

FINDINGS OF FACT

1. At no time mentioned was BAILEY licensed by the Bureau in any capacity.
2. During the period of time set forth below, BAILEY, on behalf of Upgrade Realty Corporation, solicited borrowers and negotiated to do one or more of the following acts for another or others, for or in expectation of compensation; negotiate one or more loans for, or perform services for, borrowers and/or lenders in connection with loans secured directly or collaterally by one or more liens on real property; and charge, demand or collect an advance fee for any of the services offered.
3. On or about December 20, 2011, BAILEY, as a representative of Upgrade Realty Corporation, demanded and received an advance fee of \$1,500 from Reginald and Odessa D. for loan modification and negotiation services on behalf of Reginald and Odessa D. in connection with a loan secured by real property located at 1149 Via Del Sol Road, Salinas, California.
4. On or about December 20, 2011, BAILEY, as a representative of Upgrade Realty Corporation, demanded and received an advance fee of \$1,000 from Reginald and Odessa D. for loan modification and negotiation services on behalf of Reginald and Odessa D. in connection with a loan secured by real property located at 76153 Deerwood Drive, Yulee, Florida.
5. Between on or about December 5, 2011, and June 6, 2012, BAILEY, as a representative of Upgrade Realty Corporation, demanded and received an advance fee totaling \$4,400 from Elizabeth B. for loan modification and negotiation services on behalf of Elizabeth B. in connection with a loan secured by real property located at 1919 West 108th Street, Los Angeles, California.

CONCLUSIONS OF LAW

6. Based on the findings of fact contained in paragraphs 1 through 5, BAILEY solicited one or more borrowers to perform services for those borrowers and/or those

1 borrowers' lenders in connection with loans secured directly or collaterally by one or more liens
2 on real property located within the State of California, and charged, demanded or collected
3 advance fees for the services to be provided, which acts require a real estate broker license under
4 Sections 10131(d) (real estate license required for enumerated acts) and 10131.2 (real estate
5 broker license required to charge or collect an advance fee) of the Code, in violation of Section
6 10130 of the Code.

7 7. BAILEY used a form of advance fee agreement which had not been
8 provided to the Bureau for its prior review and consideration, in violation of Section 10085 of
9 the Code (prior submission of advance fee materials required) and Section 2970 (details for
10 prior submission of advance fee materials) of the Regulations.

11 8. BAILEY claimed, demanded, charged, collected, and/or received advance
12 fees in connection with loan modification services after October 10, 2009, in violation of
13 Section 10085.6 (unlawful collection of advance fees related to loan modifications) of the Code
14 and Section 2945.4 (unlawful collection of advance fees related to loan modifications) of the
15 California Civil Code (Civil Code).

16 DESIST AND REFRAIN ORDER

17 Based on the Findings of Fact and Conclusions of Law stated herein, GARY
18 DEWAYNE BAILEY, whether doing business under his own name, or any other name or
19 fictitious name, IS HEREBY ORDERED to:

20 1. Immediately desist and refrain from performing any acts within the State
21 of California for which a real estate broker license is required. In particular, BAILEY is ordered
22 to desist and refrain from soliciting borrowers and/or performing services for borrowers or
23 lenders in connection with loans secured directly or collaterally by one or more liens on real
24 property, unless and until you obtain a real estate broker license issued by the Bureau.

25 2. Immediately desist and refrain from charging, demanding, claiming,
26 collecting and/or receiving advance fees, as that term is defined in Section 10026 of the Code,
27 for any of the services BAILEY offers to others, unless and until BAILEY demonstrates and

1 provides evidence satisfactory to the Commissioner that he is properly licensed by the Bureau as
2 a real estate broker, and:

3 (A) Has an advance fee agreement which has been submitted to the
4 Bureau and which is in compliance with Sections 2970 and 2972 of the Regulations;

5 (B) Has placed all previously collected advance fees into a trust
6 account for that purpose and is in compliance with Section 10146 of the Code;

7 (C) Has provided an accounting to trust fund owner-beneficiaries
8 pursuant to Section 2972 of the Regulations; and

9 (D) Is in compliance with California law, as amended effective as
10 of October 11, 2009, with respect to loan modification and/or forbearance services. Under
11 the amended law, BAILEY can only collect advance fees for loan modification or other
12 mortgage loan forbearance services related to commercial loans and loans for residential
13 properties containing five or more dwelling units.

14 3. Immediately desist and refrain from demanding, claiming, collecting and/or
15 receiving advance fees, as that term is defined in Section 10026 of the Code, in any form, and
16 under any conditions, with respect to the performance of loan modification or any other form of
17 mortgage loan forbearance services in connection with loans on residential property containing
18 four or fewer dwelling units.

19 DATED: 9/9/2013

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21 REAL ESTATE COMMISSIONER

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26 By: **JEFFREY MASON**
27 **Chief Deputy Commissioner**

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- NOTICE -

Business and Professions Code Section 10139 provides that “Any person acting as a real estate broker or real estate salesperson without a license or who advertises using words indicating that he or she is a real estate broker without being so licensed shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars (\$20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars (\$60,000).”

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