

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789
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6
7

FILED
MAR 30 2000

DEPARTMENT OF REAL ESTATE

By Shelly Key

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	No. H-2534 SD
	)	
	)	<u>STIPULATION AND AGREEMENT</u>
	)	
12 GLYNN DAVID SHAW and	)	<u>IN SETTLEMENT AND ORDER</u>
	)	
13 TIERRA CAPITAL CORP.,	)	
	)	
14 Respondents.	)	
	)	
15	)	
16	)	

17
18 It is hereby stipulated by and between GLYNN DAVID SHAW
19 and TIERRA CAPITAL CORP., (Respondents) and their attorney of
20 record, Rickard L. Borg and the Complainant, acting by and
21 through David B. Seals, Counsel for the Department of Real
22 Estate, as follows for the purpose of settling and disposing of
23 the Accusation filed on October 22, 1999, 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 in Settlement.

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. On November 8, 1999, Respondents filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw
12 said Notice of Defense. Respondents acknowledge that they
13 understand that by withdrawing said Notices of Defense they will
14 thereby waive their right to require the Commissioner to prove
15 the allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that they will
17 waive other rights afforded to them in connection with the
18 hearing such as the right to present evidence in defense of the
19 allegations in the Accusation and the right to cross-examine
20 witnesses.

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

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

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

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

21 7. Respondents TIERRA CAPITAL CORP. and GLYNN DAVID
22 SHAW have received, read and understand the "Notice Concerning
23 Costs of Subsequent Audits". Respondents TIERRA CAPITAL CORP.
24 and GLYNN DAVID SHAW understand that by agreeing to this
25 Stipulation and Agreement in Settlement, the findings set forth
26 below in the DETERMINATION OF ISSUES become final, and that the
27 Commissioner may charge Respondents TIERRA CAPITAL CORP. and

1 GLYNN DAVID SHAW for the costs of any audit for which they are
2 charged pursuant to Section 10148 of the Business and Professions
3 Code. The reasonable cost of the audit which led to this
4 disciplinary action is \$1,833. The maximum cost of the subsequent
5 audit will not exceed \$1,833.

6 DETERMINATION OF ISSUES

7 I

8 The facts alleged above are grounds for the suspension
9 or revocation of the licenses and license rights of Respondents
10 as follows:

11 (a) As to Respondent TIERRA CAPITAL CORP. under
12 Section 10177(d) in conjunction with Section 2831.2 of the
13 Regulations.

14 (b) As to Respondent GLYNN DAVID SHAW, under Section
15 10177(g) of the Code.

16 ORDER

17 I

18 No discipline shall be imposed on the licenses and
19 licensing rights of Respondents TIERRA CAPITAL CORP. and GLYNN
20 DAVID SHAW. However, pursuant to Section 10148 of the Business
21 and Professions Code, Respondents TIERRA CAPITAL CORP. and GLYNN
22 DAVID SHAW shall pay the Commissioner's reasonable cost for: a)
23 the audit which led to this finding of violation and, b) a
24 subsequent audit to determine if Respondent TIERRA CAPITAL CORP.
25 has corrected the trust fund violation(s) found in paragraph I(a)
26 of the Determination of Issues. In calculating the amount of the
27 Commissioner's reasonable cost, the Commissioner may use the

1 estimated average hourly salary for all persons performing audits
2 of real estate brokers, and shall include an allocation for
3 travel costs, including mileage, time to and from the auditor's
4 place of work and per diem. Respondents TIERRA CAPITAL CORP. and
5 GLYNN DAVID SHAW, shall be jointly and severally liable for
6 payment of the entire amount of the cost of said audits and
7 Respondents shall pay such cost within 60 days of receiving an
8 invoice from the Commissioner detailing the activities performed
9 during the audit and the amount of time spent performing those
10 activities. The Commissioner may suspend the real estate licenses
11 of Respondents TIERRA CAPITAL CORP. and GLYNN DAVID SHAW pending
12 a hearing held in accordance with Section 11500, et seq., of the
13 Government Code, if payment is not timely made as provided for
14 herein, or as provided for in a subsequent agreement between the
15 Respondents and the Commissioner. The suspension shall remain in
16 effect until payment is made in full or until Respondents TIERRA
17 CAPITAL CORP. and GLYNN DAVID SHAW enter into an agreement
18 satisfactory to the Commissioner to provide for payment, or until
19 a decision providing otherwise is adopted following a hearing
20 held pursuant to this condition.

