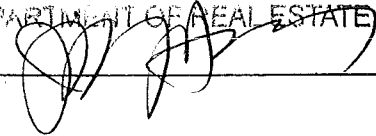


FILED

FEB 22 2013

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | | |
|--|---|----------------|
| In the Matter of the Accusation Against |) | No. H-37901 LA |
| |) | L-2012031165 |
| NEW AMERICAN LENDING INC., and |) | |
| JEFFREY CHRISTOPHER SPRANKLE, |) | |
| individually, and as designated officer of |) | |
| New American Lending Inc., |) | |
| |) | |
| Respondents. |) | |
| |) | |

DECISION AFTER REJECTION

Susan J. Boyle, Administrative Law Judge ("ALJ"), heard this matter on August 31, 2012 at the Office of Administrative Hearings in San Diego, California. Diane Lee, Real Estate Counsel, represented Complainant, Sylvia Yrigollen, Deputy Real Estate Commissioner of the California Department of Real Estate (Department). JEFFREY CHRISTOPHER SPRANKLE ("SPRANKLE") was present and appeared on behalf of himself and appeared on behalf of NEW AMERICAN LENDING INC. ("NEW AMERICAN") as its designated broker-officer.

A companion case, relating to SPRANKLE's mortgage loan originator license endorsement was heard jointly with this matter (DRE Case No. H-37903 LA, OAH Case No. L-2012031167).

1 Documentary evidence, testimony of witnesses, and argument of the parties was taken together A separate
2 Decision was rendered for each case number. As to DRE Case Number H-37903 LA, a Proposed Decision
3 was rendered by the ALJ revoking SPRANKLE's mortgage loan originator license endorsement. I adopted
4 that decision as my Decision in Case Number H-37903 LA.

5 On October 3, 2012, the ALJ submitted a Proposed Decision in DRE Case Number
6 H-37901 LA, which I declined to adopt as my Decision herein.

7 Pursuant to Section 11517(c) of the Government Code of the State of California,
8 Respondent was served with notice of my determination not to adopt the Proposed Decision of the
9 ALJ along with a copy of said Proposed Decision. Respondent was notified that I would decide the
10 case upon the record, the transcript of proceedings held on August 31, 2012, and upon any written
11 argument offered by Respondent and Complainant. Complainant and Respondent each submitted
12 further written argument. I have given careful consideration to the record in this case, including the
13 transcripts of proceedings of August 31, 2012. I have also considered the arguments submitted by
14 Complainant. The following shall constitute the Decision of the Real Estate Commissioner
15 ("Commissioner") in this proceeding:
16
17

18 FINDINGS OF FACT

- 19 1. The Complainant brought the Accusation in her official capacity.
20 2. Respondent SPRANKLE is licensed by the Department as a real estate broker.
21 SPRANKLE has been licensed as a real estate broker since April 12, 2004. Prior to that time,
22 beginning on October 27, 1994, SPRANKLE was licensed by the Department as a real estate
23 salesperson.
24 3. Respondent NEW AMERICAN is a California corporation licensed by the
25 Department as a corporate real estate broker. Respondent SPRANKLE is the broker-officer of
26 NEW AMERICAN designated pursuant to Business and Professions Code ("Code") section
27

1 10159.2 to be responsible for the supervision of the real estate activities of NEW AMERICAN
2 to ensure compliance with the Real Estate Law.

3 4. On or about May 16, 2011, during the course of a background investigation
4 into his Mortgage Loan Originator ("MLO") license endorsement application, a representative of
5 the Department discovered that SPRANKLE sustained a federal conviction in 1996. Respondent
6 SPRANKLE had not disclosed this conviction on his MLO application nor on any prior MLO or
7 broker license application or renewal submitted to the Department.

8 *Conviction*

9 5. On or about December 6, 1996, in the United States District Court, Southern
10 District of California, in Case No. 95-1808, Respondent was convicted on his plea of guilty to
11 four counts of violating Title 18 U.S.C. section 1343 (wire fraud), a felony.

12 (a) Respondent was sentenced to three years probation, subject to terms and
13 conditions which included refraining from the unlawful use of controlled substances, submitting
14 to drug testing, residing in a Community Correction Center for 6 months, participating in a
15 program of drug or alcohol abuse treatment, not engaging in any employment, charity or other
16 enterprise which involves the solicitation of monies by telephone or U.S. Mail or other means,
17 and not associating with any individual who has been, or is employed in telemarketing activity.
18 Respondent was also ordered to pay restitution and fees totaling \$2,200.00.

19 (b) On or about November 24, 1997, Respondent's probation was revoked due to a
20 violation of probation for failing to successfully complete the residential treatment program.
21 Respondent was terminated from the program for using cocaine. Respondent was ordered to
22 serve eight months in prison.

