

Lucy

1 ELLIOTT MAC LENNAN, Counsel
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013

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FILED
MAY 20 2003
DEPARTMENT OF REAL ESTATE

By *R. McLeach*

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * * *

12 To:)	No. H-29861 LA
)	L-2003010823
)	
14 MARK EDWARD ALSTON, etc.)	<u>NOTICE OF HEARING</u>
)	<u>ON ORDER TO</u>
)	<u>DESIST AND REFRAIN</u>

16 On December 31, 2002, the Real Estate Commissioner of
17 the State of California issued her Order directing the above-
18 named party to desist and refrain from certain alleged
19 activities.

20 Edward O. Lear, Esq., for and on behalf of MARK EDWARD
21 ALSTON, made a request on January 9, 2003, for hearing pursuant
22 to Sections (10086 or 11019) of the Business and Professions
23 Code of the State of California.

24 YOU ARE HEREBY NOTIFIED that a hearing on the Order to
25 Desist and Refrain will be held before the Department of Real
26 Estate at the Office of Administrative Hearings, 320 West Fourth
27 Street, Ste. 630, Los Angeles, California, on August 11 and 12,

1 2003, commencing at 9:00 a.m., upon the matters contained in the
2 ORDER TO DESIST AND REFRAIN filed on December 31, 2002.

3 You may be present at the hearing and may be
4 represented by counsel, but you are neither required to be
5 present at the hearing, nor are you required to be represented
6 by counsel.

7 You may present any relevant evidence and will be
8 given full opportunity to cross-examine all witnesses testifying
9 again you.

10 DATED: MAY 20 2003

11
12 PAULA REDDISH ZINNEMANN
13 Real Estate Commissioner

14 By: 
15 ELLIOTT MAC LENNAN
16 Counsel

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19
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21
22
23 cc: Mark Edward Alston
24 c/o Edward O. Lear, Esq.
25 5200 W. Century Blvd., Ste. 940
Los Angeles, CA 90045

26 Edward O. Lear, Esq.
27 Sacto
OAH
MLB

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3 Los Angeles, California 90013-1105
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FILED
DEC 31 2002
DEPARTMENT OF REAL ESTATE

By K. Friedrichs

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 To:)
12)
13 MARK EDWARD ALSTON, doing)
14 Business as Alston & Associates)
15 Mortgage Company, Mark Alston)
16 Realty and Skyway Realty)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)

No. H-29861 LA

ORDER TO DESIST

AND REFRAIN

18 The Real Estate Commissioner of the State of California
19 ("Commissioner") has caused an investigation to be made of your
20 activities as a real estate broker and based upon the findings of
21 that investigation, as set forth below, is of the opinion that
22 you have violated Sections 10145 and 10240 of the Business and
23 Professions Code ("Code") and Sections 2725, 2731, 2831, 2831.1,
24 2831.2, 2840, 2950(d), 2950(h) and 2951 of Title 10, Chapter 6,
25 California Code of Regulations ("Regulations").
26
27

I

1 At all times material herein, you, MARK EDWARD ALSTON,
2 doing business as Alston & Associates Mortgage Company, Mark
3 Alston Realty and Skyway Realty, were and now are licensed by the
4 Department of Real Estate of the State of California
5 ("Department") as a real estate broker.
6

7 II

8 All further references to "you", unless otherwise
9 specified, include the party identified in Paragraph I, above,
10 and also include the employees, agents and real estate licensees
11 employed by or associated with said party who at all times
12 material herein were engaged in the furtherance of the business
13 or operations of said party and who were acting within the course
14 and scope of their authority and employment.
15

16 III

17 At all times herein mentioned, you engaged in the
18 business of, acted in the capacity of, advertised or assumed to
19 act as a real estate broker in the State of California, within
20 the meaning of Code Section 10131(d), for another or others, for
21 or in expectation of compensation. Said activities included the
22 operation and conduct of a mortgage loan brokerage business with
23 the public wherein you solicited borrowers or lenders for, or
24 negotiated loans, or collected payments or performed services,
25 for borrowers or lenders or note owners in connection with loans
26 secured directly or collaterally by liens on real property or
27

1 on a business opportunity, for another or others, for or in
2 expectation of compensation. In addition, you conducted broker
3 controlled escrows under the exemption set forth in Section
4 17006(a) (4) of the California Financial Code under the dba
5 Skyway Escrow for Countrywide Home Loans, and dba Mark Alston &
6 Associates Mortgage Escrow Division.

7 IV

8 At all times material herein, in connection with the
9 activities described in Paragraph III, above, you accepted or
10 received funds, including funds in trust (hereinafter "trust
11 funds"), from or on behalf of actual or prospective parties to
12 transactions handled by you and thereafter you made deposit or
13 disbursement of such funds, including accepting or receiving
14 trust funds from or on behalf of borrowers and lenders. From
15 time to time herein mentioned, said trust funds were deposited
16 and/or maintained by you in bank accounts including, but not
17 necessarily limited to:
18

19 "Alston and Associates Escrow Trust Account (T/A #1)
20 Account No. 62400068020"
21 Union Bank of California
22 5245 W. Centinela Ave. Suite 601
23 Los Angeles, California

24 "Mark E. Alston Skyway Escrow Trust Account (T/A #2)
25 Account No. 6240009712"
26 Union Bank of California
27 6719 La Tijerra Blvd.
Los Angeles, California

