

FLAG

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0789
7 or (916) 227-1126 (Direct)

FILED

APR 29 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	
)	NO. H-4105 SD
THE CHURCHILL REAL ESTATE)	
GROUP, INC., a California Corporation, and)	ACCUSATION
KEVIN CHARLES CHURCHILL,)	
)	
Respondents.)	

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

1

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

2

24 Respondents THE CHURCHILL REAL ESTATE GROUP, INC., and KEVIN
25 CHARLES CHURCHILL are presently licensed and/or have license rights under the Real Estate
26 Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter "the
27 Code").

1 3

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

5 4

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

9 5

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

17 6

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

24 7

25 At all times herein mentioned, Respondent CHURCHILL is and was the chief
26 executive officer, agent for service of process, and principal stockholder of Respondent
27 CORPORATION, and, therefore, Respondent CORPORATION was and is the alter ego of

1 Respondent CHURCHILL, and whenever a reference is made to an act, omission or
2 representation of Respondent CORPORATION, such allegation shall be deemed to mean that
3 Respondent CHURCHILL was so acting, failing to act, and/or speaking.

4 8

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

12 FIRST CAUSE OF ACTION

13 9

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

17 10

18 Within the three-year period prior to the filing of this Accusation, on or about
19 May 7, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the course and
20 scope of the licensed activities set forth in Paragraph 8, above, solicited and induced Sean
21 Parker and Susan Thurston-Parker (hereinafter "the Parkers") to submit an offer to purchase real
22 property identified as 2435 Frankfort Street, San Diego, California (hereinafter "the Frankfort
23 property") and to submit an earnest money deposit of \$10,000.00, by representing to the Parkers
24 that their obligation to purchase the Frankfort property would be made contingent upon the sale
25 of the Parkers' real property residence identified as 5328 West Falls View Drive in San Diego,
26 California (hereinafter "the West Falls property"). On or about May 9, 2007, after counter-
27 offer, the sellers of the Frankfort property, John and Laura Peelle (hereinafter "Sellers Peelle")

1 accepted the Parkers' offer to purchase the Frankfort property with a signed written
2 "Contingency for Sale or Purchase of Other Property" rendering purchase of the Frankfort
3 property contingent upon sale of the Parkers' West Falls property.

4 11

5 Within the three-year period prior to the filing of this Accusation, on or about
6 May 9, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the course and
7 scope of the licensed activities set forth in Paragraph 8, above, solicited the Parkers to list their
8 West Falls property for sale and negotiated with the Parkers for an exclusive authorization to
9 sell the Parkers' West Falls property.

10 12

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

19 13.

20 Within the three-year period prior to the filing of this Accusation, on or about
21 July 8, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the course and
22 scope of the licensed activities set forth in Paragraph 8, above, presented to, and induced the
23 Parkers to accept, an "Addendum" to the purchase agreement for the Frankfort property, which
24 reduced the purchase price, increased the earnest money deposit from \$10,000.00 to \$25,000.00,
25 and required the Parkers to remove all contingencies by 4:00 PM on July 13, 2007. In so doing,
26 Respondents induced the Parkers to pay an additional \$15,000.00 for the earnest money deposit.

27 ///

1
2 Within the three-year period prior to the filing of this Accusation, on or about
3 July 13, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the course and
4 scope of the licensed activities set forth in Paragraph 8, above, induced the Parkers to sign a
5 written Contingency Removal for their purchase of the Frankfort property by representing to the
6 Parkers that Respondents would not submit the Contingency Removal to Sellers Peele prior to
7 Respondents' receipt of Buyer Henderson's Contingency Removal confirming that Buyer
8 Henderson had obtained loan approval for the purchase of the West Falls property.

9
10 Within the three-year period prior to the filing of this Accusation, on or about
11 July 15, 2007, Respondent CORPORATION and Respondent CHURCHILL, in the course and
12 scope of the licensed activities set forth in Paragraph 8, above, submitted the Parkers' signed,
13 written Contingency Removal to Sellers Peele.

14
15 In or about August 2007: the escrow for the purchase of the West Falls property
16 is canceled due to the inability of Buyer Henderson to obtain a loan; the escrow for the
17 purchase of the Frankfort property is canceled; and, the Parkers forfeit their \$25,000.00 earnest
18 money deposit for the purchase of the Frankfort property.

