

1 Department of Real Estate
2 107 South Broadway, Room 8107
3 Los Angeles, California 90012
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5 (213) 897-3937
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FILED
JUL 24 1998
DEPARTMENT OF REAL ESTATE

By K. Medeiros

8 DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-27566 LA
12 RANGELL REALTY CORPORATION;)
13 and KIMBERLY RANGELL,) STIPULATION AND AGREEMENT
14 as designated officer of)
15 Rangell Realty Corporation,)
16 Respondents.)

17 It is hereby stipulated by and between RANGELL REALTY
18 CORPORATION and KIMBERLY RANGELL as designated officer of Rangell
19 Realty Corporation (sometimes collectively referred to as
20 Respondents), and the Complainant, acting by and through Elliott
21 Mac Lennan, Counsel for the Department of Real Estate, as follows
22 for the purpose of settling and disposing of the Accusation filed
23 on February 26, 1998, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondents
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

1 Procedure Act (APA), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement (Stipulation).

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

8 3. Respondents filed a Notice of Defense pursuant to
9 Section 11506 of the Government Code for the purpose of requesting
10 a hearing on the allegations in the Accusation. Respondents
11 hereby freely and voluntarily withdraw said Notice of Defense.
12 Respondents acknowledge that they understand that by withdrawing
13 said Notice of Defense they thereby waive their right to require
14 the Commissioner to prove the allegations in the Accusation at a
15 contested hearing held in accordance with the provisions of the
16 APA and that they will waive other rights afforded to them in
17 connection with the hearing such as the right to present evidence
18 in their defense the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual allegations
20 contained in the Accusation. In the interest of expedience and
21 economy, Respondents choose not to contest these allegations, but
22 to remain silent and understand that, as a result thereof, these
23 factual allegations, without being admitted or denied, will serve
24 as a prima facie basis for the disciplinary action stipulated to
25 herein. The Real Estate Commissioner shall not be required to
26 provide further evidence to prove said factual allegations.

27



1 5. This Stipulation is based on Respondents' decision
2 not to contest the allegations set forth in the Accusation as a
3 result of the agreement negotiated between the parties. This
4 Stipulation is expressly limited to this proceeding and any
5 further proceeding initiated by or brought before the Department
6 of Real Estate based upon the factual allegations in the
7 Accusation for the sole purpose of reaching an agreed disposition
8 of this proceeding without a hearing. The decision of Respondents
9 not to contest the allegations is made solely for the purpose of
10 effectuating this Stipulation. It is the intent and understanding
11 of the parties that this Stipulation shall not be binding or
12 admissible against Respondents in any actions against Respondents
13 by third parties.

14 6. It is understood by the parties that the Real Estate
15 Commissioner may adopt this Stipulation as his Decision in this
16 matter thereby imposing the penalty and sanctions on Respondents'
17 real estate licenses and license rights as set forth in the
18 "Order" herein below. In the event that the Commissioner in his
19 discretion does not adopt the Stipulation, it shall be void and of
20 no effect and Respondents shall retain the right to a hearing and
21 proceeding on the Accusation under the provisions of the APA and
22 shall not be bound by any stipulation or waiver made herein.

23 7. The Order or any subsequent Order of the Real Estate
24 Commissioner made pursuant to this Stipulation shall not
25 constitute an estoppel, merger or bar to any further
26 administrative or civil proceedings by the Department of Real
27



1 Estate with respect to any matters which were not specifically
2 alleged to be causes for accusation in this proceeding.

3
4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, it is
6 stipulated and agreed that the following determination of issues
7 shall be made:

8 I

9 The conduct of RANGELL REALTY CORPORATION, as described
10 in Paragraph 4, is in violation of Sections 10145, 10148, 10161.8
11 and 10240 of the Business and Professions Code (Code) and Sections
12 2731, 2752, 2831.1, 2832(1), 2832.1, 2840 and 2950 of Title 10,
13 Chapter 6 of the California Code of Regulations (Regulations) and
14 is a basis for the suspension or revocation of Respondent's
15 licenses and license rights pursuant to Section 10177(d) of the
16 Code.

