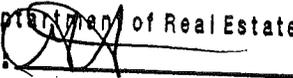


FILED

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Department of Real Estate
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6

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10	In the Matter of the Amended Accusation of)	
11)	NO. H-4105 SD
12	THE CHURCHILL REAL ESTATE GROUP, INC.,)	
13	a California Corporation, and)	FIRST AMENDED
14	KEVIN CHARLES CHURCHILL,)	ACCUSATION
)	
	Respondents.)	

15
16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California, for Amended Accusation against Respondent THE CHURCHILL
18 REAL ESTATE GROUP, INC., a California Corporation, and against Respondent KEVIN
19 CHARLES CHURCHILL, is informed and alleges as follows:

20 1

21 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
22 of the State of California, makes this Amended Accusation against Respondent in her official
23 capacity.

24 2

25 Respondents THE CHURCHILL REAL ESTATE GROUP, INC., and KEVIN
26 CHARLES CHURCHILL are presently licensed and/or have license rights under the Real Estate
27

1 Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "the
2 Code").

3 3

4 At all times herein mentioned, Respondent THE CHURCHILL REAL ESTATE
5 GROUP, INC., (hereinafter "Respondent CORPORATION") was and is licensed by the
6 Department of Real Estate (hereinafter "the Department") as a corporate real estate broker.

7 4

8 At all times herein mentioned, Respondent KEVIN CHARLES CHURCHILL
9 (hereinafter "Respondent CHURCHILL") was and is licensed by the Department as a real estate
10 broker.

11 5

12 At all times herein mentioned, Respondent CHURCHILL was licensed by the
13 Department as the designated broker/officer of Respondent CORPORATION. As said
14 designated Broker/officer, Respondent CHURCHILL was at all times mentioned herein
15 responsible pursuant to Sections 10159.2 and 10177(h) of the Code for the supervision of the
16 activities of the officers, agents, and employees of, and of the real estate licensees employed by,
17 Respondent CORPORATION and of the activities of said corporation for which a real estate
18 license is required.

19 6

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

26 ///

27 ///

1
2 At all times herein mentioned, Respondent CHURCHILL is and was the chief
3 executive officer, agent for service of process, and principal stockholder of Respondent
4 CORPORATION, and, therefore, Respondent CORPORATION was and is the alter ego of
5 Respondent CHURCHILL, and whenever a reference is made to an act, omission or
6 representation of Respondent CORPORATION, such allegation shall be deemed to mean that
7 Respondent CHURCHILL was so acting, failing to act, and/or speaking.

8
9 Within the three-year period prior to the filing of this Amended Accusation and
10 at all times herein mentioned, Respondents engaged in the business of, acted in the capacity of,
11 advertised, or assumed to act as a real estate broker within the State of California within the
12 meaning of Section 10131(a) of the Code, including, on behalf of others, for or in expectation of
13 compensation, Respondents sold or offered to sell, bought or offered to buy, solicited
14 prospective sellers or purchases of, solicited or obtained listings of, and/or negotiated the
15 purchase or sale of real property.

16 FIRST CAUSE OF ACTION

17
18 There is hereby incorporated in this First, separate and distinct, Cause of Action,
19 all of the allegations contained in Paragraphs 1 through 8, inclusive, of the Amended Accusation
20 with the same force and effect as if herein fully set forth.

21
22 Within the three-year period prior to the filing of this Amended Accusation, on
23 or about May 7, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
24 course and scope of the licensed activities set forth in Paragraph 8, above, solicited and induced
25 Sean P. and Susan P. (hereinafter "Sean & Susan") to submit an offer to purchase real property
26 identified as 2435 Frankfort Street, San Diego, California (hereinafter "the Frankfort property")
27 and to submit an earnest money deposit of \$10,000.00, by representing to Sean & Susan that

1 their obligation to purchase the Frankfort property would be made contingent upon the sale of
2 Sean & Susan' real property residence identified as 5328 West Falls View Drive in San Diego,
3 California (hereinafter "the West Falls property"). On or about May 9, 2007, after counter-
4 offer, the sellers of the Frankfort property, John and Laura P. (hereinafter "Sellers John and
5 Laura") accepted Sean & Susan' offer to purchase the Frankfort property with a signed written
6 "Contingency for Sale or Purchase of Other Property" rendering purchase of the Frankfort
7 property contingent upon sale of Sean & Susan's West Falls property.