19
20 The representations described in Paragraphs 10 and 14, above, were false and
21 misleading and were known by Respondent CORPORATION and Respondent CHURCHILL to
22 be false and misleading when made or were made by such Respondents with no reasonable
23 grounds for believing said representations to be true. In truth and in fact: Respondents would
24 not and did not protect the Parkers' interests by making their purchase of the Frankfort property
25 contingent upon the sale of their West Falls property; Respondents would and did submit the
26 Parkers' Contingency Removal for the Frankfort property to Sellers Peele without any
27 confirmation that Buyer Henderson's loan contingency had been fulfilled; Respondents would

1 and did submit the Parkers' Contingency Removal for the Frankfort property to Sellers Peele
2 without receipt of a Contingency Removal for the West Falls property from Buyer Henderson;
3 Respondents knew before submitting the Parkers' Contingency Removal to Sellers Peele that
4 Buyer Henderson had not been approved for a loan; and, during the course of the transaction for
5 the purchase of the West Falls property, Buyer Henderson had informed Respondents that he
6 was having difficulty finding a loan.

7 18

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

11 18

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

- 15 (a) Under Sections 10176(a) of the Code (making a substantial
16 misrepresentation);
- 17 (b) Under Section 10176(b) of the Code (making any false promises of a
18 character likely to influence, persuade or induce);
- 19 (c) Under Section 10176(i) of the Code (any other conduct, whether of the
20 same or a different character than specified in this section, which
21 constitutes fraud or dishonest dealing);
- 22 (d) Under Section 10177(g) of the Code (demonstrated negligence or
23 incompetence in performing an act for which he or she is required to hold
24 a license); and,
- 25 (e) Under Section 10177(j) of the Code (any other conduct, whether of the
26 same or a different character than specified in this section, which
27 constitutes fraud or dishonest dealing).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

At no time did the Department issue a real estate license to either Respondent under the fictitious business names recited in Paragraphs 20, 21, and 22, above.

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

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

- (a) As alleged in Paragraphs 20, 21, and 22, above, under Section 2731 of Chapter 6, Title 10, California Code of Regulations (hereinafter "Regulations") (a licensee shall not use a fictitious name in the conduct of any activity requiring a real estate license unless the licensee holds a license bearing that fictitious name) and/or Section 10159.5 of the Code (every person applying for a license desiring to have such license issued under a fictitious name shall file with the application a certified copy of the fictitious business name statement filed with the county clerk) in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10, California Code of Regulations); and,

///

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

6 THIRD CAUSE OF ACTION

7 26

8 There is hereby incorporated in this Third, separate and distinct, Cause of Action,
9 all of the allegations contained in Paragraphs 1 through 25, inclusive, of the Accusation with the
10 same force and effect as if herein fully set forth.

11 27

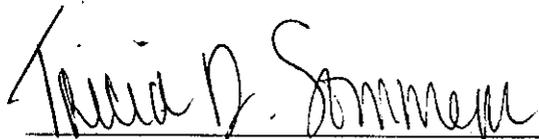
12 At all times above mentioned, Respondent CHURCHILL was responsible, as the
13 designated broker officer of Respondent CORPORATION, for the supervision and control of
14 the activities conducted on behalf of the corporation by its officers and employees. Respondent
15 CHURCHILL failed to exercise reasonable supervision and control over the mortgage brokering
16 activities of Respondent CORPORATION and its licensed employees. In particular, Respondent
17 CHURCHILL permitted, ratified, and/or caused the conduct described in the First and Second
18 Causes of Action, above, to occur, and failed to take reasonable steps, including but not limited
19 to the review of transactional documents, preventing misrepresentations, and submission of
20 contingency removal prior to occurrence of reciprocal contingencies, failure to provide listing
21 agreement with definite, specified date of final and complete termination, the supervision of
22 employees, and the implementation of policies, rules, procedures, and systems to ensure the
23 compliance of the corporation and its licensed employees with the Real Estate Law (Business
24 and Professions Code Sections 10000 et seq. and Sections 11000 et seq.) and the
25 Commissioner's Regulations (Chapter 6, Title 10, California Code of Regulations).

26 ///

27 ///

The acts and/or omissions of Respondent CHURCHILL as described in Paragraph 27, above, constitute grounds for the suspension or revocation of the licenses and license rights of Respondent CHURCHILL under the provisions Section 10159.2 of the Code (designated broker/officer responsible for supervision and control of activities conducted on behalf of corporation by officers, licensed salespersons and employees to secure compliance with the Real Estate Law) and Section 2725 of Chapter 6, Title 10, California Code of Regulations (broker shall exercise reasonable supervision over: licensed employees; establish policies and procedures for compliance with Real Estate Law; supervise transactions requiring a real estate license; trust fund handling; etc.) all in conjunction with Section 10177(d) of the Code (suspension or revocation of license for willful disregard or violation of the Real Estate Law, Sections 10000 et seq. and Sections 11000 et seq. of the Code, or of Chapter 6, Title 10, California Code of Regulations) and/or of Section 10177(h) of the Code (suspension or revocation for broker or designated broker/officer who fails to exercise reasonable supervision of licensed employees or licensed activities of broker corporation).

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 all licenses and license rights of Respondents 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.


 TRICIA D. SOMMERS
 Deputy Real Estate Commissioner

Dated at Sacramento, California,
 this 27th day of April, 2010.