

1 Department of Real Estate  
185 Berry Street, Room 3400  
2 San Francisco, CA 94107  
3 Telephone: (415) 904-5917  
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FILED  
NOV 23 1992

DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*  
~~Lynda Montiel~~

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	
12	DONALD LEE BARTELS,	)	NO. H-6721 SF
13	BARTELS REALTORS, INC.,	)	<u>STIPULATION AND</u>
14	Respondents.	)	<u>AGREEMENT IN</u>
		)	<u>SETTLEMENT AND ORDER</u>

15 It is hereby stipulated by and between DONALD LEE  
16 BARTELS and BARTELS REALTORS, INC. (sometimes referred to as  
17 "Respondents") and their attorney of record, Timothy F. O'Leary,  
18 and the Complainant, acting by and through Larry A. Alamao,  
19 Counsel for the Department of Real Estate, as follows for the  
20 purpose of settling and disposing of the Accusation filed on  
21 June 2, 1992 in this matter:

22 1. All issues which were to be contested and all  
23 evidence which was to be presented by Complainant and Respondents  
24 at a formal hearing on the Accusation, which hearing was to be  
25 held in accordance with the provisions of the Administrative  
26 Procedure Act (APA), shall instead and in place thereof be

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submitted solely on the basis of the provisions of this Stipulation and Agreement in Settlement.

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

3. On June 10, 1992, Respondents filed a Notice of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of Defense they will thereby waive their right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that they will waive other rights afforded to them in connection with the hearing such as the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. Without admitting any of the allegations contained in the Accusation, Respondents, pursuant to the limitations set forth below, hereby admit that the Real Estate Commissioner shall not be required to prove its allegations.

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1                   2.   The remaining fifteen (15) days of said 30-day  
2 suspension shall be stayed upon the condition that Respondents  
3 petition pursuant to Section 10175.2 of the Business and  
4 Professions Code and pays a monetary penalty pursuant to Section  
5 10175.2 of the Business and Professions Code at a rate of \$100.00  
6 for each day of the suspension for a total monetary penalty of  
7 \$1,500.00:

8                   (a) Said payment shall be in the form of a cashier's  
9 check or certified check made payable to the  
10 Recovery Account of the Real Estate Fund. Said  
11 check must be delivered to the Department prior to  
12 the effective date of the Order in this matter.

13                   (b) No further cause for disciplinary action against  
14 the Real Estate licenses of Respondents occurs  
15 within one (1) year from the effective date of the  
16 decision in this matter.

17                   (c) If Respondents fail to pay the monetary penalty in  
18 accordance with the terms and conditions of the  
19 Order, the Commissioner may, without a hearing,  
20 order the immediate execution of all or any part of  
21 the stayed suspension in which event the  
22 Respondents shall not be entitled to any repayment  
23 nor credit, prorated or otherwise, for the money  
24 paid to the Department under the terms of this  
25 Order.

26    ///

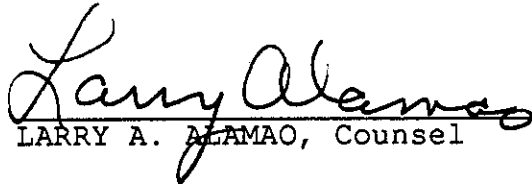
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(d) If Respondents pay the monetary penalty and if no further cause for disciplinary action against the real estate licenses of Respondents occurs within one (1) from the effective date of the decision, the stay hereby granted shall become permanent.

DATED: 9/21/92


DEPARTMENT OF REAL ESTATE

  
LARRY A. ALAMA, Counsel

\* \* \*

I have read the Stipulation and Agreement, have discussed it with my counsel, 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.


DATED: 10/22/92

  
DONALD LEE BARTELS  
Respondent

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DATED: 10/22/92

  
BARTELS REALTORS, INC.  
By Donald Lee Bartels  
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my clients accordingly.

DATED: October 13, 1992

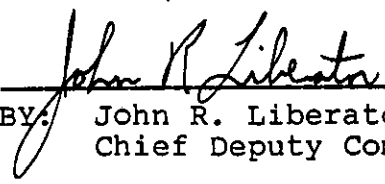
  
TIMOTHY F. O'LEARY  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement in Settlement is hereby adopted by the Real Estate Commissioner as Decision and Order and shall become effective at 12 o'clock noon on December 14th, 1992.

IT IS SO ORDERED November 17, 1992.

CLARK WALLACE  
Real Estate Commissioner

  
BY: John R. Liberator  
Chief Deputy Commissioner

Flag

COPY

FILED  
JUL 30 1992

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Lynda Montiel  
Lynda Montiel

In the Matter of the Accusation of

DONALD LEE BARTELS and  
BARTELS REALTORS, INC.,

Case No. H-6721 SF

OAH No. N-41123

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at \_\_\_\_\_

OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,

455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

on December 22, 1992 (one day), at the hour of 9:30 a.m.,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: July 30, 1992

By Larry Alamao  
LARRY A. ALAMAO, Counsel



*Floy*

**FILED**  
JUN 02 1992

DEPARTMENT OF REAL ESTATE

By *Marie Chiolo*

1 LARRY A. ALAMAO, Counsel  
2 Department of Real Estate  
3 185 Berry Street, Room 3400  
4 San Francisco, CA 94107

5 Telephone: (415) 904-5917

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of )	
12	DONALD LEE BARTELS, )	No. H- 6721 SF
13	BARTELS REALTORS, INC., )	<u>ACCUSATION</u>
14	Respondents. )	

15  
16 The Complainant, Edward V. Chiolo, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against DONALD LEE BARTELS (hereinafter "respondent BARTELS") and  
19 BARTELS REALTORS, INC. (hereinafter "respondent REALTORS"), is  
20 informed and alleges as follows:

21 I

22 The Complainant, Edward V. Chiolo, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Accusation in  
24 his official capacity.