23 6. The facts and circumstances leading to SPRANKLE's conviction were set forth
24 in the Plea Agreement. Between January 1993 and September 1994, Respondent SPRANKLE,
25 along with others, schemed to, "obtain monies from individuals, primarily the elderly, by
26 contacting them over the interstate telephone wires and inducing them to send money through
27 the U.S. Mail and by private carrier, by means of false and fraudulent misrepresentations and

1 promises." In the Plea Agreement, Respondent admitted to engaging in two separate fraudulent
2 telemarketing schemes. One of the schemes involved selling elderly consumers anti-drug
3 materials and other products by intentionally misleading customers to believe that they had been
4 selected to receive a substantial award as part of a, "Say no to Drugs," youth anti-drug program.
5 In the second scheme, Respondent contacted former victims of fraudulent telemarketers and
6 falsely represented to them that they could recover money they lost by paying a fee for services
7 so that the funds could be recovered. In relation to both schemes, Respondent used false names
8 in sales calls, and leased mailboxes under a variety of business names, inducing victims to send
9 the money to the mail drop locations he rented. In the Plea Agreement, Respondent admitted to
10 personally being responsible for \$60,000.00 in closed "sales," in relation to the first scheme. As
11 to the second, the companies Respondent falsely claimed to be employed by generated
12 \$44,017.00 in readily provable losses to their victims.

13 *Failure to disclose the conviction*

14 7. On March 26, 2004, Respondent SPRANKLE submitted an application for an
15 individual broker license application to the Department, which he signed on March 23, 2004.
16 Respondent certified under penalty of perjury that the answers and statements he gave in the
17 application were true and correct. Question 20 of the broker application asks:

18 *"Have you ever been convicted of any violation of law? Convictions*
19 *expunged under Penal Code section 1203.4 must be disclosed. However*
20 *you may omit minor traffic citations which do not constitute a misdemeanor*
or felony offense."

21 Respondent falsely answered, "No." He failed to disclose the 1996 federal felony
22 conviction.

23 8. Relying on the false information Respondent SPRANKLE provided in his 2004
24 application, the Department issued a real estate broker license to Respondent on April 12, 2004.
25 The broker license has been renewed and in effect since that time.

26 9. On April 29, 2005, SPRANKLE submitted a corporate broker application to
27 the Department as the proposed designated broker-officer of Respondent NEW AMERICAN.

1 SPRANKLE signed the corporate broker application on April 25, 2005, and certified under
2 penalty of perjury that the answers and statements he gave in the corporation's application were
3 true and correct. Question 17 of the corporation license is addressed to the proposed broker-
4 officer and asks:

5 *"Have you ever been convicted of any violation of law? Convictions*
6 *expunged under Penal Code section 1203.4 must be disclosed. However*
7 *you may omit minor traffic citations which do not constitute a misdemeanor*
8 *or felony offense."*

9 Once again, SPRANKLE falsely answered "No." He failed to disclose his 1996
10 felony conviction for fraud.

11 10. Relying on the false information Respondent SPRANKLE provided in NEW
12 AMERICAN's 2005 corporate broker application, the Department issued a corporate broker license
13 to NEW AMERICAN on May 24, 2005. NEW AMERICAN's corporate broker license has been
14 renewed and in effect since that time.

15 11. On August 31, 2010, Respondent SPRANKLE submitted a Mortgage Loan
16 Originator Endorsement application, form MU4 ("MLO application") to the national registry for
17 mortgage loan originators. In section C. "Criminal Disclosure," Question (1) asks, "Have you
18 ever been convicted of any felony?" In response to this question, Respondent falsely answered,
19 "No." He failed to disclose the 1996 felony fraud conviction in his MLO application, and an
20 endorsement was issued.

21 12. On May 16, 2011, the Department's investigator discovered the 1996 federal
22 conviction when he received information in a criminal background search.

23 13. Respondent SPRANKLE repeatedly provided false answers to questions related
24 to his criminal conviction in his individual and broker license application and in his application for
25 an MLO endorsement. SPRANKLE's felony fraud conviction in 1996 was material to these
26 applications, and could potentially have been grounds to deny SPRANKLES' individual license as
27 well as those submitted on behalf of Respondent NEW AMERICAN's corporate application for
licensure, since SPRANKLE owned or controlled more than 10% of NEW AMERICAN.

1 14. After SPRANKLE was notified that the Department was aware of his 1996
2 conviction, he undertook to correct the omission from his MLO endorsement information on the
3 on-line computerized national registry and disclosed the conviction in subsequent MLO
4 applications. As an example, on November 30, 2011, Respondent submitted an MU4 form to the
5 national registry in which he answered "Yes," when asked if he had ever been convicted of any
6 felony.

7 15. Respondent SPRANKLE appeared at hearing and testified on his own behalf,
8 and offered the testimony of his friend, Donovan R. Newcomer. He also provided several letters
9 of reference from neighbors and friends.

10 16. At hearing, and in written statements to the Department, Respondent
11 SPRANKLE stated that he was not required to disclose his conviction the two applications for a
12 real estate broker license due to the time that had passed since the convictions. However, as
13 quoted verbatim in Factual Findings No. 7, 9 and 11 above, none of the applications completed by
14 SPRANKLE limit the requirement to disclose criminal convictions to convictions that occurred
15 within a specified time frame. Respondent was not able to provide any documentation to support
16 his claim or explain why he had this erroneous belief. Nonetheless, in written argument after the
17 Proposed Decision was rejected, Respondent continues to assert this false excuse, despite having
18 had documentary evidence to the contrary placed in front of him during the hearing.

