
2 course and scope of their authority and employment.

3 4.

4 At all times herein mentioned, you, OCM, engaged in the
5 business of, acted in the capacity of, advertised or assumed to
6 act as a real estate broker in the State of California, within
7 the meaning of Code Section 10131(d) as a mortgage and loan
8 broker.

9 5.

10 A departmental investigation revealed that you, OCM,
11 disseminated a one-page advertising Flyer ("Flyer"). The Flyer,
12 among other things, states that OCM was "established" in 1965,
13 namely "EST. 1965". OCM was established on its original license
14 date of June 6, 1988. OCM's corporate license expired on June 5,
15 1992. OCM was again licensed as a corporate real estate broker
16 on July 23, 1993. Your conduct in representing "EST. 1965" as the
17 date OCM was "established" constitutes misleading advertising, in
18 violation of Code Section 10235 and Regulation 2848.

19 6.

20 The Flyer advertises a "COFI ARM". "COFI" indicates
21 "Cost of Funds Index", a technical industry term. "ARM"
22 indicates "Adjustable Rate Mortgage". The claim "Take Cash Out
23 To Consolidate Your Bills Compare The Payments And Enjoy The
24 Savings" is false, misleading or deceptive in itself or through
25 the omission of information necessary to make the representation
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1 not misleading in the context in which it is used. Your claim is
2 misleading because any potential initial savings in payments may
3 be offset by future interest rate increases and possible loss of
4 equity due to negative amortization caused by deferred interest.
5 As such, by including this representation in the Flyer, you have
6 violated Code Section 10235 and Regulation 2848.

7 7.

8 Also in the Flyer, you represent a specific payment
9 under the category "NEW PAYMENT" on its right-hand side. This
10 representation requires an equally prominent disclosure of the
11 following information about the loan:

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

20 Additionally, the Flyer advertises an adjustable rate
21 loan. Accordingly, you are required to disclose the period of
22 time the initial interest rate will be in effect for the
23 adjustable rate loan, the maximum interest rate, maturity,
24 frequency and amount of the interest rate increases, periodicity
25 and amount of payments. Moreover, you are required to disclose
26 if a borrower is exposed to potential negative amortization of
27

1 deferred interest in the form of a balloon payment. Your conduct
2 in failing to disclose any of these terms for adjustable rate
3 mortgage advertised by the Flyer is in violation of Code Section
4 10235 and Regulation 2848(5).

5 8.

6 The Flyer also represented that you had a "2.950% 30
7 Year COFI ARM", to wit, a Cost of Funds Indexed Adjustable Rate
8 Mortgage. This constitutes a representation of a simple annual
9 interest rate without an equally prominent statement of the
10 Annual Percentage Rate ("APR") in violation of Regulation
11 2848(16). This violation is not cured by your setting out the
12 APR in the bottom left hand corner of the Flyer because it fails
13 to meet the prominency disclosure requirements, in violation of
14 Code Section 10235 and Regulation 2848(16).

15 9.

16 In the bottom right hand corner of the Flyer you
17 include the following information "CA LIC RE BKR #011606664". As
18 set forth, this information is insufficient to satisfy
19 disclosures requirements of Regulation 2847.3. Moreover, the
20 Flyer recites an incorrect license number for OCM.

21 10.

22 Your conduct, acts and/or omissions, BIGLOW, as
23 described herein above, constitutes a failure on your part, as
24 the officer designated by a corporate broker licensee, to
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26
27


1 exercise the supervision and control over the licensed activities
2 of OCM in violation of Code Section 10159.2.

3 NOW, THEREFORE, YOU, OLD CITY MORTGAGE, AND YOU, HOWARD
4 LOUIS BIGLOW, ARE ORDERED TO DESIST AND REFRAIN from performing
5 any of the acts for which a real estate license is required
6 unless and until you are in compliance with Code Sections 10235
7 and Sections 2847.3, 2848, 2848(5) and 2848(16) of the
8 Regulations.

9 AND FURTHER, YOU, HOWARD LOUIS BIGLOW, ARE ORDERED TO
10 DESIST AND REFRAIN from performing any of the acts for which a
11 real estate license is required as the designated officer of a
12 corporation, unless and until you are in compliance with Code
13 Section 10159.2.
14

15
16 DATED: November 15, 2002.
17

18
19 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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22

23 cc: Howard Louis Biglow
24 c/o Old City Mortgage
25 3124 W. Beverly Blvd.
Montebello, CA 90640

26 EM:EC
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