

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
AUG 23 2005

DEPARTMENT OF REAL ESTATE

By A. Elzy

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of) No. H-1783 FR
11)
12 PEARSON REALTY) STIPULATION AND AGREEMENT
13 and)
14 JOHN H. STEWART,)
15 Respondents.)

16
17 It is hereby stipulated by and between Respondent
18 PEARSON REALTY (hereinafter referred to as "Respondent
19 CORPORATION") and Respondent JOHN H. STEWART (Hereinafter
20 "Respondent STEWART"), John W. Phillips, counsel for Respondent,
21 and the Complainant, acting by and through Michael B. Rich,
22 Counsel for the Department of Real Estate, as follows for the
23 purpose of settling and disposing of the Accusation filed on
24 April 22, 2005, in this matter (hereinafter "the Accusation"):

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondent

27

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act (APA), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement.

6 2. Respondents have received, read and understand
7 the Statement to Respondent, the Discovery Provisions of the APA
8 and the Accusation filed by the Department of Real Estate in
9 this proceeding.

10 3. On May 2, 2005, Respondents filed a Notice of
11 Defense pursuant to Section 11505 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondents hereby freely and voluntarily withdraw
14 said Notice of Defense. Respondents acknowledge that
15 Respondents understand that by withdrawing said Notice of
16 Defense Respondents will thereby waive Respondents' right to
17 require the Commissioner to prove the allegations in the
18 Accusation at a contested hearing held in accordance with the
19 provisions of the APA and that Respondents will waive other
20 rights afforded to Respondents in connection with the hearing
21 such as the right to present evidence in defense of the
22 allegations in the Accusation and the right to cross-examine
23 witnesses.

24 4. Respondents, pursuant to the limitations set
25 forth below, hereby admit that the factual allegations in the
26 Accusation pertaining to Respondents are true and correct and
27 stipulate and agree that the Real Estate Commissioner shall not

1 be required to provide further evidence of such allegations.

2 5. It is understood by the parties that the Real
3 Estate Commissioner may adopt the Stipulation and Agreement as
4 his decision in this matter, thereby imposing the penalty and
5 sanctions on Respondents' respective real estate licenses and
6 license rights as set forth in the "Order" below. In the event
7 that the Commissioner in his discretion does not adopt the
8 Stipulation and Agreement, it shall be void and of no effect,
9 and Respondents shall retain the right to a hearing and
10 proceeding on the Accusation under all the provisions of the APA
11 and shall not be bound by any admission or waiver made herein.

12 6. This Stipulation and Agreement shall not
13 constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Department of Real
15 Estate with respect to any matters which were not specifically
16 alleged to be causes for accusation in this proceeding.

17 DETERMINATION OF ISSUES

18 By reason of the foregoing stipulations, admissions
19 and waivers and solely for the purpose of settlement of the
20 pending Accusation without hearing, it is stipulated and agreed
21 that the following Determination of Issues shall be made:

22 I

23 The acts and omissions of Respondent CORPORATION as
24 described in the Accusation are grounds for the suspension or
25 revocation of the licenses and license rights of Respondent
26 CORPORATION under the provisions of Sections 10137, 10159.5 and
27 10161.8 of the Business and Professions Code (hereinafter "the

1 Code") in conjunction with 10177(d) of the Code, and Section
2 2731 and 2752 of the Regulations of the Real Estate Commissioner
3 [Chapter 6, Title 10, California Code of Regulations] in
4 conjunction with Section 10177(d) of the Code.

5 The acts and omissions of Respondent STEWART as
6 described in the Accusation are grounds for the suspension or
7 revocation of the licenses and license rights of Respondent
8 STEWART under the provisions of Section 10177(h) of the Code and
9 Section 10159.2(a) of the Code in conjunction with 10177(d) of
10 the Code.

