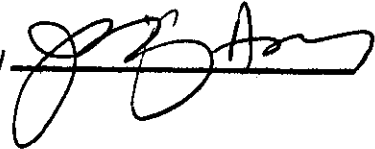


1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

**FILED**  
SEP 11 2003

DEPARTMENT OF REAL ESTATE

By 

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

10 In the Matter of the Accusation of ) No. H-1583 FR  
11 )  
12 RICKEY JOE HARTSELL, ) STIPULATION AND AGREEMENT  
13 )  
14 Respondent. )

16 It is hereby stipulated by and between Respondent  
17 RICKEY JOE HARTSELL, (hereinafter "Respondent") and his  
18 attorney of record, Dale Bruder, and the Complainant, acting by  
19 and through Michael B. Rich, Counsel for the Department of Real  
20 Estate, as follows for the purpose of settling and disposing of  
21 the Accusation filed on March 8, 2003, in this matter  
22 (hereinafter "the Accusation"):

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

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

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

8           3. On March 25, 2003, Respondent filed a Notice of  
9 Defense pursuant to Section 11505 of the Government Code for  
10 the purpose of requesting a hearing on the allegations in the  
11 Accusation. Respondent hereby freely and voluntarily withdraws  
12 said Notice of Defense. Respondent acknowledges that he  
13 understands that by withdrawing said Notice of Defense  
14 Respondent will thereby waive his right to require the  
15 Commissioner to prove the allegations in the Accusation at a  
16 contested hearing held in accordance with the provisions of the  
17 APA and that Respondent will waive other rights afforded to him  
18 in connection with the hearing such as the right to present  
19 evidence in defense of the allegations in the Accusation and  
20 the right to cross-examine witnesses.

21           4. This Stipulation is based on the factual  
22 allegations contained in the Accusation. In the interests of  
23 expedience and economy, Respondent chooses not to contest these  
24 allegations, but to remain silent and understands that, as a  
25 result thereof, these factual allegations, without being  
26 admitted or denied, will serve as a prima facie basis for the  
27

1 disciplinary action stipulated to herein. The Real Estate  
2 Commissioner shall not be required to provide further evidence  
3 to prove said factual allegations.

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

15 6. The Order or any subsequent Order of the Real  
16 Estate Commissioner made pursuant to this Stipulation and  
17 Agreement shall not constitute an estoppel, merger or bar to  
18 any further administrative or civil proceedings by the  
19 Department of Real Estate with respect to any matters which  
20 were not specifically alleged to be cause for accusation in  
21 this proceeding.

22 7. Respondent understands that by agreeing to this  
23 Stipulation and Agreement in Settlement, Respondent agrees to  
24 pay, pursuant to Section 10148 of the Business and Professions  
25 Code, the cost of the audit that led to this disciplinary action.  
26 The amount of said costs is \$1,611.46.

27





1 Estate Commissioner or conditions attaching to the restricted  
2 license.

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

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

20 5. Respondent shall, within six (6) months from the  
21 effective date of this Decision, take and pass the Professional  
22 Responsibility Examination administered by the Department  
23 including the payment of the appropriate examination fee. If  
24 Respondent fails to satisfy this condition, the Commissioner may  
25 order suspension of Respondent's license until Respondent passes  
26 the examination.

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

24                   7.    Respondent shall prior to the effective date of  
25 the Decision provide evidence satisfactory to the Commissioner  
26  
27

1 that Respondent has cured the trust fund shortages alleged in  
2 the Accusation.

3 8. Any restricted real estate broker license issued to  
4 Respondent may be suspended or revoked for a violation by  
5 Respondent of any of the conditions attaching to the restricted  
6 license.

