

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0425

FILED
APR 21 2000

5 DEPARTMENT OF REAL ESTATE
6
7

8 By Kathleen Contreras

9
10 BEFORE THE
11
12 DEPARTMENT OF REAL ESTATE
13
14 STATE OF CALIFORNIA

15 * * *

16 In the Matter of the Accusation of) NO. H-3487 SAC
17 CENTURY 21 EXCHANGE) STIPULATION AND AGREEMENT
18 REALTORS, INC., and)
19 ROBERT CLYDE BASSO,)
20)
21)
22 Respondents.)
23 _____)
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28 It is hereby stipulated by and between CENTURY 21
29 EXCHANGE REALTORS, INC. and ROBERT CLYDE BASSO (Respondents),
30 and the Complainant, acting by and through Deidre L. Johnson,
31 Counsel for the Department of Real Estate, as follows for the
32 purpose of settling and disposing of the Accusation filed on
33 January 6, 2000:

34 1. All issues which were to be contested and all
35 evidence which was to be presented by Complainant and Respondents
36 at a formal hearing on the Accusation, which hearing was to be
37 held in accordance with the provisions of the Administrative
38



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

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 January 19, 2000, 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 Notice of Defense they will
14 each thereby waive the 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. Respondents, pursuant to the limitations set forth
22 below, hereby admit that the factual allegations set forth in
23 Paragraphs I through V of the Accusation are true and correct and
24 the Real Estate Commissioner shall not be required to provide
25 further evidence of such allegations.

26 5. Without admitting the truth of the allegations
27 contained in the remainder of the Accusation, Respondents

1 stipulate that they will not interpose a defense thereto. This
2 Stipulation is based on the factual allegations contained in the
3 Accusation. In the interests of expedience and economy,
4 Respondents choose not to contest these allegations, but to
5 remain silent, and understand that, as a result thereof, these
6 factual allegations, without being admitted or denied, will serve
7 as a basis for the disciplinary action stipulated to herein. The
8 Real Estate Commissioner shall not be required to provide further
9 evidence to prove said factual allegations.

10 6. It is understood by the parties that the Real
11 Estate Commissioner may adopt the Stipulation and Agreement as
12 the decision in this matter thereby imposing the penalties and
13 sanctions on the real estate licenses and license rights of
14 Respondents as set forth in the below "Order". In the event that
15 the Commissioner in her discretion does not adopt the Stipulation
16 and Agreement, it shall be void and of no effect, and Respondents
17 shall retain the right to a hearing and proceeding on the
18 Accusation under all the provisions of the APA and shall not be
19 bound by any admissions or waivers made herein.

20 7. Respondents have received, read and understand the
21 "Notice Concerning Costs of Audit." Respondents understand, by
22 agreeing to this Stipulation and Agreement, and after the
23 findings set forth below in the "Determination of Issues" become
24 final, that the Commissioner may charge Respondents for the costs
25 of the following audits that have been and may be conducted
26 pursuant to Section 10148 of the Business and Professions Code:

27 (a) Audit #SC98-0082 combined with Audit

#SC98-0108, dated July 30, 1999:
Not more than \$5,200.00;

(b) Future follow-up audit:
Not more than \$6,200.00.

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

DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations, admissions and
13 waivers and for the purpose of settlement of the pending
14 Accusation as to Respondents without a hearing, it is stipulated
15 and agreed that the following determination of issues shall be
16 made:

I

18 The acts and/or omissions of Respondent CENTURY 21
19 EXCHANGE REALTORS, INC., as stipulated in Paragraphs 4 and 5
20 above, violate Sections 10145 and 10148 of the California
21 Business and Professions Code (the Code), and Sections 2831,
22 2831.2, 2832, 2832.1, and 2834 of Title 10, California Code of
23 Regulations, and constitute grounds for disciplinary action under
24 the provisions of Sections 10176(e) and 10177(d) of the Code.

III

26 The acts and/or omissions of Respondent ROBERT CLYDE
27 BASSO, as stipulated in Paragraphs 4 and 5 above, constitute

1 grounds for disciplinary action under the provisions of Section
2 10177(h) of the Code.