8 11

9 Within the three-year period prior to the filing of this Amended Accusation, on
10 or about May 9, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
11 course and scope of the licensed activities set forth in Paragraph 8, above, solicited Sean &
12 Susan to list their West Falls property for sale and negotiated with Sean & Susan for an
13 exclusive authorization to sell Sean & Susan's West Falls property.

14 12

15 Within the three-year period prior to the filing of this Amended Accusation, on
16 or about June 25, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
17 course and scope of the licensed activities set forth in Paragraph 8, above, solicited for and
18 obtained an offer to purchase the West Falls property from Keith H. (hereinafter "Buyer Keith")
19 and submitted said offer to Sean & Susan. Buyer Keith's obligation to purchase the West Falls
20 property was contingent upon Buyer Keith obtaining approval for a loan of \$460,000.00. On or
21 about June 25, 2007, Sean & Susan accepted Buyer Keith's offer to purchase the West Falls
22 property.

23 13.

24 Within the three-year period prior to the filing of this Amended Accusation, on
25 or about July 8, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
26 course and scope of the licensed activities set forth in Paragraph 8, above, presented to, and
27 induced Sean & Susan to accept, an "Addendum" to the purchase agreement for the Frankfort

1 property, which reduced the purchase price, increased the earnest money deposit from
2 \$10,000.00 to \$25,000.00, and required Sean & Susan to remove all contingencies by 4:00 PM
3 on July 13, 2007. In so doing, Respondents induced Sean & Susan to pay an additional
4 \$15,000.00 for the earnest money deposit.

5 14

6 Within the three-year period prior to the filing of this Amended Accusation, on
7 or about July 13, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
8 course and scope of the licensed activities set forth in Paragraph 8, above, induced Sean &
9 Susan to sign a written Contingency Removal for their purchase of the Frankfort property by
10 representing to Sean & Susan that Respondents would not submit the Contingency Removal to
11 Sellers John and Laura prior to Respondents' receipt of Buyer Keith's Contingency Removal
12 confirming that Buyer Keith had obtained loan approval for the purchase of the West Falls
13 property.

14 15

15 Within the three-year period prior to the filing of this Amended Accusation, on
16 or about July 15, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
17 course and scope of the licensed activities set forth in Paragraph 8, above, submitted Sean &
18 Susan's signed, written Contingency Removal to Sellers John and Laura.

19 16

20 In or about August 2007, the escrow for the purchase of the West Falls property
21 is canceled due to the inability of Buyer Keith to obtain a loan; the escrow for the purchase of
22 the Frankfort property is canceled; and, Sean & Susan forfeit their \$25,000.00 earnest money
23 deposit for the purchase of the Frankfort property.

24 17

25 The representations described in Paragraphs 10 and 14, above, were false and
26 misleading and were known by Respondent CORPORATION and Respondent CHURCHILL to
27 be false and misleading when made or were made by such Respondents with no reasonable

1 grounds for believing said representations to be true. In truth and in fact: Respondents would
2 not and did not protect Sean & Susan' interests by making their purchase of the Frankfort
3 property contingent upon the sale of their West Falls property; Respondents would and did
4 submit Sean & Susan' Contingency Removal for the Frankfort property to Sellers John and
5 Laura without any confirmation that Buyer Keith's loan contingency had been fulfilled;
6 Respondents would and did submit Sean & Susan's Contingency Removal for the Frankfort
7 property to Sellers John and Laura without receipt of a Contingency Removal for the West Falls
8 property from Buyer Keith; Respondents knew before submitting Sean & Susan's Contingency
9 Removal to Sellers John and Laura that Buyer Keith had not been approved for a loan; and,
10 during the course of the transaction for the purchase of the West Falls property, Buyer Keith had
11 informed Respondents that he was having difficulty finding a loan.