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

17  
18  
19 7/16/03  
DATED

Michael B. Rich  
MICHAEL B. RICH, Counsel  
DEPARTMENT OF REAL ESTATE

20 \* \* \*

21  
22 I have read the Stipulation and Agreement and its  
23 terms are understood by me and are agreeable and acceptable to  
24 me. I understand that I am waiving rights given to me by the  
25 California Administrative Procedure Act (including but not  
26 limited to Sections 11506, 11508, 11509, and 11513 of the  
27



1 Government Code), and I willingly, intelligently, and  
2 voluntarily waive those rights, including the right of  
3 requiring the Commissioner to prove the allegations in the  
4 Accusation at a hearing at which I would have the right to  
5 cross-examine witnesses against me, and to present evidence in  
6 defense and mitigation of the charges.

7  
8 7-10-03

DATED

*Rickey Joe Hartsell*  
RICKEY JOE HARTSELL  
Respondent

10  
11 I have reviewed the Stipulation and Agreement as to  
12 form and content and have advised my client accordingly.

13  
14 7-10-03

DATED

*Dale Bruder*  
DALE BRUDER  
Attorney for Respondent

15  
16  
17 \* \* \*

18 The foregoing Stipulation and Agreement for  
19 Settlement is hereby adopted by the Real Estate Commissioner as  
20 her Decision and Order and shall become effective at 12 o'clock  
21 noon on October 1, 2003.

22 IT IS SO ORDERED *July 25, 2003*

23 PAULA REDDISH ZINNEMANN  
24 Real Estate Commissioner

25  
26  
27 *Paula Reddish Zinnemann*

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

**FILE**  
JUN 07 2003  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By Shelly [Signature]

RICKEY JOE HARTSELL,

}  
}

Case No. H-1583 FR

OAH No. N2003050485

*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 **OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CALIFORNIA 95814** on **WEDNESDAY--AUGUST 13, 2003**, 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.

DEPARTMENT OF REAL ESTATE

Dated: JUNE 7, 2003

By Michael B. Rich  
MICHAEL B. RICH, Counsel S.E.

1 MICHAEL B. RICH, Counsel  
2 State Bar No. 84257  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6  
7 Telephone: (916) 227-0789

FILED  
MAY 08 2003

DEPARTMENT OF REAL ESTATE

*Shelly [Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ) NO. H-1583 FR  
13 RICKEY JOE HARTSELL, )  
14 ) FIRST AMENDED  
15 ) ACCUSATION  
16 Respondents. )

17 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate  
18 Commissioner of the State of California, for Cause of Accusation  
19 against RICKEY JOE HARTSELL doing business under the fictitious  
20 business name of CENTURY 21 ARROW REALTY is informed and alleges  
21 as follows:

22 I

23 Respondent RICKEY JOE HARTSELL doing business under the  
24 fictitious business name of CENTURY 21 ARROW REALTY (hereafter  
25 referred to as "Respondent") is presently licensed and/or has  
26 license rights under the Real Estate Law, Part 1 of Division 4 of  
27 the California Business and Professions Code (hereafter the  
"Code").

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II

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

III

At all times herein mentioned, Respondent was and is licensed by the Department as a real estate broker.

IV

Within the last three years, Respondent engaged in activities on behalf of others for which a real estate license is required, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants for, collected rents on, and/or managed certain real properties in California. During the course of the activities described above, Respondent received and disbursed funds in trust on behalf of others.

V

Beginning in July of 2002, the Department conducted an audit of the above business activities of Respondent for the time period of July 1, 1999 through July 1, 2002.

VI

Within the last three years, Respondent deposited the above trust funds into a checking account at Washington Mutual in Visalia, California, bearing account number 866-259945-3, in the name of "Rick or Debbie Hartsell DBA Century 21 Arrow Realty Mgt." (hereafter referred to as "Account 1").

///

1 VII

2 In connection with the collection and disbursement of  
3 trust funds, Respondent failed to deposit and maintain the trust  
4 funds in a trust account or neutral escrow depository, or to  
5 deliver them into the hands of the owners of the funds, as  
6 required by Section 10145 of the Code, in such a manner that as  
7 of April 30, 2002, there was a trust fund shortage in the  
8 approximate sum of \$25,149.05.06 in Account 1.