19 17. SPRANKLE is a 57-year-old man. He testified at hearing that when he came to
20 California in the early 1990s, the only job he could get was in telemarketing. He stated that he got
21 caught up in the business and concurrently had a drug abuse problem. SPRANKLE testified that
22 he no longer abuses drugs and has been "clean" since October 21, 1997, the date he was kicked
23 out of a court-ordered drug rehabilitation program because he was using cocaine. He stated that,
24 he entered and successfully completed a second drug abuse treatment program after being released
25 from prison. He estimated his date of sobriety as being when he was sent to prison ton the
26 probation violation in 1997. He says he continues to attend Narcotics Anonymous (NA)

1 approximately twice a week, he has only reached Step 4 of the 12 Step program. SPRANKLE did
2 not submit any documentation supporting this testimony.

3 18. SPRANKLE testified that he attends church every Sunday, which he says is a
4 change from the way he was when he was abusing drugs. He maintained that he still feels guilty
5 about his earlier misdeeds, though he was not able to describe them in any detail. He testified that
6 his spirituality is heightened and motivates him to stay clean and help people.

7 19. SPRANKLE testified and provided letters corroborating that he volunteers in
8 his community in several ways, including driving his elderly neighbor to church each week and to
9 doctor appointments when needed. He plays guitar in a three-piece band that performs concerts at
10 retirement and nursing homes. SPRANKLE also helps his neighbors when they are having
11 difficulties navigating real estate and foreclosure processes.

12 20. Donovan R. Newcomer, SPRANKLE's friend and neighbor, testified on behalf
13 of SPRANKLE and provided a letter of support. Newcomer is a retired vocation rehabilitation
14 counselor. He has known SPRANKLE for approximately seventeen years, and has used
15 SPRANKLE's real estate services to refinance his home approximately four times. Newcomer
16 said that he has seen a difference in SPRANKLE over the years, noting that SPRANKLE has
17 become very devoted to helping people. Newcomer confirmed that SPRANKLE drives him to
18 doctor appointments and church, and helped another neighbor who was a victim of a fraudulent
19 company that took his money but did not process a promised refinance of his home. Newcomer
20 said that he is aware that SPRANKLE has a criminal history relating to SPRANKLE's past work
21 in the telemarketing industry. He said that SPRANKLE told him he was not aware that the
22 telemarketing business he worked for was dishonest. Newcomer also said that he had no reason to
23 believe that SPRANKLE was guilty of the charges against him in 1996 and knew of no
24 information to suggest that SPRANKLE did anything wrong.

25 21. In addition to the letter authored by Newcomer, SPRANKLE submitted twelve
26 letters of reference; five letters from clients and/or neighbors whom SPRANKLE assisted
27 professionally, four were from co-workers or former employers and three were related to

1 SPRANKLE's charitable work. The letters from clients thanked SPRANKLE for taking the time
2 to find solutions for their individual concerns, expressed a "deep sense of trust and confidence" in
3 SPRANKLE, expressed their plan to have "Jeff as my mortgage broker for life," and described
4 him as "diligently working toward an honest and prosperous life." However, as the ALJ noted in
5 her Proposed Decision, of the client letters, only two, including the Newcomer letter, expressed an
6 understanding that SPRANKLE's license was subject to disciplinary action.

7 22. Respondent SPRANKLE submitted a letter from a former co-worker, Richard
8 Ofiara, who described SPRANKLE as an inspiration to him. SPRANKLE seemed to find special
9 satisfaction in assisting distressed homeowners facing foreclosures or victimized by unethical
10 person to remain in their homes that were threatened with foreclosures and/or victimized by
11 unethical professional practices. Ofiara wrote that SPRANKLE told him that he failed to disclose
12 past felonies to the Department. However, Ofiara was given the impression that SPRANKLE did
13 not disclose the prior felonies because SPRANKLE did not understand that he was required to
14 disclose felonies that were more than ten years old.

15 23. A former employer and a manager from the company SPRANKLE worked for
16 from July 2002 to January 2006, Frank Sharpe and Kipling North, described SPRANKLE as
17 "honest and forthright in all his dealings with the public," and "a man with much integrity."
18 Neither of their letters indicated any knowledge of SPRANKLE's felony convictions or the basis
19 of this disciplinary action. (The misstatements made in his broker and corporate applications were
20 apparently made in 2004 and 2005, while he was working for or with these two individuals.)

21 24. An employee of SPRANKLE's, Michelle Boisvert, provided a letter of support.
22 She indicated that she understood that the Department was disciplining Respondent due to a felony
23 conviction from the mid 1990's. She did not indicate whether or not she was aware that
24 Respondent failed to disclose this conviction in multiple license applications. Boisvert stated that
25 in the time she has known SPRANKLE, he has never, to her knowledge, acted in a manner that
26 would harm another person either physically, emotionally, or financially for his own gain. She
27

1 also indicated that she was worked with SPRANKLE on many transactions and has never had
2 cause to question his work ethics or integrity.

3 25. SPRANKLE also provided letters of support from individuals who praised his
4 volunteer work as a musician performing for the elderly and disabled individuals.

5 26. As the ALJ points out in her Proposed Decision, SPRANKLE was convicted of
6 four counts of wire fraud in relation to fraudulent and deceptive telemarketing business practices.
7 He signed a seventeen-page plea agreement in which he admitted specific serious acts of
8 dishonesty, and served time in prison. Nonetheless, at hearing, SPRANKLE repeatedly denied
9 recollection of key facts relating to the crimes. These denials contradict SPRANKLE's asserted
10 acceptance of responsibility for his actions.