21
22 2/18/2000

23 DATED

24
25
26
27

DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

26 I have read the Stipulation and Agreement, have
27 discussed it with my counsel, if any, and its terms are

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

10
11 2/18/00
12 DATED

13
14 Glynn D. Shaw Jr
15 GLYNN DAVID SHAW
16 Respondent

17
18 2/18/00
19 DATED

20
21 Tierra Capital Corp.
22 TIERRA CAPITAL CORP.
23 Respondent

24
25 I have reviewed the Stipulation and Agreement in
26 Settlement as to form and content and have advised my clients
27 accordingly.

28
29 2/18/00
30 DATED

31
32 Rickard L. Borg
33 RICKARD L. BORG
34 Attorney for Respondents

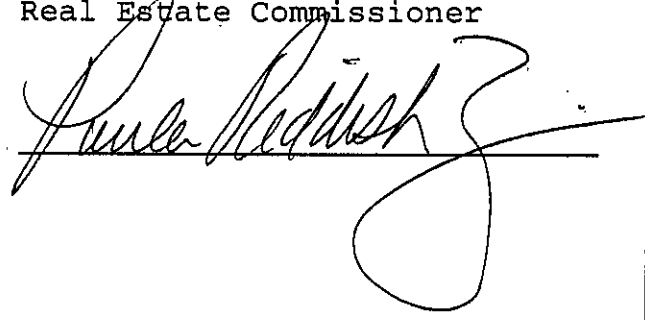
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* * *

The foregoing Stipulation and Agreement for
Settlement is hereby adopted by the Real Estate Commissioner as
her Decision and Order and shall become effective at 12 o'clock
noon on April 19, 2000.

IT IS SO ORDERED March 1, 2000.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 26 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GLYNN DAVID SHAW, JR. and
TIERRA CAPITAL CORP.

Respondent

Case No. H-2534 SD

OAH No. L-1999110350

By Shelly Ely

SECOND CONTINUED

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, 1350 Front Street, Room 6022

San Diego, California 92101

on TUESDAY--FEBRUARY 22, 2000, 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: January 26, 2000

By

David B. Seals
DAVID B. SEALS

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 15 1999

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GLYNN DAVID SHAW, JR. and
TIERRA CAPITAL CORP.

Case No. H-2534 SD

OAH No. L-1999110350

By Shelly Ely

Respondent

FIRST CONTINUED
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, 1350 Front Street, Room 6022,

San Diego, California 92101

on TUESDAY--JANUARY 25, 2000, 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.

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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: December 15, 1999

By

DAVID B. SEALS

Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 01 1999

DEPARTMENT OF REAL ESTATE

By Shelly E. Seal

In the Matter of the Accusation of

GLYNN DAVID SHAW, JR., and
TIERRA CAPITAL CORP.

Case No. H-2534 SD

OAH No. L-1999110350

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, 1350 Front Street, Room 6022,

San Diego, California 92101

on TUESDAY--JANUARY 4, 2000, 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: December 1, 1999

By David B. Seals
DAVID B. SEALS 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)

FILED
OCT 22 1999

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)
12 GLYNN DAVID SHAW, JR. and,)
13 TIERRA CAPITAL CORP.)
14 Respondents.)

NO. H- 2534 SD

ACCUSATION

15
16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against GLYNN DAVID SHAW, JR. (hereinafter "Respondent SHAW") and
19 TIERRA CAPITAL CORP. (hereinafter "Respondent TIERRA") is
20 informed and alleges as follows:

21 I

22 The Complainant, J. Chris Graves, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

25 II

26 Respondent TIERRA is presently licensed and/or has
27 license rights under the Real Estate Law, Part 1 of Division 4 of

1 the California Business and Professions Code (hereinafter
2 "Code"), as a corporate real estate broker with Respondent SHAW
3 as its designated officer.