11 ORDER

12 I

13 All real estate licenses and license rights of
14 Respondent PEARSON REALTY shall be suspended for a period of
15 sixty (60) days from the effective date of the Decision;
16 provided however, that if Respondent CORPORATION petitions,
17 sixty (60) days of said suspension (or a portion thereof) shall
18 be stayed upon condition that Respondent pays a monetary penalty
19 pursuant to Section 10175.2 of the Code at the rate of \$50.00
20 for each day of the suspension for a total monetary penalty of
21 \$3,000.00, and upon condition that no further cause for
22 disciplinary action against the real estate license of
23 Respondent occurs within one (1) year from the effective date of
24 the Decision in this matter. Any stay granted pursuant to this
25 paragraph shall be subject to the following terms:

26 (a) Said monetary penalty payment shall be in the
27 form of a cashier's check or certified check made payable to the

1 Recovery Account of the Real Estate Fund. Said check must be
2 received by the Department prior to the effective date of the
3 Decision in this matter.

4 (b) The Commissioner may, if a final subsequent
5 determination is made, after hearing or upon stipulation, that
6 cause for disciplinary action occurred during the one (1) year
7 period following the effective date of the Decision in this
8 matter, vacate and set aside the stay and order the immediate
9 execution of all or any part of the stayed suspension, in which
10 event the Respondent shall not be entitled to any repayment nor
11 credit, prorated or otherwise, for money paid to the Department
12 under the terms of this Order.

13 (c) If Respondent CORPORATION fails to pay the
14 monetary penalty in accordance with the terms and conditions of
15 the Decision, the Commissioner may, without a hearing, order the
16 immediate execution of all or any part of the stayed suspension
17 in which event the Respondent shall not be entitled to any
18 repayment nor credit, prorated or otherwise, for money paid to
19 the Department under the terms of the Decision.

20 (d) If Respondent CORPORATION pays the monetary
21 penalty and if no order vacating the stay is made pursuant to
22 Paragraph (b), above, the stay granted pursuant to this Decision
23 shall become permanent.

24 II

25 All real estate licenses and license rights of
26 Respondent JOHN H. STEWART shall be suspended for a period of
27 sixty (60) days from the effective date of the Decision;

1 provided however, that if Respondent STEWART petitions, sixty
2 (60) days of said suspension (or a portion thereof) shall be
3 stayed upon condition that Respondent pays a monetary penalty
4 pursuant to Section 10175.2 of the Code at the rate of \$50.00
5 for each day of the suspension for a total monetary penalty of
6 \$3,000.00, and upon condition that no further cause for
7 disciplinary action against the real estate license of
8 Respondent occurs within one (1) year from the effective date of
9 the Decision in this matter. Any stay granted pursuant to this
10 paragraph shall be subject to the following terms:

11 (a) Said monetary penalty payment shall be in the
12 form of a cashier's check or certified check made payable to the
13 Recovery Account of the Real Estate Fund. Said check must be
14 received by the Department prior to the effective date of the
15 Decision in this matter.

16 (b) The Commissioner may, if a final subsequent
17 determination is made, after hearing or upon stipulation, that
18 cause for disciplinary action occurred during the one (1) year
19 period following the effective date of the Decision in this
20 matter, vacate and set aside the stay and order the immediate
21 execution of all or any part of the stayed suspension, in which
22 event the Respondent shall not be entitled to any repayment nor
23 credit, prorated or otherwise, for money paid to the Department
24 under the terms of this Order.

25 (c) If Respondent STEWART fails to pay the monetary
26 penalty in accordance with the terms and conditions of the
27 Decision, the Commissioner may, without a hearing, order the

1 immediate execution of all or any part of the stayed suspension
2 in which event the Respondent shall not be entitled to any
3 repayment nor credit, prorated or otherwise, for money paid to
4 the Department under the terms of the Decision.

5 (d) If Respondent STEWART pays the monetary penalty
6 and if no order vacating the stay is made pursuant to Paragraph
7 (b), above, the stay granted pursuant to this Decision shall
8 become permanent.