11 27. SPRANKLE attempted to justify his failure to disclose his conviction in the
12 corporate application by asserting that the corporate was not convicted of a crime, only he was.
13 The ALJ found that SPRANKLE's position in this regard is disingenuous. The section of the
14 application that requires disclosure of criminal convictions is entitled, "Broker-Officer
15 Information." SPRANKLE clearly understood that the questions in that section related to him as
16 he answered every other question in that section with information about himself. For example,
17 SPRANKLE included is own social security number and information about his broker's license
18 when they were requested.

19 28. The ALJ also found that SPRANKLE's character references expressed limited
20 knowledge of SPRANKLE's circumstances. SPRANKLE may have been less than forthright in
21 disclosing the circumstances of his criminal conviction to the persons who submitted letters of
22 reference for him. For example, Newcomer testified that he believed SPRANKLE got in trouble
23 because he did not know that the telemarketing company was dishonest, but SPRANKLE admitted
24 in his plea agreement to knowingly committing specific dishonest acts in furtherance of the
25 telemarketing business.

26 29. In his testimony at hearing and written statements to the Department,
27 Respondent SPRANKLE failed to demonstrate an appreciation of the need for honesty, integrity

1 and truthfulness, and full disclosure of material facts in his business dealings with the public.

2
3 LEGAL CONCLUSIONS

4 1. Cause exists to discipline SPRANKLE's broker license and license rights and NEW
5 AMERICAN's corporate broker license and license rights pursuant to Code sections 10177(a) and 498
6 for procuring real estate licenses or license renewals by fraud, misrepresentation or deceit, and by
7 making a material misstatement of fact in an application for a real estate license, license renewal or
8 reinstatement.

9 (a) The 1996 felony convictions for fraud were material to both the corporate and
10 individual broker license applications, as well as to the MLO originator endorsement application. Fraud
11 is both a felony and a crime that is substantially related to the qualifications, functions and duties of a real
12 estate licensee pursuant to Title 10, Chapter 6 of the California Code of Regulations, Regulation
13 2910(a)(2) and (4). Therefore, the convictions should have been taken into consideration in determining
14 whether or not to issue the individual and corporate real estate broker licenses.

15 (b) Although SPRANKLE says he has lived a crime and drug free life since 1997, he
16 compounded the accusations against him by making multiple false statements, which statements were
17 signed under penalty of perjury.

18 (c) Pursuant to Business and Professions Code section 10101, the Accusation in this
19 matter was filed on February 21, 2012, within one year of discovery of the failure to disclose.

20 2. Having established that grounds exist to discipline Respondent SPRANKLE's and
21 Respondent NEW AMERICAN's for dishonesty and fraud in application for a license, the question turns
22 to the appropriate measure of discipline.

23 3. In an administrative disciplinary proceeding, regardless of the motives which may
24 have impelled the plea, the conviction based thereon stands as conclusive evidence of guilt of the offense
25 charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440). An applicant or licensee may introduce evidence of
26 extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation,
27 but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a

1 prior conviction. Therefore, Respondent's conviction, based upon an admission of guilt, is sufficient to
2 establish that Respondent engaged in the fraudulent activities described in the Plea Agreement. That
3 activity involved multiple ongoing acts of dishonesty in a business context. Similarly, Respondent's
4 failure to disclose that conviction when under a legal obligation to do so in his license applications
5 reflects an ongoing pattern of dishonesty. Finally, at hearing, and in written statements submitted before
6 and after hearing, Respondent continued to make false statements or material misstatements of fact.

7 4. Corporations are "persons" under the Real Estate Law, and may obtain real estate
8 licenses. (Code Section 10006) However, a licensed corporate broker may act only through a
9 designated corporate officer who is a licensed broker. Business and Professions Code Section 10211
10 requires that the corporation designate a supervising broker in its application for real estate license. If
11 there is no licensed officer, the corporation cannot perform licensed activities. The designated broker
12 officer of a corporation is responsible for ensuring compliance with this provision of the Real Estate Law
13 Ensuring that all employees act with the utmost honesty and integrity and adhere to their duties as
14 fiduciaries is an inherent part of the Supervising broker's responsibility.

15 5. Honesty and integrity are among the necessary qualifications of a real estate licensee.
16 (*Business and Professions Code section 10152; Golde v. Fox* (1976) 98 Cal.App.3d 167, 177). The
17 Real Estate Law and the disciplinary procedures provided for in the Real Estate Law are designed to
18 protect the public and to achieve the maximum protection for the purchasers of real property and
19 those dealing with real estate licensees. The public dealing with licensees who are brokering
20 mortgage loans are entitled to rely on real estate agents' expertise and integrity in representing them.
21 (*Wyatt v. Union Mortgage Company et al.* (1979) 24 Cal.3d 773). Real estate licensees act as
22 fiduciaries in their dealings with the public. Real estate brokers hold money and other personal
23 property on behalf of clients, and supervise the conduct of salespersons and others under their
24 employ. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Harrington v. Department of Real Estate*
25 (1989) 214 Cal.App.3d 394, 402).

26 6. Respondent SPRANKLE's lack of candor in answering questions in his various
27 license applications and at hearing demonstrates that he does not appreciate the need to speak

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honestly about and to accept responsibility for his actions. No measure of supervision would be adequate to protect the public from such a licensee. The following order is therefore in the public's best interest.