9 VIII

10 Respondent failed to obtain the prior written consents  
11 of the principals for the reduction of the aggregate balance of  
12 trust funds in Account 1 to an amount less than the existing  
13 aggregate trust fund liability to the owners of said funds  
14 in conformance with Section 2832.1 of the Regulations.

15 IX

16 In connection with the receipt and disbursement of  
17 trust funds as above alleged, and as set forth in Audit No. FR-  
18 02-0003 and FR-02-0004, dated August 29, 2002, and accompanying  
19 working papers and exhibits, Respondent:

- 20 (a) Failed to keep a separate record for each  
21 beneficiary or transaction, accounting for all  
22 funds that have been deposited to the broker's  
23 trust account, containing all of the information  
24 required by Section 2831.1 of the Regulations,  
25 including, but not limited to an accurate daily  
26 balance after posting transactions for Trust  
27 Account 1;

1 (b) Failed to reconcile the balance of separate  
2 beneficiary or transaction records with the  
3 control records of trust funds received and  
4 disbursed at least once a month, and/or failed  
5 to maintain a record of such reconciliations  
6 as required by Section 2831.2 of the Regulations  
7 for both Trust Account 1 and Trust Account 2;

8 (c) Failed to maintain a written control record of all  
9 trust funds received and disbursed containing all  
10 information required by Section 2831 of the  
11 Regulations, including but not limited to  
12 recordation of all deposits, recordation of dates  
13 of receipt, and recordation of accurate dates of  
14 deposit of trust funds; and,

15 (d) Failed to designate Account #1 as a trust account  
16 as required by Section 2832 of the Regulations.

17 X

18 The acts and/or omissions of Respondent as alleged  
19 above constitute grounds for disciplinary action under the  
20 following provisions:

21 (a) As alleged in Paragraph VII, under Section  
22 10145 of the Code in conjunction with Section  
23 10177(d) of the Code;

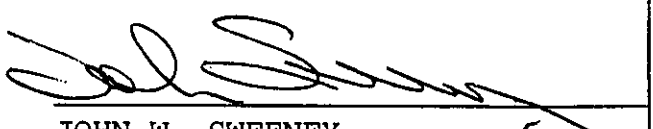
24 (b) As alleged in Paragraph VIII, under Section 2832.1  
25 of the Regulations in conjunction with Section  
26 10177(d) of the Code.

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- (c) As alleged in Paragraph IX(a), under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) As alleged in Paragraph IX(b), under Section 2831.2 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) As alleged in Paragraph IX(c), under Section 2831 of the Regulations in conjunction with 10177(d) of the Code; and,
- (f) As alleged in Paragraph IX(d), under Section 2832 of the Regulations in conjunction with 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 the license and all 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 provisions of law.

  
JOHN W. SWEENEY  
Deputy Real Estate Commissioner

Dated at Fresno, California  
this 30<sup>th</sup> day of April, 2003

1 MICHAEL B. RICH, Counsel  
State Bar No. 84257  
2 Department of Real Estate  
P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789  
5  
6  
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FILED  
MAR 08 2003  
DEPARTMENT OF REAL ESTATE  
*Shelly Ely*

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

11 \* \* \*

12 In the Matter of the Accusation of )  
13 RICKEY JOE HARTSELL, ) NO. H-1583 FR  
14 Respondent. ) ACCUSATION  
15 )

16 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate  
17 Commissioner of the State of California, for Cause of Accusation  
18 against RICKEY JOE HARTSELL doing business under the fictitious  
19 business name of CENTURY 21 ARROW REALTY is informed and alleges  
20 as follows:

21 I

22 Respondent RICKEY JOE HARTSELL doing business under the  
23 fictitious business name of CENTURY 21 ARROW REALTY (hereafter  
24 referred to as "Respondent") is presently licensed and/or has  
25 license rights under the Real Estate Law, Part 1 of Division 4 of  
26 the California Business and Professions Code (hereafter the  
27 "Code").



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II

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

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At all times herein mentioned, Respondent was and is licensed by the Department as a real estate broker.