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8/9/05
DATED

Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

* * *

I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

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8-1-05

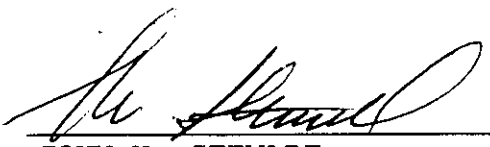
DATED



PEARSON REALTY
Respondent
By: JOHN H. STEWART

8-1-05

DATED

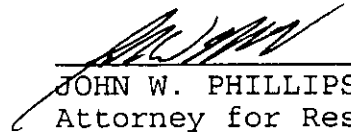


JOHN H. STEWART
Respondent

Approved as to form and content by counsel for Respondent.

7/26/05

DATED



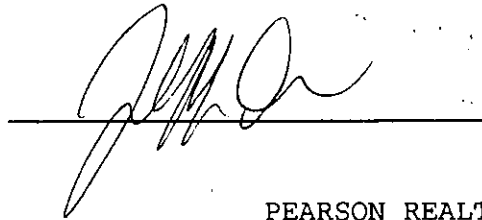
JOHN W. PHILLIPS
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted by as my Decision in this matter as to Respondent PEARSON REALTY and Respondent JOHN H. STEWART and shall become effective at 12 o'clock noon on SEP 12, 2005.

IT IS SO ORDERED 8-17, 2005.

JEFF DAVI
Real Estate Commissioner



1 MICHAEL B. RICH, Counsel
2 State Bar Number 82457
3 DEPARTMENT OF REAL ESTATE
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0789

FILED
APR 22 2005

DEPARTMENT OF REAL ESTATE

By *J. E. J.*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 PEARSON REALTY and) H-1783 FR
13 JOHN H. STEWART,)
14 Respondents.) ACCUSATION

15
16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
17 Commissioner of the State of California, as and for an
18 Accusation herein against PEARSON REALTY and JOHN H. STEWART, is
19 informed and alleges as follows:

20 FIRST CAUSE OF ACCUSATION

21 I

22 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 against Respondents in his official capacity and not otherwise.

25 II

26 Respondents PEARSON REALTY and JOHN H. STEWART, are
27 presently licensed and/or have license rights under the Real

1 Estate Law, Part 1 of Division 4 of the California Business and
2 Professions Code (hereafter the Code).

3 III

4 At all times herein mentioned, Respondent PEARSON
5 REALTY (hereafter "Respondent CORPORATION") was and now is
6 licensed by the Department of Real Estate of the State of
7 California (hereinafter "the Department") as a corporate real
8 estate broker.

9 IV

10 At all times herein mentioned, Respondent JOHN H.
11 STEWART (hereafter "Respondent STEWART") was and is licensed by
12 the Department of Real Estate (hereafter "Department") as an
13 individual real estate broker.

14 V

15 Respondent STEWART was and is licensed by the
16 Department as the designated broker/officer of Respondent
17 CORPORATION. As said designated officer/broker, STEWART was at
18 all times mentioned herein responsible pursuant to Section
19 10159.2 of the Code for the supervision of the activities of the
20 officers, agents, real estate licensees and employees of
21 Respondent CORPORATION for which a real estate license is
22 required.

23 VI

24 At no time mentioned herein did the Department license
25 GARRETT BAXTER WATKINS as either a real estate broker or as a
26 real estate salesperson.

27 ///

1 VII

2 At all times herein mentioned, Respondent CORPORATION
3 engaged in the business of, acted in the capacity of, advertised
4 and assumed to act as real a estate broker and/or real estate
5 salesperson in the employ of a real estate broker in the State of
6 California within the meaning of Section 10131(b) of the Code,
7 including the business of engaging in leasing or renting or
8 offering to lease or rent, placing for rent, or soliciting
9 listings of places to rent, or soliciting for prospective
10 tenants, or negotiating the sale, purchase or exchanges of leases
11 on real property, or on a business opportunity, or collecting
12 rents from real property, or improvements thereon, or from
13 business opportunities, on behalf of others for or in expectation
14 of compensation, in Fresno County, California, in or about 2004.