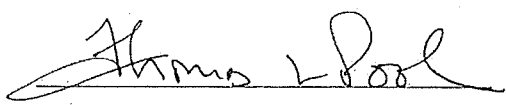
ORDER

All licenses and licensing rights of Respondent NEW AMERICAN LENDING INC.
and Respondent JEFFREY CHRISTOPHER SPRANKLE under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon on MAR 14 2013

IT IS SO ORDERED FEB 23 2013

WAYNE S. BELL
Real Estate Commissioner

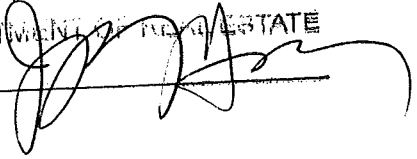


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FILED

OCT 25 2012

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of
NEW AMERICAN LENDING, INC.,
and JEFFREY CHRISTOPHER SPRANKLE,
individually, and as designated officer for
New American Lending, Inc.,
Respondents.

No. H-37901 LA
OAH No. 2012031165

NOTICE

TO: NEW AMERICAN LENDING, INC., and JEFFREY CHRISTOPHER SPRANKLE,
Respondents.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated
October 3, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real
Estate Commissioner. A copy of the Proposed Decision dated October 3, 2012, is attached for
your information.

In accordance with Section 11517(c) of the Government Code of the State of
California, the disposition of this case will be determined by me after consideration of the record
herein including the transcript of the proceedings held on August 31, 2012, any written argument
hereafter submitted on behalf of Respondents and Complainant.

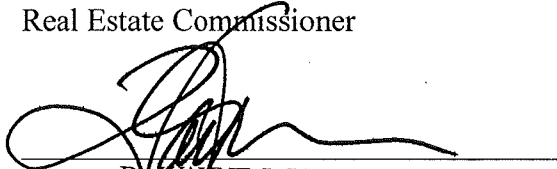
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Written argument of Respondents to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of August 31, 2012, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondents at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: Oct. 20, 2012

Real Estate Commissioner



BY WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NEW AMERICAN LENDING INC., and
JEFFREY CHRISTOPHER SPRANKLE,

Respondent.

Case No. H-37901 – LA

OAH No. 2012031165

PROPOSED DECISION

This matter came on regularly for hearing on August 31, 2012, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Real Estate Counsel Diane Lee represented complainant, Sylvia Yrigollen, Deputy Real Estate Commissioner, Department of Real Estate (department).

Jeffrey Christopher Sprankle (Sprankle) represented himself and appeared as the designated broker-officer of respondent New American Lending Inc. (New American). Sprankle also represented himself as the holder of a mortgage loan originator license endorsement in case No. H-37903-LA (OAH 2012031167), a companion case that was heard jointly with this matter.

Oral and documentary evidence was received and the matter was submitted on August 31, 2012.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 12, 2004, the department issued a real estate broker license to Sprankle. The license was renewed in 2008. Sprankle's broker license was to expire April 11, 2012, unless renewed.
2. On May 24, 2005, the department issued a corporation license to New American; Sprankle was listed as designated officer. The corporate license was renewed in 2009. The corporation license and designation of New American expires May 23, 2013, unless renewed.

3. On February 15, 2012, the Accusation in Case No. H-37901 – LA was signed by Sylvia Yrigollen in her official capacity as Deputy Real Estate Commissioner of the department. The accusation and other required jurisdictional documents were served upon respondents.

The Accusation seeks to revoke or suspend Sprankle's real estate broker's license and New American's corporation license based upon Sprankle's conviction for wire fraud in 1996, and his failure to disclose the conviction in his broker application and the application for a corporate real estate broker license on behalf of New American. The Accusation also seeks an award of costs.

3. Sprankle timely filed a notice of defense for himself and on behalf of New American.

Sprankle's January 12, 1996 Conviction for Wire Fraud

4. On October 25, 1995, a twelve-count federal indictment, Case No. 95-1808-IEG, was filed against Sprankle and another individual in the United States District Court for the Southern District of California.

5. On January 12, 1996, Sprankle signed a signed a seventeen page Consolidated Plea Agreement in which he pled guilty to four felony counts of wire fraud¹ and acknowledged under penalty of perjury that "the facts in the 'factual basis' paragraph [in the plea agreement] are true."

In the factual basis paragraph, Sprankle admitted that from February 1994 to September 1994, he schemed with another individual to "obtain monies from individuals, primarily the elderly, by contacting them over the interstate telephone wires and inducing them to send money through the U.S. Mail and by private carrier, by means of false and fraudulent misrepresentations and promises." Sprankle also admitted in the plea agreement that the scheme he participated in involved contacting former victims of fraudulent telemarketers and falsely representing that the victims could recover money lost to the prior fraudulent telemarketers by paying a fee for services or taxes allegedly owed so that the recovered funds could be released. Sprankle further admitted to leasing mailboxes under a variety of business names and inducing victims to send the money to the mail drop locations he rented. Sprankle admitted that \$44,017 was generated by these fraudulent activities.

6. On December 6, 1996, in the United States District Court for the Southern District of California, in case number 95-1808-IEG, respondent was sentenced on four counts of wire fraud (18 U.S.C. 1343). In exchange for his plea to four counts in the indictment, an

¹ Two additional counts alleged to be contained in a second indictment are referenced in the plea agreement, but no additional evidence was presented relating to these counts or the second indictment.

additional eight counts were dismissed. Respondent was placed on three years probation with certain terms and conditions including the requirement that he "reside in a Community Correction Center" for six months and participate in a program of drug or alcohol abuse treatment. Respondent was further ordered to pay fines and fees of approximately \$2200.