17 II

18 The conduct of KIMBERLY RANGELL, as described in
19 Paragraph 4, above, constitutes a failure to keep Rangell Realty
20 Corporation in compliance with the Real Estate Law and constitutes
21 a failure to exercise reasonable supervision and control over the
22 activities of Rangell Realty Corporation and its salespersons
23 which require a real estate license and is cause for the
24 suspension or revocation of said Respondent's license and license
25 rights pursuant Sections 10159.2 and 10177(h) of the Code.

26 /
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1 Law, Regulations of the Real Estate Commissioner or
2 conditions attaching to the restricted license.

3 3. Respondents shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for
5 the removal of any of the conditions, limitations or
6 restrictions of a restricted license until two years
7 has elapsed from the effective date of this Decision.

8
9 4. Respondent KIMBERLY RANGELL shall, within nine
10 months from the effective date of this Decision, present
11 evidence satisfactory to the Real Estate Commissioner
12 that Respondent has, since the most recent issuance of
13 an original or renewal real estate license, taken and
14 successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real
16 Estate Law for renewal of a real estate license. If
17 Respondent fails to satisfy this condition, the
18 Commissioner may order the suspension of the restricted
19 license until the Respondent presents such
20 evidence. The Commissioner shall afford Respondent the
21 opportunity for a hearing pursuant to the Administrative
22 Procedure Act to present such evidence.

23
24 5. Respondent KIMBERLY RANGELL shall within six months
25 from the effective date of this Decision, take and pass
26 the Professional Responsibility Examination administered
27 by the Department including the payment of the



1 appropriate examination fee. If Respondent fails to
2 satisfy this condition, the Commissioner may order
3 suspension of Respondent's license until Respondent
4 passes the examination.

5
6 6. As a further condition of any restricted license
7 being issued to Respondents, they shall first provide
8 evidence satisfactory to the Commissioner that the
9 deficit in the amount of \$64,761.64 has been cured
10 including the source of funds used to cure the deficit.

11
12 II

13 Pursuant to Section 10148 of the Code, Respondents, or
14 either of them shall pay the Commissioner's reasonable cost for an
15 audit to determine if Respondents have corrected the trust fund
16 violations found in paragraph I of the Determination of Issues.
17 In calculating the amount of the Commissioner's reasonable cost,
18 the Commissioner may use the estimated average hourly salary for
19 all persons performing audits of real estate brokers, and shall
20 include an allocation for travel time to and from the auditor's
21 place of work. Respondents shall pay such cost, not to exceed
22 \$7,300, within 45 days of receiving an invoice from the
23 Commissioner detailing the activities performed during the audit
24 and the amount of time spent performing those activities. The
25 Commissioner may suspend the restricted license issued to either
26 Respondent pending a hearing held in accordance with Section
27 11500, et seq., of the Government Code, if payment is not timely



1 made as provided for herein, or as provided for in a subsequent
2 agreement between the Respondents and the Commissioner. The
3 suspension shall remain in effect until payment is made in full or
4 until Respondents enter into an agreement satisfactory to the
5 Commissioner to provide for payment, or until a decision providing
6 otherwise is adopted following a hearing held pursuant to this
7 condition.

8 III

9
10 During the time Respondent RANGELL REALTY CORPORATION
11 holds a restricted license, it shall submit to the Department of
12 Real Estate a Quarterly Trust Fund Statement as of the last day of
13 each March, June, September and December. The Position Statement
14 shall be submitted to the Supervising Auditor of the Department at
15 its Los Angeles Office not later than sixty (60) days following
16 the last day of each calendar quarter. The Position Statement
17 shall include the information and documents specified below.
18 Position Statements submitted by Respondent RANGELL REALTY
19 CORPORATION shall be verified as true and accurate by the
20 designated officer of Respondent RANGELL REALTY CORPORATION under
21 penalty of perjury. If Respondent has no trust fund liability as
22 of the last day of the calendar quarter, the Position Statement
23 shall so state. The Position Statement shall consist of the
24 following:

25 (a) A schedule of trust fund accountability with the
26 following information concerning funds held by Respondent as agent
27 or trustee to the owner(s) of said funds:



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- (i) Account number and depositories.
- (ii) Names of principals and beneficiaries.
- (iii) Trust fund liability to (a)(ii).