IV

Within the last three years, Respondent engaged in activities on behalf of others for which a real estate license is required, for or in expectation of compensation, and leased or rented, offered to lease or rent, solicited prospective tenants for, collected rents on, and/or managed certain real properties in California. During the course of the activities described above, Respondent received and disbursed funds in trust on behalf of others.

V

Beginning in July of 2001, the Department conducted an audit of the above business activities of Respondent for the time period of July 1, 1999 through July 1, 2002.

VI

Within the last three years, Respondent deposited the above trust funds into a checking account at Washington Mutual in Visalia, California, bearing account number 866-259945-3, in the name of "Rick or Debbie Hartsell DBA Century 21 Arrow Realty Mgt." (hereafter referred to as "Account 1").

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VII

In connection with the collection and disbursement of trust funds, Respondent failed to deposit and maintain the trust funds in a trust account or neutral escrow depository, or to deliver them into the hands of the owners of the funds, as required by Section 10145 of the Code, in such a manner that as of April 30, 2002, there was a trust fund shortage in the approximate sum of \$25,149.05. . in Account 1.

VIII

Respondent failed to obtain the prior written consents of the principals for the reduction of the aggregate balance of trust funds in Account 1 to an amount less than the existing aggregate trust fund liability to the owners of said funds in conformance with Section 2832.1 of the Regulations.

IX

In connection with the receipt and disbursement of trust funds as above alleged, and as set forth in Audit No. FR-02-0003 and FR-02-0004, dated August 29, 2002, and accompanying working papers and exhibits, Respondent:

- (a) Failed to keep a separate record for each beneficiary or transaction, accounting for all funds that have been deposited to the broker's trust account, containing all of the information required by Section 2831.1 of the Regulations, including, but not limited to an accurate daily balance after posting transactions for Trust Account 1;

1 (b) Failed to reconcile the balance of separate  
2 beneficiary or transaction records with the  
3 control records of trust funds received and  
4 disbursed at least once a month, and/or failed  
5 to maintain a record of such reconciliations  
6 as required by Section 2831.2 of the Regulations  
7 for both Trust Account 1 and Trust Account 2;

8 (c) Failed to maintain a written control record of all  
9 trust funds received and disbursed containing all  
10 information required by Section 2831 of the  
11 Regulations, including but not limited to  
12 recordation of all deposits, recordation of dates  
13 of receipt, and recordation of accurate dates of  
14 deposit of trust funds; and,

15 (d) Failed to designate Account #1 as a trust account  
16 as required by Section 2832 of the Regulations.

17 X

18 The acts and/or omissions of Respondent as alleged  
19 above constitute grounds for disciplinary action under the  
20 following provisions:

21 (a) As alleged in Paragraph VII, under Section  
22 10145 of the Code in conjunction with Section  
23 10177(d) of the Code;

24 (b) As alleged in Paragraph VIII, under Section 2832.1  
25 of the Regulations in conjunction with Section  
26 10177(d) of the Code.

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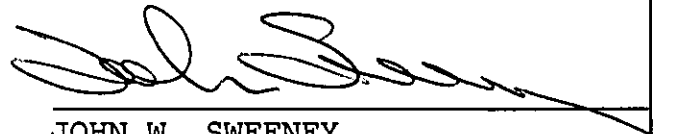
1 (c) As alleged in Paragraph IX(a), under Section  
2 10145 of the Code and Section 2831.1 of the  
3 Regulations in conjunction with Section 10177(d)  
4 of the Code;

5 (d) As alleged in Paragraph IX(b), under Section  
6 2831.2 of the Regulations in conjunction with  
7 Section 10177(d) of the Code;

8 (e) As alleged in Paragraph IX(c), under Section 2831  
9 of the Regulations in conjunction with 10177(d) of  
10 the Code; and,

11 (f) As alleged in Paragraph IX(d), under Section 2832  
12 of the Regulations in conjunction with 10177(d) of  
13 the Code.

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

21  
22  
23   
24 JOHN W. SWEENEY  
Deputy Real Estate Commissioner

25 Dated at Fresno, California  
26 this 26<sup>th</sup> day of February, 2003  
27