7. By Petition on Probation dated June 23, 1997, it was reported by the Chief Probation Officer of the Court that respondent tested positive for cocaine on May 19 and 27, 1997.

8. By Petition on Probation dated November 6, 1997, the Chief Probation Officer of the Court reported that respondent "failed to participate in, and complete, a residential drug treatment program . . ." and that respondent was terminated from the program on October 21, 1997. As a result, respondent's probation was revoked on November 24, 1997, and respondent was sentenced to serve eight months of incarceration.

Sprankle's Failure to Disclose the Conviction

9. On March 23, 2004, Sprankle signed a Broker License Application (Broker Application) and certified under penalty of perjury that "the answers and statements given in this application are true and correct . . ." Question 20 of the Broker Application asks, "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However you may omit minor traffic citations which do not constitute a misdemeanor or felony offense." Sprankle checked the "No" box in response to Question 20.

10. On April 25, 2005, Sprankle signed a Corporation License Application (Corporation Application) and certified under penalty of perjury that "I am an official corporate officer, and that the answers and statements given in this application are true and correct." Section II of the Corporation Application contains questions 1 through 19 and is entitled "Broker-Officer Information." Question 17 of the Corporation Application asks, "Have you ever been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However you may omit minor traffic citations which do not constitute a misdemeanor or felony offense." Sprankle checked the "No" box in response to Question 17.

Neither the Broker Application nor the Corporation Application excuses the requirement to disclose convictions based upon the age of the conviction.

Evidence in Mitigation and of Rehabilitation

11. Sprankle is a 57 year old man. He testified that when he came to California in the early 1990s, the only job he could get was in telemarketing. He stated that he got caught up in the business and concurrently had a drug abuse problem.

Sprankle testified that he no longer abuses drugs and has been "clean" since October 21, 1997, the date he was "kicked out" of a court-ordered drug rehabilitation program (Crash I) because he was using cocaine. Sprankle represented that, after being released from prison for violating probation, he entered and completed Crash II, a drug abuse treatment program. However, Sprankle further testified that, despite calculating his date of sobriety to be October 1997 and continuing to attend Narcotics Anonymous (NA) approximately twice a week, he has only reached Step 4 of the twelve step program. While Sprankle submitted several letters of reference from neighbors and/or former clients, he did not submit any documentation supporting his testimony that he has attended, and continues to attend, NA, or that he entered and completed the Crash II drug abuse program.

Sprankle presented himself as a man who values his religion; he attends Catholic Church every Sunday. Sprankle lamented that, in the mid 1990s, when he had a drug problem he was "not with the Lord." He maintained that he still feels guilty about his earlier mistakes, but that his "heightened spirituality" motivates him to stay clean and help people. Sprankle volunteers in his community several ways, include driving his elderly neighbor, Donovan Newcomer, to church each week and to doctor appointments when needed. He also plays guitar in a three piece band that performs concerts at retirement and nursing homes. Sprankle also stated that he helps his neighbors when they are having difficulties navigating real estate and foreclosure processes.

Sprankle testified that he believed he was not required to disclose his conviction on the two applications because they occurred more than seven years prior, and that the convictions were therefore barred by the statute of limitations. Sprankle stated that he had no intent to hide his convictions from the department, but that he misunderstood the questions on the applications.

12. Donovan R. Newcomer, Sprankle's friend and neighbor testified on behalf of Sprankle and submitted a letter dated June 4, 2012. Newcomer is a retired vocational rehabilitation counselor.

Newcomer has known Sprankle for approximately seventeen years. He has used Sprankle to refinance his home approximately four times. Newcomer has seen a dramatic difference in Sprankle over the years, noting that Sprankle has become very devoted to helping people. Sprankle drives Newcomer to church and doctor's appointments. Newcomer is aware that Sprankle helped another neighbor, without compensation, when that neighbor was a victim of a fraudulent company that took his money but did not process a promised refinance of his home. Newcomer is also aware that Sprankle performs with a trio of musicians who, without a fee, entertain elderly and disabled persons living in residential facilities.

Newcomer is aware that Sprankle has a criminal history. He testified that his understanding was that Sprankle came to California and obtained a job in telemarketing. He stated that Sprankle claims he did not know the telemarketing company he worked for was dishonest. Newcomer testified that he had no reason to believe that Sprankle was guilty of

the charges against him in 1996 because he has always been an honest person. Newcomer knew of no information to suggest that Sprankle did anything wrong.

13. In addition to the letter authored by Newcomer, Sprankle submitted twelve letters of reference; five letters were from clients and/or neighbors whom Sprankle assisted professionally, four were from co-workers or former employers and three were related to Sprankle's charitable work. The letters from clients thanked Sprankle for taking the time to find solutions for their individual concerns, expressed "a deep sense of trust and confidence" in Sprankle, expressed their plan to have "Jeff as my mortgage broker for life," and described him as "diligently working toward an honest and prosperous life." Of the client letters, only two, including the Newcomer letter, expressed an understanding that Sprankle's license was subject to disciplinary action.