4 III

5 Respondent SHAW is presently licensed and/or has
6 license rights under the Real Estate Law, Part 1 of Division 4 of
7 the Code, as a real estate broker and as the designated officer
8 of Respondent TIERRA.

9 IV

10 At all times mentioned herein, as the designated
11 officer of Respondent TIERRA, Respondent SHAW was responsible for
12 the supervision and control of the activities conducted on behalf
13 of Respondent TIERRA by its officers and employees as necessary
14 to secure full compliance with the provisions of the Real Estate
15 Law.

16 V

17 Whenever reference is made in an allegation in this
18 Accusation to an act or omission of Respondent TIERRA, such
19 allegation shall be deemed to mean that the officers, directors,
20 employees, agents and real estate licensees employed by or
21 associated with Respondent TIERRA committed such act or omissions
22 while engaged in furtherance of the business or operation of
23 Respondent TIERRA and while acting within the course and scope of
24 their corporate authority and employment.

25 VI

26 That at all times herein mentioned, Respondent TIERRA
27 and Respondent SHAW, and both of them, engaged in the business

1 of, acted in the capacity of, advertised, or assumed to act as
2 real estate brokers in the State of California within the meaning
3 of Section 10131 of the Code for or in expectation of
4 compensation.

5 VII

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

11 VIII

12 Respondent TIERRA failed to maintain trust account
13 records in compliance with Section 2831, Title 10, California
14 Code of Regulations (hereinafter the "Regulations") by failing to
15 maintain the dates of receipts and accurate dates of deposit for
16 the control record.

17 IX

18 Respondent TIERRA failed to maintain a monthly
19 reconciliation of the control records with the separate records
20 for the trust account, in violation of Section 2831.2 of the
21 Regulations.

22 X

23 Respondent TIERRA's bank account at City National Bank,
24 5650 El Camino Real, Suite 130, Carlsbad, CA 92008,
25 Acct.#220001326, into which trust funds were deposited, was not
26 in the broker's name, as trustee, in violation of Section 2832 of
27 the Regulations.

1 XI

2 Respondent SHAW used the names Tierra Capital and
3 Tierra Capital Corp. without first obtaining a license in either
4 name from the Department in violation of Section 2731 of the
5 Regulations.

6 XII

7 Respondent TIERRA failed to comply with Section 10240
8 of the Code in conjunction with Section 10236.4 of the Code in
9 negotiating loans secured directly or collaterally by a lien on
10 real property.

11 XIII

12 The acts and/or omissions of Respondents described
13 above are grounds for the revocation or suspension of
14 Respondents' licenses under the following sections of the
15 Business and Professions Code and the Regulations:

- 16 (a) As to Respondents TIERRA and SHAW, and each of them
17 under Section 10177(d) in conjunction with Sections
18 10236.4 and 10240 of the Code, and Sections 2731, 2831,
19 2831.2, and 2832 of the Regulations; and
20 (b) As to Respondent SHAW only, under Section 10177(g)
21 and/or 10177(h) of the Code.

22 WHEREFORE, Complainant prays that a hearing be
23 conducted on the allegations of this Accusation and that upon
24 proof thereof, a decision be rendered imposing disciplinary
25 action against all licenses and license rights of Respondents
26 under the Real Estate Law (Part 1 of Division 4 of the Business
27 and Professions Code), and for such other and further relief as

1 may be proper under other provisions of law, including the
2 imposition of a fine of up to \$10,000.00 pursuant to the
3 provisions of Section 10139.5 of the Business and Professions
4 Code.

J. Chris Graves

J. CHRIS GRAVES
Deputy Real Estate Commissioner

8 Dated at San Diego, California,
9 this 6th day of October, 1999.