12 18

13 The acts and omissions of Respondent CORPORATION and Respondent
14 CHURCHILL described in Paragraphs 14 and 15, above, constitute misrepresentation, fraud,
15 deceit, and dishonest dealing.

16 19

17 The facts alleged in Paragraphs 10 through 18, inclusive, above, are grounds for
18 the suspension or revocation of the licenses and licensing rights of Respondent
19 CORPORATION and Respondent CHURCHILL under the following provisions:

- 20 (a) Under Sections 10176(a) of the Code (making a substantial
21 misrepresentation);
22 (b) Under Section 10176(b) of the Code (making any false promises of a
23 character likely to influence, persuade or induce);
24 (c) Under Section 10176(i) of the Code (any other conduct, whether of the
25 same or a different character than specified in this section, which constitutes
26 fraud or dishonest dealing);
27 (d) Under Section 10177(g) of the Code (demonstrated negligence or

1 incompetence in performing an act for which he or she is required to hold a
2 license); and,

3 (e) Under Section 10177(j) of the Code (any other conduct, whether of the
4 same or a different character than specified in this section, which constitutes
5 fraud or dishonest dealing).

6 SECOND CAUSE OF ACTION

7 20

8 There is hereby incorporated in this Second, separate and distinct, Cause of
9 Action, all of the allegations contained in Paragraphs 1 through 18, inclusive, of the Amended
10 Accusation with the same force and effect as if herein fully set forth.

11 21

12 Within the three-year period prior to the filing of this Amended Accusation, on
13 or about May 7, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
14 course and scope of the licensed activities set forth in Paragraph 8, above, submitted to Sellers
15 John and Laura the purchase offer for the Frankfort property on behalf of Sean & Susan and
16 prepared and submitted other transactional documents for said purchase, including the
17 "Contingency for Sale or Purchase of Other Property," dated May 8, 2007, using the fictitious
18 business name "The Churchill Group."

19 22

20 Within the three-year period prior to the filing of this Amended Accusation, on
21 or about May 7, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
22 course and scope of the licensed activities set forth in Paragraph 8, submitted to Sean & Susan
23 the purchase offer for the West Falls property on behalf of Buyer Keith and prepared and
24 submitted other transactional documents for said purchase using the fictitious business name
25 "The Churchill Group, Inc."

26 ///

27 ///

1
2 Within the three-year period prior to the filing of this Amended Accusation, on
3 or about July 11, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
4 course and scope of the licensed activities set forth in Paragraph 8, submitted to Sean & Susan a
5 written "Residential Listing Agreement (Exclusive Authorization and Right to Sell)" using the
6 fictitious business name "The Churchill Group."

7
8 At no time did the Department issue a real estate license to either Respondent
9 under the fictitious business names recited in Paragraphs 21, 21, and 23, above.

10
11 Within the three-year period prior to the filing of this Amended Accusation, on
12 or about July 11, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the
13 course and scope of the licensed activities set forth in Paragraph 8, submitted to Sean & Susan a
14 written "Residential Listing Agreement (Exclusive Authorization and Right to Sell)" that
15 claimed and/or demanded a fee, compensation or commission to perform acts requiring a real
16 estate license, which did not contain a definite, specified date of final and complete termination.