14. In a letter dated June 25, 2012, Richard Ofiara, a former co-worker of Sprankle, described him as "an inspiration to him as it was so obvious that he found special satisfaction in assisting persons [to] remain in their homes who were threatened with foreclosures and/or victimized by unethical professional practices in the real estate business." Ofiara wrote that he continues to refer cases to Sprankle that involve exceptional complexities. Ofiara stated that Sprankle confided in him that the reference letter was needed because Sprankle had failed to disclose past felonies to the department. Ofiara noted his understanding that Sprankle had reviewed "another application that emphasized only felonies in the past 10 years" and suggested Sprankle misunderstood what was required of him because his felonies were more than 10 years old.

15. Frank Sharpe, owner of Capital Plus Financial, employed Sprankle from July 2002 to January 2006. In a letter dated July 19, 2012, Sharpe described Sprankle as "honest and forthright in all his dealing with the public," and "a man with much integrity." Kipling North, a manager of Capital Plus Financial, who worked with Sprankle from 2002 to 2006, signed a letter that contained identical language to that signed by Sharpe, suggesting that at least one of the letters, and maybe both, were prepared for the authors, by someone else. Neither Sharpe nor North indicated knowledge of Sprankle's felony convictions or the basis of the disciplinary action.

16. In a letter dated August 28, 2012, Michelle Boisvert stated that she has known Sprankle for twelve years, beginning in 2000 when they worked together at a company called Apartment Search. Boisvert observed that Sprankle listened to clients and treated them with compassion. Boisvert did not have contact with Sprankle again until 2006 when she decided to hang her real estate license with him. Boisvert understood that the department was seeking to discipline Sprankle because he failed to disclose that he had "a felony conviction from the mid 1990s." Boisvert stated that in the time she knew Sprankle, "he has never, to my knowledge, acted in a manner that would harm another person, either physically, emotionally, or financially for his own gain." Boisvert also indicated that she has worked with Sprankle on many transactions and that "[a]t no time during the last 6 years has Mr. Sprankle ever made me feel the need to question his work ethics or his integrity."

17. In a letter dated June 13, 2012, George Camp, a musician, stated that he has known Sprankle for four years as a fellow musician who has given of his time and talents to volunteer to perform to the elderly and disabled. Camp also expressed admiration for Sprankle for helping his neighbors and others modify their mortgages to more favorable terms to avoid foreclosure.

18. E-mail correspondence dated November 6, 2008, expressed gratitude to Sprankle and his band for providing music to the residents at a senior living facility.

Factors Militating Against Rehabilitation and/or Licensure

19. Although Sprankle was convicted of four counts of wire fraud, signed a seventeen page plea agreement and served time in prison, at hearing, Sprankle repeatedly denied recollection of key facts relating to the crimes. These denials contradict Sprankle's asserted acceptance of responsibility for his actions.

20. Sprankle attempted to justify his failure to disclose his conviction in the Corporation Application by asserting that the corporation was not convicted of a crime, only he was. Sprankle's position in this regard is disingenuous. The section of the application that requires disclosure of criminal convictions is entitled "Broker-Officer Information." Sprankle clearly understood that the questions in that section related to him as he answered every other question in that section with information about himself; for example, Sprankle included his own social security number and information about his broker's license when they were requested.

21. Sprankle may have been less than forthright in disclosing the circumstances of his criminal conviction to the persons who submitted letters of reference for him. Newcomer testified that he believed Sprankle got in trouble because he did not know that the telemarketing company was dishonest. Other character references expressed limited knowledge of Sprankle's circumstances.

LEGAL CONCLUSIONS

Applicable Statutory and Regulatory Provisions

1. Business and Professions Code section 490 states in part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

2. Business and Professions Code section 482 requires the Board to “develop criteria to evaluate the rehabilitation of a person when: . . . (b) Considering suspension or revocation of a license under Section 490.” Section 482 also requires the Board to “take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

3. Business and professions Code section 493 provides in relevant part, that in a proceeding to revoke or suspend a license

upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

4. Business and Professions Code section 498 provides that “A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.”

5. Business and professions Code section 10177 provides in relevant part that the department can deny the issuance of a license to an applicant who has who has:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material

misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

6. California Code of Regulations, title 10, section 2910, in relevant part, provides:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

¶ ¶

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

¶ ¶

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

7. California Code of Regulations, title 10, section 2912 provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

- (a) The passage of not less than two years from the most recent criminal conviction that is “substantially related” to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through “substantially related” acts or omissions of the licensee.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Evaluation Based Upon Conviction of a Crime

8. Cause exists to take disciplinary action against Sprankle's and New American's real estate licenses because Sprankle was convicted of crimes that are substantially related to the qualifications, functions, and duties of a real estate broker. (Bus. & Prof. Code, § 490; Cal. Code Regs., tit 10, § 10177.) Sprankle's crimes are substantially related to the qualifications, functions, and duties of a real estate broker because Sprankle fraudulently obtained money from individuals, including the elderly, by making false and fraudulent misrepresentations and promises all with the intent of conferring a financial benefit on himself. (Cal. Code of Regs, tit. 10, § 2910 (a) (1), (4) and (8).)

In an administrative disciplinary proceeding, an administrative agency may rely on a plea and the conviction based on that plea to establish a reasonable and substantial relationship to licensed activities. An applicant or licensee may introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation, but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled the plea, the conviction based thereon stands as conclusive evidence of guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440.)