V

1 On or about February 27, 2002, the Department completed
2 an examination of your books and records pertaining to your real
3 estate and trust fund handling activities described in Paragraphs
4 III and IV, above, covering the period from approximately January
5 1, 2001 through October 31, 2001, which examination revealed
6 violations of the Code and Regulations as set forth below.
7

8 VI

9 In the course of activities described in Paragraphs
10 III and IV, above, and during the examination period described
11 in Paragraph V, you acted in violation of the Code and the
12 Regulations in that you:

13 (a) Failed to maintain an adequate and complete control
14 record in the form of a columnar record in chronological order of
15 all escrowed trust funds received for both trust accounts, as
16 required by Code Section 10145 and Regulations 2831, 2950(d) and
17 2951.
18

19 (b) Failed to maintain a separate record for each
20 beneficiary or transaction, thereby failing to account for all
21 trust funds received, deposited into, and disbursed from both
22 trust accounts, as required by Code Section 10145 and Regulations
23 2831.1, 2950(d) and 2951.

24 (c) Failed to perform a monthly reconciliation of the
25 balance of all separate beneficiary or transaction records
26 maintained pursuant to Regulation 2831.1 with the record of all
27

1 trust funds received and disbursed from both trust accounts, as
2 required by Code Section 10145 and Regulations 2831.2, 2950(d)
3 and 2951.

4 (d) Had no system in place for regularly monitoring his
5 escrow division compliance with the Real Estate Law or for the
6 supervision of your escrow division or its escrow record keeping,
7 in violation of Regulation 2725.

8 (e) Performed escrows under the fictitious business
9 name of "Skyway Escrow" without holding a license bearing
10 this fictitious business name, in violation of Regulation 2731.

11 (f) Failed to advise all parties to the escrow
12 operations of Skyway Escrow and Mark Alston & Associates Mortgage
13 Escrow Division of your ownership of said escrow companies, in
14 violation of Regulation 2950(h).

15 (g) Failed to provide and/or maintain a statement in
16 writing containing all the information required by Section 10241
17 of the Code to various borrowers including rebates for yield
18 spread premiums in the total amount of \$12,512.38 to the
19 following borrowers: Gail Smith, Brown, Madden, McKinley, and
20 Hughzetta Smith before these borrowers became obligated to
21 perform under the terms of their loans, in violation of Code
22 Section 10240 and Regulation 2840.

24 (h) Failed to provide a statement in writing containing
25 all the information required by Section 10241 of the Code for
26 borrowers Nicholas and Kay Flores before these borrowers became
27

1 obligated to perform under the terms of their loan, in violation
2 of Code Section 10240 and Regulation 2840.

3 (i) Received undisclosed compensation in the form of
4 rebates from lenders pertaining to yield spread premiums earned
5 in connection with Respondent's mortgage loan activities
6 requiring a real estate license. The premiums were not disclosed
7 in the Mortgage Loan Disclosure Statements/Good Faith Estimates
8 provided to various borrowers including but not limited to Gail
9 Smith, Zuniga, Madden, McKinley, and Hughzetta Smith, for
10 \$12,512.38 in undisclosed compensation. The conduct of taking a
11 secret profit undisclosed to borrowers subjects you to discipline
12 pursuant to Code Section 10176(g); and

13 (j) Made substantial misrepresentations concerning the
14 total escrow fees initially represented and then ultimately
15 charged to certain borrowers including Gail Smith, Zuniga, Madden
16 and McKinley, in total amount of \$5,683, which subjects you to
17 discipline pursuant to Code Section 10176(a).
18

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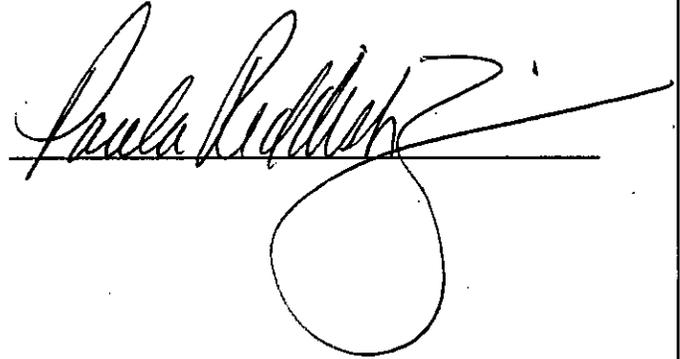
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1 NOW, THEREFORE, YOU, MARK EDWARD ALSTON, DOING BUSINESS
2 AS ALSTON & ASSOCIATES MORTGAGE COMPANY, , MARK ALSTON REALTY,
3 SKYWAY REALTY, AND SKYWAY ESCROW, ARE ORDERED TO DESIST AND
4 REFRAIN from engaging in any activity requiring a real estate
5 license unless and until you are in compliance with Code Sections
6 10145 and 10240 of the Business and Professions Code ("Code") and
7 Sections 2725, 2731, 2831, 2831.1, 2831.2, 2840, 2950(d), 2950(h)
8 and 2951.

9 DATED: December 18, 2002.

10 PAULA REDDISH ZINNEMANN
11 Real Estate Commissioner

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23 cc: Mark Edward Alston
24 Alston & Associates Mortgage Company
25 5933 Century Blvd., Suite 610
Los Angeles, CA 90045

26 EM:MLB
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