3 ORDER

4 A. All real estate licenses and license rights of Respondents

5 CENTURY 21 EXCHANGE REALTORS, INC. and ROBERT CLYDE BASSO are
6 revoked.

7 B. A restricted real estate broker corporation license shall be

8 issued to Respondent CENTURY 21 EXCHANGE REALTORS, INC., and
9 a restricted real estate broker license shall be issued to
10 Respondent ROBERT CLYDE BASSO, pursuant to Section 10156.6 of
11 the Code if they each make application therefor and pay to
12 the Department the appropriate fee for said license(s) within
13 ninety (90) days of the effective date of the Decision.

14 C. The restricted license issued to each Respondent shall be

15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following
17 limitations imposed under authority of Section 10156.6 of
18 said Code:

19 1) The restricted license issued to each Respondent may be
20 suspended prior to hearing by order of the Real Estate
21 Commissioner in the event of such Respondent's conviction
22 or plea of nolo contendere to a crime which bears a
23 substantial relationship to such Respondent's fitness or
24 capacity as a real estate licensee.

25 2) The restricted license issued to each Respondent may be
26 suspended prior to hearing by Order of the Real Estate
27 Commissioner on evidence satisfactory to the Commissioner



1 that such Respondent has violated provisions of the
2 California Real Estate Law, the Subdivided Lands Law,
3 Regulations of the Real Estate Commissioner or conditions
4 attaching to the restricted license.

5 3) Each Respondent shall not be eligible to apply for the
6 issuance of an unrestricted real estate license, nor the
7 removal of any of the conditions of the restricted
8 license, until one (1) year has elapsed from the
9 effective date of this Decision.

10 4) Pursuant to Section 10148 of the Business and Professions
11 Code, Respondents shall pay the Commissioner's reasonable
12 costs for the following audits as a result of the trust
13 fund violations found in the Determination of Issues:

14 (a) Audit #SC98-0082 combined with Audit
15 #SC98-0108, dated July 30, 1999:
16 Not more than \$5,200.00;

17 (b) Future follow-up audit:
18 Not more than \$6,200.00.

19 In calculating the amount of the Commissioner's
20 reasonable costs, the Commissioner may use the estimated
21 average hourly salary for all Department Audit Section
22 personnel performing audits of real estate brokers, and
23 shall include an allocation for travel time to and from
24 the auditor's place of work. Respondents, jointly and
25 severally, shall pay such costs within sixty (60) days of
26 receiving an invoice for each audit from the Commissioner
27 detailing the activities performed during the audit and
the amount of time spent performing those activities.

The total costs shall not exceed the amounts set forth above. The Commissioner may suspend the restricted license issued to each Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

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



10
11 DATED: March 28, 2000



DEIDRE L. JOHNSON
Counsel for the Complainant

15 * * *

16 I have read the Stipulation and Agreement, understand

17 that I have the right to consult with counsel, and/or have

18 discussed it with my counsel, and its terms are understood by me

19 and are agreeable and acceptable to me. I understand that I am

20 waiving rights given to me by the California Administrative

21 Procedure Act, and I willingly, intelligently and voluntarily

22 waive those rights, including the right of requiring the

23 Commissioner to prove the allegations in the Accusation at a

24 hearing at which I would have the right to cross-examine

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111

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1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

CENTURY 21 EXCHANGE
REALTORS, INC.
Respondent

3/28/03
PATER

DATED

By:

ROBERT CLYDE BASSO
President

3/28/w

DATED

ROBERT CLYDE BASSO
Respondent

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DECISION AND ORDER

The foregoing Stipulation and Agreement is hereby

adopted as my Decision and Order and shall become effective at 12 o'clock noon on May 11, 2000.

IT IS SO ORDERED.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

FILED
FEB 29 2000

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *Kathleen C. Contreras*

In the Matter of the Accusation of

CENTURY 21 EXCHANGE
REALTORS, INC., AND
ROBERT CLYDE BASSO,

}

Case No. H-3487 SAC

OAH No. N-2000020345

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 March 31, 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: February 29, 2000

By

Deidre L. Johnson
DEIDRE L. JOHNSON

Counsel

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789

FILED
JAN 06 2000

DEPARTMENT OF REAL ESTATE

By Jean Penno

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

11 * * *

12 In the Matter of the Accusation of)
13 CENTURY 21 EXCHANGE) NO. H-3487 SAC
14 REALTORS, INC., and)
15 ROBERT CLYDE BASSO,) ACCUSATION
16 Respondents.)
17)
18)

17 The Complainant, Charles W. Koenig, a Deputy Real
18 Estate Commissioner of the State of California, for Causes of
19 Accusation against CENTURY 21 EXCHANGE REALTORS, INC., and
20 ROBERT CLYDE BASSO, is informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22 I

24 Respondents CENTURY 21 EXCHANGE REALTORS, INC., and
25 ROBERT CLYDE BASSO are presently licensed and/or have license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27 California Business and Professions Code (hereafter the Code).