17
18 The acts and/or omissions of Respondents as alleged above constitute grounds
19 for the revocation or suspension of Respondent s' licenses and/or license rights under the
20 following provisions:

- 21 (a) As alleged in Paragraphs 21, 22, and 23, above, under Section 2731 of
22 Chapter 6, Title 10, California Code of Regulations (hereinafter "Regulations")
23 (a licensee shall not use a fictitious name in the conduct of any activity requiring
24 a real estate license unless the licensee holds a license bearing that fictitious
25 name) and/or Section 10159.5 of the Code (every person applying for a license
26 desiring to have such license issued under a fictitious name shall file with the
27 application a certified copy of the fictitious business name statement filed with

1 the county clerk) in conjunction with Section 10177(d) of the Code (suspension
2 or revocation of license for willful disregard or violation of the Real Estate Law,
3 Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6,
4 Title 10, California Code of Regulations); and,

5 (b) As alleged in Paragraph 24, above, under Section 10176(f) of the Code
6 (claiming, demanding or receiving fee, compensation or commission under any
7 exclusive agreement authorizing employee to perform acts set forth under section
8 10131 for compensation where agreement does not contain definite, specified
9 date of final and complete termination).

10 THIRD CAUSE OF ACTION

11 27

12 There is hereby incorporated in this Third, separate and distinct, Cause of Action,
13 all of the allegations contained in Paragraphs 1 through 26, inclusive, of the Amended
14 Accusation with the same force and effect as if herein fully set forth.

15 28

16 At all times above mentioned, Respondent CHURCHILL was responsible, as the
17 designated broker officer of Respondent CORPORATION, for the supervision and control of
18 the activities conducted on behalf of the corporation by its officers and employees. Respondent
19 CHURCHILL failed to exercise reasonable supervision and control over the mortgage brokering
20 activities of Respondent CORPORATION and its licensed employees. In particular, Respondent
21 CHURCHILL permitted, ratified, and/or caused the conduct described in the First and Second
22 Causes of Action, above, to occur, and failed to take reasonable steps, including but not limited
23 to the review of transactional documents, preventing misrepresentations, and submission of
24 contingency removal prior to occurrence of reciprocal contingencies, failure to provide listing
25 agreement with definite, specified date of final and complete termination, the supervision of
26 employees, and the implementation of policies, rules, procedures, and systems to ensure the
27 compliance of the corporation and its licensed employees with the Real Estate Law (Business

1 and Professions Code Sections 10000 et seq. and Sections 11000 et seq.) and the
2 Commissioner's Regulations (Chapter 6, Title 10, California Code of Regulations).

3 29

4 The acts and/or omissions of Respondent CHURCHILL as described in
5 Paragraph 28, above, constitute grounds for the suspension or revocation of the licenses and
6 license rights of Respondent CHURCHILL under the provisions Section 10159.2 of the Code
7 (designated broker/officer responsible for supervision and control of activities conducted on
8 behalf of corporation by officers, licensed salespersons and employees to secure compliance
9 with the Real Estate Law) and Section 2725 of Chapter 6, Title 10, California Code of
10 Regulations (broker shall exercise reasonable supervision over: licensed employees; establish
11 policies and procedures for compliance with Real Estate Law; supervise transactions requiring a
12 real estate license; trust fund handling; etc.) all in conjunction with Section 10177(d) of the
13 Code (suspension or revocation of license for willful disregard or violation of the Real Estate
14 Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10,
15 California Code of Regulations) and/or of Section 10177(h) of the Code (suspension or
16 revocation for broker or designated broker/officer who fails to exercise reasonable supervision
17 of licensed employees or licensed activities of broker corporation).

18 COST RECOVERY

19 Section 10106 of the Code provides, in pertinent part, that in any order issued in
20 resolution of a disciplinary proceeding before the department, the commissioner may request the
21 administrative law judge to direct a licensee found to have committed a violation of this part to
22 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

23 ///

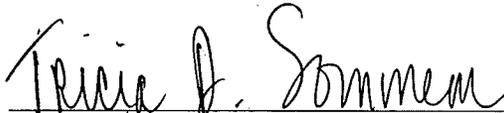
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27

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and
3 license rights of Respondent(s) under the Real Estate Law (Part 1 of Division 4 of the Business
4 and Professions Code), for the cost of investigation and enforcement as permitted by law, and for
5 such other and further relief as may be proper under other provisions of law.

6
7
8 
9 TRICIA D. SOMMERS
 Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 1st day of March, 2012.