15 VIII

16 During the period from at least April 2, 2004, to about
17 December 2004, GARRETT BAXTER WATKINS was employed by or
18 associated with Respondent CORPORATION, and performed the
19 activities alleged in Paragraph VII, above, for Respondent
20 CORPORATION for which a real estate license is required, for or
21 in expectation of compensation.

22 IX

23 Between on or about April 2, 2004 and on or about or
24 through December 2004, in the course of the activities described
25 in Paragraph VII and VIII, above, GARRETT BAXTER WATKINS
26 solicited and/or negotiated for a listing to lease real property
27 in California, and thereafter solicited and/or advertised for

1 tenants for or in expectation of compensation in various such
2 transactions, including, but not limited to, the following:

3
4 Landlord/Owner Property Listing Date
5 Bally Total Fitness 284 W. Shaw Ave. 4/2/04
6 Corporation Clovis, CA

7 Landlord/Owner Property Advertising Date
8 Unknown Chestnut and Olive 7/04 - 9/04
9 Clovis, CA
10 Unknown OSH Center 7/04 - 9/04
11 Clovis, CA

12 X

13 The facts alleged above constitute cause for the
14 suspension or revocation of the licenses and license rights of
15 Respondents under Section 10137 of the Code in conjunction with
16 and Section 10177(d) the Code.

17 SECOND CAUSE OF ACCUSATION

18 XI

19 There is hereby incorporated in this Second, separate
20 and distinct, Cause of Accusation, all of the allegations
21 contained in Paragraphs I, II, III, IV, V and VII of the First
22 Cause of Accusation with the same force and effect as if herein
23 fully set forth.

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XII

Respondent CORPORATION utilized and conducted its real estate brokerage activities under the fictitious business name of "Grubb & Ellis - Pearson Commercial."

XIII

At no time did the Department issue a license to Respondent under the fictitious business names recited in Paragraph VII, above.

XIV

The facts as alleged in Paragraphs XI through XIII, above, are a violation of Section 2731 of the Regulations and/or Section 10159.5 of the Code and are grounds for the suspension or revocation of Respondent's license under the provisions of Section 10177(d) of the Code.

THIRD CAUSE OF ACCUSATION

XV

There is hereby incorporated in this Third, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I, II, III, IV, V and VII of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XVI

Respondent CORPORATION employed RAMON VENTURA (hereafter "VENTURA"), a licensed real estate salesperson, pursuant to a written agreement dated November 10, 2003.

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XVII

Respondent CORPORATION did not notify the Commissioner of the Department of Real Estate of its employment of VENTURA.

XVIII

The failure of Respondent CORPORATION to notify the Commissioner of the Department of Real Estate in writing on the prescribed form within five days of its employment of VENTURA as alleged above constitute grounds for disciplinary action under Section 2752 of the Regulations of the Real Estate Commissioner [Chapter 6, Title 10, California Code of Regulations] and Section 10161.8 of the Code in conjunction with Section 10177(d).

FOURTH CAUSE OF ACCUSATION

XIX

There is hereby incorporated in this Fourth, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I through XVIII, inclusive, of the First, Second, and Third Causes of Accusation with the same force and effect as if herein fully set forth.

XX

At all times above mentioned, Respondent STEWART was responsible, as the designated broker/officer of Respondent CORPORATION, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent STEWART failed to exercise reasonable supervision and control over the property management and employment activities of Respondent CORPORATION. In particular, Respondent STEWART permitted, ratified and/or caused the conduct

1 described in the First, Second, and Third Causes of Accusation,
2 above, to occur, and failed to take reasonable steps, including
3 but not limited to the use of a fictitious business name, the
4 employment of persons to conduct licensed acts, employment of
5 salesperson licensees, and the implementation of policies, rules,
6 procedures, and systems to ensure the compliance of Respondent
7 CORPORATION with the Real Estate Law.

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XXI

The above acts and/or omissions of Respondent STEWART constitute grounds for suspension or revocation of his real estate broker license under the provisions of Section 10177(h) of the Code and/or Section 10159.2(a) of the Code in conjunction with Section 10177(d) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.


JOHN W. SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 12th day of April, 2005.