11

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

三

At all times herein mentioned, Respondent CENTURY 21 EXCHANGE REALTORS, INC. (hereafter CEXR) was and is licensed by the State of California Department of Real Estate (hereafter Department) as a real estate broker corporation.

TV

At all times herein mentioned, Respondent ROBERT CLYDE BASSO (hereafter BASSO) was and is licensed by the Department as a real estate broker and as the designated broker officer of Respondent CEXR.

v

At least within the last three years, Respondents engaged in activities on behalf of others for which a real estate license is required, for or in expectation of compensation, including but not limited to the following:

(a) Under Section 10131(a) of the Code, sold or offered to sell, bought or offered to buy, solicited prospective sellers or purchasers of, and/or negotiated the purchase, sale or exchange of real property (hereafter resale activities); and,

(b) Under Section 10131(b) of the Code, leased or rented, offered to lease or rent, solicited prospective tenants, collected rents on, and/or managed certain real properties in California (hereafter property management activities).

FIRST CAUSE OF ACTION

VI

9 Beginning in April of 1999, the Department conducted an
10 audit of the above business activities of Respondents for the
11 time period of January 1, 1998 through March 31, 1999 (hereafter
12 the audit period). During the course of the activities described
13 in Paragraph V above, Respondents received and disbursed funds in
14 trust on behalf of others.

VII

16 Within the last three years, Respondent CEXR deposited
17 the trust funds into at least five bank accounts, including but
18 not limited to accounts with the following account titles,
19 numbers, and uses:

- (a) Bank Account #1: "Exchange Realtors Management Investors Account," a checking account at Union Safe Deposit Bank, Stockton, California, with account number 40-49892002, used for property management activities;
- (b) Bank Account #2: "The Robert Basso Co. dba Century 21 Investor Account," a checking account at Delta National Bank, Stockton, California, with

account number 25200068, used for property management activities;

- (c) Trust Account #1: "Exchange Realty Trust Account," a trust account at Union Safe Deposit Bank, Stockton, California, with account number 10-21671206, used for resale activities;
- (d) Trust Account #2: "The Robert Basso Co. dba Century 21 Trust Account," a trust account at Delta National Bank, Stockton, California, with account number 25200068, used for resale activities; and,
- (e) Business Account: "Xchange Account," a checking account at Union Safe Deposit Bank, Stockton, California, with account number 10-44820606, used for general business purposes.

VIII

17 In connection with the collection and disbursement of
18 trust funds, Respondent CEXR failed to deposit and maintain the
19 trust funds in a trust account or neutral escrow depository, or
20 to deliver them into the hands of the owners of the funds, as
21 required by Section 10145 of the Code, in such a manner that as
22 of March 31, 1999, there was a total trust fund shortage in the
23 approximate sum of at least \$19,682.35 as to Bank Accounts #1
24 and #2.

IX

26 In connection with the audit, Respondent CEXR was
27 requested to produce specified documents and records executed

1 or obtained by the company in connection with transactions
2 for which a real estate license is required for the audit
3 period, including but not limited to all records of receipts
4 and disbursements of trust funds for all trust fund accounts
5 used in connection with Respondent CEXR's brokerage
6 activities.

7 X

8 Beginning in or about April of 1999, and continuing
9 to the present, Respondent CEXR has failed to retain and make
10 available for examination and inspection by a designated
11 representative of the Commissioner of the Department the
12 records requested and described in Paragraph IX above. As a
13 result, the Department was unable to determine the cause(s) of
14 most of trust shortage alleged above.

