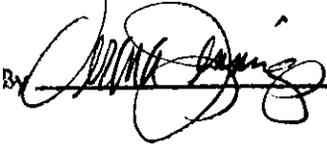


1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982

FILED
FEB 13 2004
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 To:

12 PETER ALLEN SMITH, JR.
13 doing business as
14 Smith Mortgage,

) NO. H-30719 LA

) ORDER TO DESIST
) AND REFRAIN
)

15 The Real Estate Commissioner of the State of
16 California ("Commissioner") has caused an investigation to be
17 made of your activities as a real estate broker and based upon
18 the findings of that investigation, as set forth below, is of
19 the opinion that you have violated Sections 10145, 10159.5 and
20 10240(a) of the Business and Professions Code ("Code") and
21 Sections 2731, 2831.2, 2832, 2832.1, 2835, 2950(f), 2950(h)
22 and 2951, of Title 10, Chapter 6, California Code of Regulations
23 ("Regulations"), and subjected yourself to discipline under Code
24 Section 10176(e).

25 ///

26 ///

I

1 At all times material herein, you, PETER ALLEN SMITH,
2 JR., doing business as Smith Mortgage, were and now are licensed
3 by the Department of Real Estate of the State of California
4 ("Department") as a real estate broker.
5

6 II

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

15 III

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

1 In addition, in connection with the above-described
2 activities, you engaged in the business of; acted in the
3 capacity of, advertised, or assumed to act as escrow holder,
4 servicer and/or agent, and thereby acted or assumed to act under
5 the exemption from provisions of the Escrow Law as provided by
6 Section 17006(a)(4) of the California Financial Code.

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. From time to time herein mentioned,
14 said trust funds were deposited and/or maintained by you in
15 bank account No. 0110204601, known as "The Smith Group, Inc."
16 ("Escrow Account") at Tamalpais Bank, 851 Irwin Street, Suite
17 102, San Rafael, California 94901

18 V

19
20 On or about December 4, 2003, the Department completed
21 an examination of your books and records pertaining to your
22 real estate and trust fund handling activities described in
23 Paragraphs III and IV, above, covering the period from
24 approximately January 1, 2003 to October 31, 2003 which
25 examination revealed violations of the Code and Regulations as
26 set forth below and a more specifically set forth in audit
27 Report Nos. LA 030186 and 030194 and the exhibits attached to

1 said audit reports.

2 VI

3 In the course of activities described in Paragraphs
4 III and IV, above, and during the examination period described
5 in Paragraph V, you acted in violation of the Code and the
6 Regulations in that:

7 (a) As of October 31, 2003, the Escrow Account had a
8 shortage in the amount of approximately \$25,780.26. You caused,
9 permitted and/or allowed, the withdrawal or disbursement of
10 trust funds from this account, without the prior written
11 consent of every principal who then was an owner of funds in the
12 account, thereby reducing the balance of funds in the said
13 account to an amount less than the existing aggregate trust fund
14 liability of the broker to all owners of said trust funds, in
15 violation of Code Section 10145 and Regulations 2832.1 and 2951;

16
17 (b) You failed to perform a monthly reconciliation of
18 the columnar records for the Escrow Account in violation of
19 Section 10145 of the Code and Regulations 2831.2 and 2951;

20 (c) You failed to designate the Escrow Account as a
21 Trust Account in your name as trustee, in violation of Section
22 10145 of the Code and Regulation 2832; in addition, on at least
23 two occasions, trust funds received by you were not deposited
24 into the escrow account by the following business day in
25 violation of Regulation 2950(f);

26 ///

27 ///

1 (d) You permitted an unlicensed individual, not
2 covered by a fidelity bond, to act as signatory on the escrow
3 account in violation of Code Section 10145 and Regulations 2834
4 and 2951;

5 (e) You allowed funds from the Escrow Account to be
6 transferred to his personal bank account to avoid overdrafts,
7 thus commingling funds in violation of Sections 10145 and
8 10176(e) of the Code and Regulations 2835 and 2951;

9 (f) You violated Section 10159.5 of the Code and
10 Regulation 2731 when he utilized the business names of "Smith
11 Mortgage" and "Smith Mortgage Escrow" without first obtaining
12 a license from the Department bearing said fictitious business
13 names;

14 (g) You violated Regulation 2950(h) when you failed
15 to advise parties in writing of your ownership interest
16 in the escrow company handling their escrow transactions;

17 (h) You violated Code Section 10240(a) when you
18 failed to maintain Mortgage Loan Disclosure Statements in three
19 loan files examined by the Department's auditor.
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NOW, THEREFORE, YOU, PETER ALLEN SMITH, JR., DOING
BUSINESS AS SMITH MORTGAGE, AND YOUR AGENTS AND EMPLOYEES, ARE
ORDERED TO DESIST AND REFRAIN from collecting, receiving,
accepting, or handling any funds, money, checks, certified
checks, money orders, or other negotiable instruments, from any
person involved in a transaction for which a real estate license
is required, unless and until you are in compliance with Code
Sections 10145, 10159.5, 10240(a) and 10176(e) and Regulations
2731, 2831.2, 2832, 2832.1, 2835, 2950(f), 2950(h) and 2951.

DATED: February 13, 2004.

JOHN R. LIBERATOR.
Acting Real Estate Commissioner
by Robert T. Wilson (nick) (02/12)



cc: Peter Allen Smith, Jr.
44-421 Town Center Way, Suite C

Palm Desert, CA 92260

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DA:JW

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