(b) A report of trust funds in the custody and control
of Respondent as of the accounting date consisting of:

- (i) Copies of Respondent's trust accounts' bank statements [listed above as (a)(i)] showing the balance of funds in the accounts as of the accounting date.
- (ii) A schedule of uncleared checks drawn on the accounts adjusting the accounts to their true balance as of the accounting date.

(c) A copy of Respondent's:

- (i) trust funds records maintained pursuant to Regulation 2831,
- (ii) separate records maintained pursuant to Regulation 2831.1 and
- (iii) reconciliation maintained pursuant to Regulation 2831.2.

(d) A statement explaining any discrepancy between the total liability shown under (a) above and the adjusted trust accounts' balances shown under (b) above.

DATED: 6-11-98

Elliott Mac Lennan
ELLIOTT MAC LENNAN
Counsel for Complainant

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We have read the Stipulation and Agreement and its terms
are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we 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 we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

DATED: 6/15/98

RANGELL REALTY CORPORATION
Respondent
BY: KIMBERLY RANGELL, D.O.

DATED: 6/15/98

KIMBERLY RANGELL,
as designated officer of
Rangell Realty Corporation,
Respondent

DATED: 6/17/98

STEVEN F. SPIERER, ESQ.
Counsel for Respondents

* * * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order and shall become effective at 12
o' clock noon on August 13, 1998.

IT IS SO ORDERED 7/14, 1998.

JIM ANTT JR.
Real Estate Commissioner

[Signature]



Handwritten initials

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ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
Department of Real Estate
107 South Broadway, Room 8107
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Telephone (213) 897-3937

FILED
FEB 26 1998
DEPARTMENT OF REAL ESTATE
By *R. Weberholt*

THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
RANGELL REALTY CORPORATION,)
a corporate real estate broker;)
and KIMBERLY MONIQUE RANGELL,)
individually and as designated)
officer of Rangell,)
Realty Corporation,)

Respondents.)

No. H-27566 LA

A C C U S A T I O N

The Complainant, Thomas McCrady, a Deputy Real Estate
Commissioner of the State of California, acting in his official
capacity, filed this accusation against RANGELL REALTY
CORPORATION, a corporate real estate broker dba Re/Max Southeast
Properties; and, KIMBERLY MONIQUE RANGELL, individually and as
designated officer of Rangell Realty Corporation, is informed and
alleges as follows:

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I

RANGELL REALTY CORPORATION (RRC) and KIMBERLY MONIQUE RANGELL (RANGELL), sometimes collectively referred to as 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).

II

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

III

At all times mentioned, RRC was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker. RRC was first licensed by the Department on November 1, 1991.

IV

At all times mentioned, RANGELL was licensed by the Department as designated officer of RRC to qualify RRC and to act for RRC as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of RRC by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

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V

Whenever reference is made in an allegation in the accusation to an act or omission of RRC such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with RRC, including RANGELL, committed such act or omission while engaged in the furtherance of the business or operation of RRC and while acting within the course and scope of its corporate authority, agency and employment.

VI

At all times mentioned, RRC and RANGELL were acting as the agent or employee of the other and within the course and scope of such agency or employment.

VII

At all times mentioned, in the City of Downey, Los Angeles County, Respondents RRC and RANGELL acted as real estate brokers, within the meaning of Section 10131(a) of the Code in that they operated a residential real estate resale business with the public wherein, on behalf of others and for compensation or in expectation of compensation, Respondents, sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, solicited or obtained listings of, or negotiated the purchase, sale or exchange of real property. In addition, Respondents conducted broker controlled escrows under the exemption set forth in Section 17006(a)(4) of the California Financial Code.

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VIII

On October 27, 1997, the Department completed a field audit examination of the books and records pertaining to the activities of RRC described in Paragraph VII. The audit examination covered a period of time beginning on January 1, 1995 and ending on July 31, 1997. The audit examination revealed violations of the Code and the Regulations now set forth.

IX

In connection with the aforesaid real estate activities described in Paragraph VII, RRC and RANGELL, accepted or received funds in trust (trust funds) from or on behalf of actual or prospective buyers and sellers and from escrows and thereafter made disbursements of such funds including disbursements from escrows. Respondents maintained the following trust accounts into which they deposited certain of these funds:

- "Rangell Real corp. dba Re/Max Southeast Properties Escrow Trust
No. 0014-061-908" (Escrow Trust Account)
Imperial Bank
Beverly Hills
- "Rangell Real corp. dba Re/Max Southeast Properties Trust
No. 0014-01-924" (Trust Account)
Imperial Bank
Beverly Hills

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1 FIRST CAUSE OF ACCUSATION

2 Complainant incorporates herein the Preamble and the
3 allegations of Paragraphs I through IX, inclusive, hereinabove
4

5 X

6 With respect to the trust funds referred to in Paragraph
7 IX, RRC and RANGELL:

8 (a) Permitted, allowed or caused the disbursement of
9 trust funds from the Escrow Trust Account where the disbursement
10 of said funds reduced the aggregate funds in the Escrow Trust
11 Account, to an amount which, on July 31, 1997, was between
12 \$64,761.64 , less than the existing aggregate trust fund liability
13 of every principal who was an owner of said funds, without first
14 obtaining the prior written consent of the owners of said funds,
15 as required by Section 10145 of the Code and Section 2832.1,
16 2950(d) and 2951 of the Regulations. Approximately \$12,700.00 of
17 this deficit in the Escrow Trust Account was cured during the
18 audit;

19 (b) Failed to maintain a reliable and accurate separate
20 record for each beneficiary or transaction, thereby failing to
21 account for all trust funds received, deposited, and disbursed out
22 of the Escrow Trust Account, as required by Sections 2831.1,
23 2950(d) and 2951 of the Regulations; and,

24 (c) Prior to October 1996, failed to perform an
25 accurate monthly reconciliation of the balance of all separate
26 beneficiary or transaction records maintained pursuant to
27 Regulation 2831.1 with the record of all trust funds received and



1 disbursed by the Escrow Trust Account, as required by Regulation
2 2831.2, 2950(d) and 2951.

3 XI

4 The conduct of Respondents RRC and RANGELL, described in
5 Paragraph X, violated the Code and the Regulations as set forth:

6 PARAGRAPH

PROVISIONS VIOLATED

7 X(a) Section 10145 & 10159.2 of the Code, and
8 Section 2832.1, 2950(d) and 2951 of the
9 Regulations

10
11 X(b) Section 10145 & 10159.2 of the Code, and
12 Section 2831.1, 2950(d) and 2951 of the
13 Regulations

14
15 X(c) Section 10145 & 10159.2 of the Code, and
16 Section 2831.2, 2950(d) and 2951 of the
17 Regulations

18 Each of the foregoing violations separately constitutes cause for
19 the suspension or revocation of the real estate licenses and
20 license rights of Respondents RRC and RANGELL under the provisions
21 of Section 10177(d) of the Code.

22 XII

23 The audit examination further revealed that Respondent
24 RRC used the fictitious names of "Re/Max S. E Properties" and
25 "Re/Max Southeast Properties" to conduct licensed activities on
26 behalf of RRC, including using said names on its escrow
27



1 instructions and its escrow closing statements without holding a
2 license bearing these fictitious business names. The conduct of
3 Respondent RRC, in failing to obtain a license for use of the
4 aforesaid names, is in violation of Regulation 2731 and is cause
5 to suspend or revoke Respondent's real estate license and license
6 rights under Section 10177(d) of the Code.

7 XIII

8 The audit examination also revealed that RRC failed to
9 notify the Department of the employment of licensees Luz Elena
10 Bueno, Hector Nevarez, Raul Ochoa and Marie Ojeda, Adalino Perez,
11 Manuel Sencion, Charles Sims, Byron Saul Valencia and Rosa Soto,
12 as required by Section 10161.8 of the Code and Section 2752 of the
13 Regulations. This conduct is cause to suspend or revoke the
14 license and license rights of the Respondent RRC under the
15 provisions of Section 10177(d) of the Code.

16 XIV

17 During the period of the audit, a designated
18 representative of the Department gave notice and made demand to
19 examine and inspect the books, accounts, and records received or
20 generated by Respondents, and by and through their agents and
21 employees, in the course of activities requiring a real estate
22 license including residential resale activities, broker-escrows
23 and trust fund handling activities described in Paragraph VII,
24 above. At all times since said notice and demand, through their
25 agents and employees, Respondents have failed and/or refused to
26 provide all the said books, accounts, records, and files requested
27 and further failed to keep the documentation relating to said



1 activities for three years. Specifically, Respondents failed to
2 retain escrow files for escrow numbers 2630 and 2947, and for
3 sale-purchase transactions file for the real property located at
4 8238 Elburg, Paramount, California. This conduct constitutes a
5 violation of Section 10148 of the Code and is cause to suspend or
6 revoke Respondents' real estate licenses and license rights under
7 Section 10177(d) of the Code.

8 SECOND CAUSE OF ACCUSATION

9
10 Complainant incorporates herein the Preamble and the
11 allegations of Paragraphs I through XIV, inclusive, hereinabove

12 XV

13 On or about February 7, 1997, a Real Estate Purchase
14 Contract and Receipt for Deposit (Deposit Receipt) was entered
15 into between buyer Mark Allen and seller Gertrude Henkle for the
16 purchase and sale of 8558 Parrott Avenue, Downey, California. The
17 Deposit Receipt recited that Old Republic was to be the home
18 warranty provider.

19 XVI

20 On or about February 13, 1997, an escrow was opened at
21 Re/Max Southeast Properties, the unlicensed fictitious business
22 name of Respondents, to facilitate the purchase and sale of the
23 Parrot Avenue property. The Sale Escrow Instruction changed the
24 home warranty provider to Hisco Home Warranty without signature,
25 initialization, amendment or supplementation to the sale escrow
26 instructions signed by all persons who had signed or initialed the
27 original Sale Escrow Instruction. This conduct is in violation of



1 Section 2950(b) of the Regulations and is cause to suspend or
2 revoke Respondents' RRC and RANGELL real estate licenses and
3 license rights under Section 10177(d) of the Code.

4 XVII

5 The overall conduct of Respondents RRC and RANGELL in
6 violating Sections 10145, 10148 and 10161.8 of the Code and
7 Regulations Sections 2731, 2752, 2831.1, 2831.2, 2832.1, 2950(b),
8 2950(d) and 2951, as described in Paragraphs VII through XVI
9 above, constitutes negligence or incompetence. This conduct and
10 violation are cause for the suspension or revocation of the real
11 estate license and license rights of Respondents under the
12 provisions of Section 10177(g) of the Code.

13 XVIII

14 The conduct of Respondent RANGELL, constitutes a failure
15 on the part of RANGELL, as officer designated by a corporate
16 broker licensee, to exercise the reasonable supervision and
17 control over the licensed activities of RRC as required by Section
18 10159.2 of the Code, and to keep it in compliance with the Real
19 Estate Law, is cause for the suspension or revocation of the real
20 estate licenses and license rights of RANGELL pursuant to the
21 provisions of Sections 10159.2 and 10177(h) of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of the accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents RANGELL REALTY CORPORATION, a corporate real estate broker dba Re/Max Southeast Properties; and, KIMBERLY MONIQUE RANGELL, individually and as designated officer of Rangell Realty Corporation 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.

Dated at Los Angeles, California
this 26th day of February, 1998.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc: Rangell Realty Corporation
c/o Kimberly M. Rangell, D.O.
Sacto
MGS