15 XI

16 In connection with the receipt and disbursement of
17 trust funds as above alleged, Respondent CEXR:

18 (a) Failed to deposit trust funds into one or more
19 trust accounts in the name of Respondent CEXR as
20 trustee at a bank or other financial institution,
21 in conformance with Section 2832 of Title 10,
22 California Code of Regulations (hereafter the
23 Regulations);

24 (b) Failed to maintain a written control record of
25 all trust funds received and disbursed for each
26 account containing all information required by
27 Section 2831 of the Regulations, including but

not limited to recordation of all deposits and disbursements;

- (c) Failed to reconcile the balance of separate beneficiary or transaction records with the control records of trust funds received and disbursed for Bank Accounts #1 and #2, and Trust Accounts #1 and #2, at least once a month, and/or failed to maintain a record of such reconciliations as to each account as required by Section 2831.2 of the Regulations; and,
- (d) Failed to obtain the prior written consent of the principals for the reduction of the aggregate balance of trust funds in the Trust Account 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.

XII

19 Within the last three years, Respondent CEXR authorized
20 or permitted withdrawals to be made from Bank Accounts #1 and #2,
21 and Trust Accounts #1 and #2 on the signature of Marie Basso, an
22 employee, when she was not licensed by the Department as a real
23 estate broker or a real estate salesperson, and not duly bonded
24 as an employee of Respondents with the requisite fidelity bond
25 coverage to conduct such trust account activities, pursuant to
26 Section 2834 of Title 10, California Code of Regulations
27 (hereafter the Regulations).

XIII

2 On or about December 30, 1998, CEXR transferred
3 \$19,292.99 in trust funds from Bank Account #1 into the Business
4 Account. On or about January 11, 1999, CEXR transferred
5 \$6,369.99 in trust funds from Bank Account #1 into the Business
6 Account. On both occasions, Respondent CEXR commingled the trust
7 funds with the business and/or personal funds of Respondents.

XIV

9 The acts and/or omissions of Respondent CEXR as alleged
10 above constitute grounds for disciplinary action under the
11 following provisions:

12 (a) As to Paragraphs VII and XI(a), under Section
13 10145 of the Code and Section 2832 of the
14 Regulations, in conjunction with Section 10177(d)
15 of the Code;

16 (b) As to Paragraph VIII, under Section 10145 of the
17 Code in conjunction with Section 10177(d) of the
18 Code;

19 (c) As to Paragraphs IX and X, under Section 10148 of
20 the Code in conjunction with Section 10177(d) of
21 the Code;

22 (d) As to Paragraph XI(b), under Section 2831 of the
23 Regulations in conjunction with Section 10177(d)
24 of the Code;

25 (e) As to Paragraph XI(c), under Section 2831.2 of the
26 Regulations in conjunction with Section 10177(d)
27 of the Code;

1 (f) As to Paragraph XI(d), under Section 2832.1 of the
2 Regulations in conjunction with Section 10177(d)
3 of the Code;

4 (g) As to Paragraph XIII, under Section 2834 of the
5 Regulations in conjunction with section 10177(d)
6 of the Code; and,

7 (h) As to Paragraph XIII, under Section 10176(e) of
8 the Code.

9
10 SECOND CAUSE OF ACTION

11 XV

12 Within the last three years, Respondent BASSO failed
13 to exercise reasonable supervision over the activities of CEXR
14 for which a real estate license is required. In particular,
15 BASSO permitted, ratified and/or caused the conduct described
16 above to occur and/or failed to take reasonable steps,
17 including but not limited to the establishment, maintenance and
18 review of trust books and records, and the implementation of
19 policies, rules, procedures, and systems regarding the handling
20 of trust funds, and to review, oversee, inspect and manage the
21 trust fund records to ensure compliance by the company with the
22 Real Estate Law.

23 XVI

24 The acts and/or omissions of Respondent BASSO alleged
25 in above constitute cause for disciplinary action pursuant to
26 Section 10177(h) of the Code.

27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof a decision be rendered imposing disciplinary action
4 against all licenses and license rights of Respondents under the
5 Real Estate Law (Part 1 of Division 4 of the Business and
6 Professions Code), and for such other and further relief as may
7 be proper under other provisions of law.

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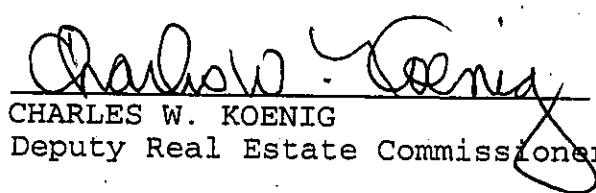
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CHARLES W. KOENIG

Deputy Real Estate Commissioner

Dated at Sacramento, California,

this 5th day of January, 2000