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II

At all times herein mentioned, Respondents are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code").

III

At all times herein mentioned, respondent BARTELS was licensed as a real estate broker and as the broker-officer of respondent REALTORS.

IV

At all times herein mentioned, respondent REALTORS was licensed as a real estate corporation acting by and through respondent BARTELS as its designated broker-officer.

V

Beginning on or before December 29, 1989, Respondents, acting on behalf of another or others and in expectation of compensation, leased or rented, offered to lease or rent, solicited prospective tenants, or collected rents from certain real properties located in or near Richmond, California.

VI

Beginning on or before December 29, 1989, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, including selling or offering to sell, buy or offering to buy, solicit prospective sellers or purchasers of, solicit or obtain listings of, or negotiate the purchase, sale or exchange of real property.

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VII

During the course of the property management activities described in Paragraph V, and the sales activities described in Paragraph VI, Respondents received and disbursed funds held in trust on behalf of another or others in bank accounts known as Bartels Realtors Trustee Account No. 010-014896, The Mechanics Bank, 3170 Hilltop Mall Road, Richmond, California and Bartels Realtors Inc. Account No. 02411385, Alvarado Bank, 3000 Hilltop Mall Road, Richmond, California.

VIII

In connection with the collection and disbursement of said trust funds, Respondents received and failed to deposit and maintain said funds in said bank accounts described in Paragraph VII, or disbursed said funds in such a manner that as of May 31, 1991, there was a shortage of \$5,674.30 of trust funds in said bank accounts. As of January 31, 1992, there was a shortage of \$1,717.30 of trust funds in said bank accounts.

IX

Respondents failed to obtain the prior written consent of their principals for the reduction of the aggregate balance of trust funds in said trust accounts to an amount less than the aggregate trust fund liability to the owners of said funds.

X

Within the three-year period immediately preceding the filing of this Accusation, in the course of the licensed activities as stated in Paragraphs V and VI, Respondents:

///

1           1. Failed to keep their own money or property separate  
2 from the money or property of others received and held by  
3 Respondents.

4           2. Allowed withdrawals to be made from trust fund bank  
5 accounts by an unlicensed employee of the Respondents without  
6 specifically authorizing in writing said employee to make those  
7 withdrawals.

8           3. Failed to review, initial and date instruments which  
9 may have a material effect upon the rights or obligations of a  
10 party to a transaction and which instruments were prepared or  
11 signed by a real estate salesperson acting in the employ of  
12 Respondents.

13           4. Failed to have or retain written agreements with  
14 each of their real estate salespersons and covering material  
15 aspects of the relationship between the parties.

16           5. Failed to immediately notify the Commissioner in  
17 writing when the following salespersons entered the employ of  
18 Respondents:

- 19           (a) Mary Taylor  
20           (b) David Farris  
21           (c) John Laison  
22           (d) Eileen Lopez  
23           (e) Edna MacNeil

24           6. Failed to immediately notify the Commissioner in  
25 writing when the employment by Respondents of the following  
26 salespersons was terminated:

27        ///

- 1 (a) Agnes Howard  
2 (b) Jean-Pierre Katz  
3 (c) Bryce Miller  
4 (d) Richard Sargent  
5 (e) Roger Solberg

6 7. Failed to maintain a separate record of all trust  
7 funds received and not deposited in Respondents' bank trust  
8 accounts.

9 XI

10 The facts alleged above are grounds for the suspension  
11 or revocation of the licenses and license rights of Respondents  
12 under the following provisions:

13 1. As to Paragraph VIII, under Section 10145 of the  
14 Code in conjunction with Section 10177(d) of the Code.

15 2. As to Paragraph IX, under Section 2832.1 of the  
16 Regulations in conjunction with Section 10177(d) of the Code.

17 3. As to Paragraph X(1), under Section 10176(e) of the  
18 Code.

19 4. As to Paragraph X(2), under Section 2834, Title 10,  
20 California Code of Regulations (hereinafter "Regulations") in  
21 conjunction with Section 10177(d) of the Code.

22 5. As to Paragraph X(3), under Section 2725 of the  
23 Regulations in conjunction with Section 10177(d) of the Code.

24 6. As to Paragraph X(4), under Section 2726 of the  
25 Regulations in conjunction with Section 10177(d) of the Code.

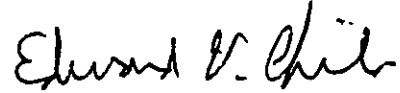
26 7. As to Paragraph X(5), under Section 10161.8 of the  
27 Code in conjunction with Section 10177(d) of the Code.

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8. As to Paragraph X(6), under Section 10161.8 of the Code in conjunction with Section 10177(d) of the Code.

9. As to Paragraph X(7), under Section 2831 of the Regulations 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 Respondents, 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 provisions of law.



---

EDWARD V. CHIOLO  
Deputy Real Estate Commissioner

Dated at San Francisco, California,  
this 22<sup>nd</sup> day of May, 1992.