9. The determination as to whether Sprankle and New American's licenses should be revoked or suspended requires evaluation under the rehabilitation criteria enumerated in California Code of Regulations, title 10, section 2912, set forth above. Sprankle's convictions occurred sixteen years ago. Sprankle's probation has long been completed and he has had no further involvement in criminal activity or continuing drug abuse. Sprankle has been licensed since 2004 and no evidence was presented of any complaints or disciplinary actions against his license prior to the present case. The letters submitted in support of Sprankle depict a person who is willing to help those around him in both a professional capacity and as a good neighbor. In addition to assisting neighbors, Sprankle donates his time to entertain the elderly and disabled in the community. Sprankle is an active member of his church. He testified to attendance at NA meetings, although no supporting documentation was presented.

Of concern, however, is Sprankle's continuing refusal to fully acknowledge and take responsibility for the conduct he engaged in that resulted in his conviction and his failure to progress past step four in the NA twelve step program in the years since his conviction. Had Sprankle disclosed his conviction, a positive showing of rehabilitation would have been established. However, Sprankle's failure to disclose his conviction and the claims he made to support the nondisclosure raise serious questions about his character for honesty and actual rehabilitation.

Evaluation Based Upon the Failure to Disclose a Conviction

10. Although Sprankle evidently has lived crime and drug free life since 1997, he compounded the accusations against him by failing to disclose his conviction in his Broker and Corporation applications. His failure to disclose the convictions is evidence of his lack of rehabilitation and also subjects him to discipline under Business & Professions Code sections 498 and 10177.

Real estate brokers deal in complicated business and financial transactions and are required to read, comprehend, and provide truthful information on a variety of forms and legal documents. They are further expected to deal honestly in all real estate transactions. Sprankle's failure to follow clear instructions and disclose his conviction on a document he signed under penalty of perjury is troubling.

Sprankle's explanations for failing to disclose his conviction are not persuasive. Sprankle signed the Broker Application in March of 2004 and the Corporation Application in April of 2005; eight and nine years respectively after his 1996 conviction. Sprankle's stated reason for failing to disclose the conviction, i.e., his belief that he was not required to disclose it because it was beyond the statute of limitations, is not supported by law or logic.

Criminal statutes of limitations are legislative enactments that provide a maximum time after an event in which the government may bring criminal charges against an alleged offender. A statute of limitations is unrelated to, and has no impact upon, the obligation to disclose a criminal conviction on an application for a license. The applications signed by Sprankle do not limit the requirement to disclose felony or misdemeanor convictions based upon the age of the convictions. Instead, the application language is unequivocal that all convictions must be disclosed. In fact, the example used in the Broker and Corporation Applications to demonstrate a proper disclosure of a criminal conviction provided relates to a conviction that occurred in 1987, nine years prior to Sprankle's conviction.

Further, both applications contained additional instructions relating to the disclosure of criminal convictions in a prominent text box immediately above the disclosure question. The language in the text box admonished applicants to carefully read the questions concerning convictions and confirmed that "All convictions must be disclosed . . ." Despite the clear language of the applications ("Have you ever been convicted . . ."), Sprankle offered no explanation for failing to make further inquiries about his obligation to disclose his convictions if he was uncertain about how to complete the applications.

11. As noted above, Sprankle has been successfully performing his duties as a real estate broker for over eight years, and as a broker officer for over seven years. The department does not allege that Sprankle has improperly conducted any real estate transactions since obtaining his license.

12. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) However, the failure to disclose criminal convictions is a serious offense that must be redressed. Upon consideration of the entirety of the facts, protection of the public is achieved by revoking Sprankle's unrestricted license and providing him with a right to apply for a restricted license.

Cost Recovery

13. Business & Professions Code section 10106 provides that "the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The department did not submit a Statement of Costs, and on that basis, department's request for costs is denied.

ORDER

All licenses and licensing rights of Respondent Jeffrey Christopher Sprankle and New American Lending, Inc. under the Real Estate Law are revoked; provided, however, a restricted real estate broker license and restricted Corporation license shall be issued to Respondents pursuant to Section 10156.5 of the Business and Professions Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted licenses within 90 days from the effective date of this Decision. The restricted licenses issued to Respondent Jeffrey Christopher Sprankle and to Respondent New American Lending, Inc. shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted licenses issued to Respondents may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent Sprankle's conviction or plea of nolo contendere to a crime which is substantially related to his fitness or capacity as a real estate licensee.
2. The restricted licenses issued to Respondents may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent Sprankle has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
3. Respondents shall not be eligible to apply for the issuance of unrestricted real estate licenses nor for the removal of any of the conditions, limitations or restrictions of either restricted license until two years have elapsed from the effective date of this Decision.
4. Respondent Sprankle shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent Sprankle fails to satisfy this condition, the Commissioner may order the suspension of the both restricted licenses until the Respondent presents such evidence. The Commissioner shall afford Respondent Sprankle the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.
5. Respondent Sprankle shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent Sprankle fails to satisfy this condition, the Commissioner may order suspension of the licenses held by Sprankle and New American license until Respondent Sprankle passes the examination.

Not
Adopted

6. Respondent Sprankle shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent Sprankle's arrest, the crime for which he was arrested and the name and address of the arresting law enforcement agency. Respondent Sprankle's failure to timely file written notice shall constitute an independent violation of the terms of the restricted licenses and shall be grounds for the suspension or revocation of his and New American's license.

Not
Adopted

DATED: October 3, 2012



SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings