

1 Department of Real Estate
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0789
4

FILED
MAR 27 2003

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-1523 FR

12 JOHN THEODORE HODGES,)

STIPULATION AND AGREEMENT

13 Respondent)

IN SETTLEMENT AND ORDER

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15
16 It is hereby stipulated by and between JOHN THEODORE
17 HODGES (hereinafter "Respondent") and the Complainant, acting by
18 and through David B. Seals, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of
20 the Accusation filed on March 5, 2002, in this matter:

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

1 2. Respondent has received, read and understands the
2 Statement to Respondent, the Discovery Provisions of the APA and
3 the Accusation filed by the Department of Real Estate in this
4 proceeding.

5 3. On August 16, 2002, Respondent filed a Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that he
10 understands that by withdrawing said Notice of Defense he will
11 thereby waive his right to require the Commissioner to prove the
12 allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA and that he will waive
14 other rights afforded to him in connection with the hearing such
15 as the right to present evidence in defense of the allegations in
16 the Accusation and the right to cross-examine witnesses.

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

25 5. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement in
27 Settlement as her decision in this matter thereby imposing the

1 penalty and sanctions on Respondent's real estate licenses and
2 license rights as set forth in the below "Order". In the event
3 that the Commissioner in her discretion does not adopt the
4 Stipulation and Agreement in Settlement, it shall be void and of
5 no effect, and Respondent shall retain the right to a hearing and
6 proceeding on the Accusation under all the provisions of the APA
7 and shall not be bound by any admission or waiver made herein.

8 6. The Order or any subsequent Order of the Real
9 Estate Commissioner made pursuant to this Stipulation and
10 Agreement in Settlement shall not constitute an estoppel, merger
11 or bar to any further administrative or civil proceedings by the
12 Department of Real Estate with respect to any matters which were
13 not specifically alleged to be causes for accusation in this
14 proceeding.

15 7. Respondent has received, read and understands the
16 "Notice Concerning Costs of Subsequent Audits". Respondent
17 understands that by agreeing to this Stipulation and Agreement in
18 Settlement, the findings set forth below in the DETERMINATION OF
19 ISSUES become final, and that the Commissioner may charge
20 Respondent for the costs of any audit for which he is charged
21 pursuant to Section 10148 of the Business and Professions Code
22 (hereinafter the "Code"). The reasonable cost of the audit which
23 led to this disciplinary action is \$3,607.48. The maximum cost of
24 the subsequent audit will not exceed \$4,791.42.

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1 2. The restricted license issued to Respondent may be
2 suspended prior to hearing by Order of the Real Estate
3 Commissioner on evidence satisfactory to the Commissioner that
4 Respondent has violated provisions of the California Real Estate
5 Law, the Subdivided Lands Law, Regulations of the Real Estate
6 Commissioner or conditions attaching to the restricted license.

7 3. Respondent shall not be eligible to apply for the
8 issuance of an unrestricted real estate license nor for the
9 removal of any of the conditions, limitations or restrictions of
10 a restricted license until two (2) years has elapsed from the
11 effective date of this Decision.

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

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

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

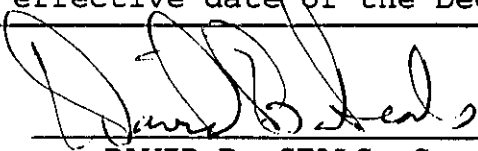
4 6. Pursuant to Section 10148 of the Business and
5 Professions Code, Respondent shall pay the Commissioner's
6 reasonable cost for the audit which led to this disciplinary
7 action and a subsequent audit to determine if Respondent has
8 corrected the trust fund violation(s) found in paragraph I of the
9 Determination of Issues. In calculating the amount of the
10 Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits
12 of real estate brokers, and shall include an allocation for
13 travel time to and from the auditor's place of work. Respondent
14 shall pay such cost within 60 days of receiving an invoice from
15 the Commissioner detailing the activities performed during the
16 audit and the amount of time spent performing those activities.
17 The Commissioner may suspend the restricted license issued to
18 Respondent pending a hearing held in accordance with Section
19 11500, et seq., of the Government Code, if payment is not timely
20 made as provided for herein, or as provided for in a subsequent
21 agreement between Respondent and the Commissioner. The
22 suspension shall remain in effect until payment is made in full
23 or until Respondent enters into an agreement satisfactory to the
24 Commissioner to provide for payment, or until a decision
25 providing otherwise is adopted following a hearing held pursuant
26 to this condition.

27 ///

1 7. Respondent shall, prior to and as a condition of the
2 issuance of the restricted license, submit proof satisfactory to
3 the Commissioner of having taken and successfully completed the
4 continuing education course on trust fund accounting and handling
5 specified in subdivision (a) of Section 10170.5 of the Business
6 and Professions Code. Proof of satisfaction of this requirement
7 includes evidence that respondent has successfully completed the
8 trust fund account and handling continuing education course
9 within 120 days prior to the effective date of the Decision in
10 this matter.

11 2/21/2003

12 DATED

12 
13 DAVID B. SEALS, Counsel
14 DEPARTMENT OF REAL ESTATE

13 * * *

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

25 2/19/03

26 DATED

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27 JOHN THEODORE HODGES
 Respondent

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Paula Rickelsh

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILE
NOV 12 2002

DEPARTMENT OF REAL ESTATE

By Shelly Chy

In the Matter of the Accusation of

JOHN THEODORE HODGES

Case No. H-1523 FR

OAH No. N2002100471

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 THE DEPARTMENT OF WATER RESOURCES BUILDING, CONFERENCE ROOM, 3374 E. SHIELDS, FRESNO, CALIFORNIA 93726 on WEDNESDAY--FEBRUARY 19, 2002, at the hour of 9:00 AM, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: NOVEMBER 12, 2002

DEPARTMENT OF REAL ESTATE

By David B. Lewis

Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

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DEPARTMENT OF REAL ESTATE

By Shelly El

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

) No. H-1523 FRESNO

12)
13) JOHN THEODORE HODGES,
14)

) ACCUSATION
)

15) Respondent.
16)

17 The Complainant, John Sweeney, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against JOHN THEODORE HODGES (hereinafter "Respondent") is
20 informed and alleges as follows:

21 I

22 Respondent is licensed and/or has license rights under
23 the Real Estate Law, Part 1 of Division 4 of the California
24 Business and Professions Code (hereinafter "Code") as a real
25 estate broker dba Emerald Properties.

26 II

27 The Complainant, John Sweeney, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
against Respondent in his official capacity.

1 III

2 At all times herein mentioned Respondent engaged in the
3 business of, acted in the capacity of, advertised, or assumed to
4 act as a real estate broker in the State of California within the
5 meaning of Section 10131(b) of the Code for or in expectation of
6 compensation.

7 IV

8 That at all times mentioned herein, Respondent accepted
9 or received funds in trust (hereafter trust funds) from and on
10 behalf of his principals placing them in accounts and at times
11 thereafter made disbursements of such funds.

12 V

13 An investigative audit of the records and bank records
14 of Respondent was conducted by the Department from February 27,
15 2001 to July 9, 2001 covering the period from February 1, 1998 to
16 February 1, 2001 as said records related to its activities as a
17 real estate broker.

18 VI

19 Respondent maintained one account into which other
20 persons trust funds were placed at Union Bank of California, Shaw
21 & Marks 134, P.O. Box 85413, San Diego, CA 92186. The account
22 were designated as Emerald Properties, Client Trust Account,
23 #1340006557.

24 VII

25 The adjusted balance of the account as of December 31,
26 2000 was Three Thousand Nine Hundred Sixteen and 79/100 Dollars
27 (\$3,916.79) and the trust fund accountability in the account as

1 of December 31, 2000 was Eight Thousand Two Hundred Forty-Nine
2 and 94/100 Dollars (\$8,249.94). Therefore, Respondent, as of
3 December 31, 2000, had a trust fund shortage of Four Thousand
4 Three Hundred Thirty-Three and 15/100 Dollars (\$4,333.15).

5 VIII

6 The shortage in was due to (1) negative property
7 account balances (\$1,449.98); (2) a negative broker fund balance
8 (\$456.70); and (3) unidentified (\$2,426.47).

9 IX

10 Gary Chung was a signatory on the trust account.
11 However, Gary Chung was not licensed by the Department nor was
12 there fidelity bond coverage at least equal to the minimum amount
13 of trust funds to which he had access at the time, in violation
14 of Section 2834, Title 10, California Code of Regulations
15 (hereinafter the "Regulations").

16 X

17 Respondent failed to reconcile on a monthly basis the
18 balance of all separate records with the record of all trust
19 funds received and disbursed in violation of Section 2831.2 of
20 the Regulations.

21 XI

22 Respondent caused the disbursement of trust funds from
23 the trust account without the written consent of every principal
24 who was an owner of the funds, causing the balance of the funds
25 in the account to be an amount less than the existing aggregate
26 trust fund liability of Respondent to all owners of said funds in

27 ///

1 violation of Section 10145 of the Code and Section 2832.1 of the
2 Regulations.

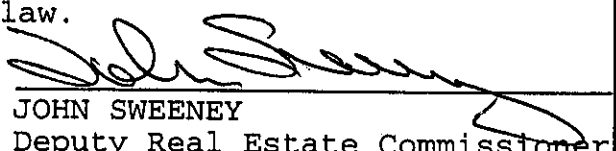
3 XII

4 Respondent failed to taken commissions out of the trust
5 account in a timely manner and therefore commingled funds in
6 violation of Section 10176(e) of the Code.

7 XIII

8 The acts and/or omissions of Respondent described above
9 is grounds for the revocation or suspension of Respondent's
10 licenses under Section 10176(e) of the Code and Section 10145 of
11 the Code and Sections 2831.2, 2832.1 and 2834 of the Regulations
12 in conjunction with Section 10177(d) of the Code.

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof a decision be rendered imposing disciplinary action
16 against all licenses and license rights of Respondent, under the
17 Real Estate Law and for such other and further relief as may be
18 proper under other provisions of law.

19 
20 JOHN SWEENEY
Deputy Real Estate Commissioner

21 Dated at Fresno, California,
22 this 26th day of February, 2002.