

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
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8 Telephone: (916) 227-0789

FILED
JUN 14 2007

DEPARTMENT OF REAL ESTATE

By *Anne Skawron*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-4608 SAC
13 RED OAK REALTY AND LENDING and) STIPULATION AND AGREEMENT
14 KEVIN L. HAYES,)
15 Respondents.)

16 It is hereby stipulated by and between Respondents
17 RED OAK REALTY AND LENDING, a corporation and KEVIN L. HAYES
18 (hereinafter "Respondents"), individually, and by and through
19 Jon F. Hoffman, counsel for Respondents, and the Complainant,
20 acting by and through Michael B. Rich, Counsel for the
21 Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation filed on December 8,
23 2006, in this matter (hereinafter "the Accusation"):

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

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

8 3. On December 20, 2006, Respondents filed a Notice
9 of Defense pursuant to Section 11505 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw
12 said Notice of Defense. Respondents acknowledges that
13 Respondents understand that by withdrawing said Notice of
14 Defense Respondents will thereby waive Respondents' right to
15 require the Commissioner to prove the allegations in the
16 Accusation at a contested hearing held in accordance with the
17 provisions of the APA and that Respondents will waive other
18 rights afforded to Respondents in connection with the hearing
19 such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations in the
24 Accusation pertaining to Respondents are true and correct and
25 stipulates and agrees that the Real Estate Commissioner shall
26 not be required to provide further evidence of such
27 allegations.

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

12 6. This Stipulation and Agreement shall not
13 constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Department of Real
15 Estate with respect to any matters which were not specifically
16 alleged to be causes for accusation in this proceeding.

17 7. Respondents understand that by agreeing to this
18 Stipulation and Agreement in Settlement, Respondents jointly and
19 severally agree to pay, pursuant to Section 10148 of the Business
20 and Professions Code, the cost of the audit that led to this
21 disciplinary action. The amount of said costs is \$3,937.78.

22 8. Respondents have received, read, and understand
23 the "Notice Concerning Costs of Audits". Respondents further
24 understand that by agreeing to this Stipulation and Agreement in
25 Settlement, the findings set forth below in the DETERMINATION OF
26 ISSUES become final, and that the Commissioner may charge
27 Respondent for the costs of any subsequent audit conducted

1 pursuant to Section 10148 of the Business and Professions Code
2 to determine if the violations have been corrected. The maximum
3 costs of said audit will not exceed \$3,937.78.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions
6 and waivers and solely for the purpose of settlement of the
7 pending Accusation without hearing, it is stipulated and agreed
8 that the following Determination of Issues shall be made:

9 I

10 The acts and omissions of Respondent RED OAK REALTY
11 AND LENDING and Respondent KEVIN L. HAYES described in the First
12 Cause of Action of the Accusation are grounds for the suspension
13 or revocation of the licenses and license rights of Respondent:
14 under the provisions of Sections 2831.1, 2831.2, 2832, and
15 2832.1 of Chapter 6, Title 10, California Code of Regulations
16 (hereinafter "Regulations") and Section 10145 of the Code in
17 conjunction with Section 10177(d) of the Code.

18 II

19 The acts and omissions of Respondent KEVIN L. HAYES
20 described in the Second Cause of Action of the Accusation are
21 grounds for the suspension or revocation of the licenses and
22 license rights of Respondent under Section 10159.2 of the Code
23 in conjunction with Section 10177(d) of the Code and Section
24 10177(h) of the Code.

25 ///

26 //

27 /

1 (d) No final subsequent determination be made, after
2 hearing or upon stipulation, that cause for disciplinary action
3 against Respondent occurred within two (2) years of the
4 effective date of the Decision herein. Should such a
5 determination be made, the Commissioner may, in his or her
6 discretion, vacate and set aside the stay order, and order the
7 execution of all or any part of the stayed suspension, in which
8 event the Respondent shall not be entitled to any repayment nor
9 credit, prorated or otherwise, for money paid to the Department
10 under the terms of this Decision.

11 (e) If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within two (2) years from the
14 effective date of the Decision herein, then the stay hereby
15 granted shall become permanent.

16 2. Thirty (30) days of said sixty (60) day suspension
17 shall be stayed upon condition that:

18 (a) No final subsequent determination be made, after
19 hearing or upon stipulation, that cause for disciplinary action
20 against Respondent occurred within two (2) years of the
21 effective date of the Decision herein.

22 (b) Should such a determination be made, the
23 Commissioner may, in his or her discretion, vacate and set aside
24 the stay order, and order the execution of all or any part of
25 the stayed suspension, in which event the Respondent shall not
26 be entitled to any repayment nor credit, prorated or otherwise,
27 for money paid to the Department under the terms of this

1 Decision.

2 (c) If no order vacating the stay is issued, and if no
3 further cause for disciplinary action against the real estate
4 license of Respondent occurs within two (2) years from the
5 effective date of the Decision, then the stay hereby granted
6 shall become permanent.

7 C. Respondent RED OAK REALTY AND LENDING shall,
8 jointly and severally with Respondent KEVIN L. HAYES, within
9 sixty (60) days of receiving an invoice therefor from the
10 Commissioner, pay the Commissioner's costs in the amount of
11 \$3,937.78 of the audit conducted pursuant to Section 10148 of
12 the Business and Professions Code that resulted in the
13 determination that Respondent committed the violations described
14 in Paragraph I of the Determination of Issues, above. If
15 Respondent fails to pay such cost within the sixty (60) days,
16 the Commissioner may in his or her discretion indefinitely
17 suspend all license and licensing rights of Respondent under the
18 Real Estate Law until payment is made in full or until
19 Respondent enters into an agreement satisfactory to the
20 Commissioner to provide for payment. Upon payment in full, any
21 indefinite suspension provided in this paragraph shall be
22 stayed.

23 D. Respondent RED OAK REALTY AND LENDING shall,
24 jointly and severally with Respondent KEVIN L. HAYES, pay the
25 Commissioner's costs, not to exceed \$3,937.78 of any audit
26 conducted pursuant to Section 10148 of the Business and
27 Professions Code to determine if Respondent has corrected the

1 violations described in Paragraph I of the Determination of
2 Issues, above. In calculating the amount of the Commissioner's
3 reasonable cost, the Commissioner may use the estimated average
4 hourly salary for all persons performing audits of real estate
5 brokers, and shall include an allocation for travel time to and
6 from the auditor's place of work. Respondent shall pay such
7 cost within sixty (60) days of receiving an invoice therefor
8 from the Commissioner detailing the activities performed during
9 the audit and the amount of time spent performing those
10 activities. If Respondent fails to pay such cost within the
11 sixty (60) days, the Commissioner may in his or her discretion
12 indefinitely suspend all license and licensing rights of
13 Respondent under the Real Estate Law until payment is made in
14 full or until Respondent enters into an agreement satisfactory
15 to the Commissioner to provide for payment. Upon payment in
16 full, the indefinite suspension provided in this paragraph shall
17 be stayed.

18 II

19 A. All licenses and licensing rights of Respondent
20 KEVIN L. HAYES under the Real Estate Law are indefinitely
21 suspended until such time as Respondent provides proof
22 satisfactory to the Commissioner that Respondent has cured the
23 trust fund shortages alleged in the Accusation.

24 B. All licenses and licensing rights of Respondent
25 KEVIN L. HAYES under the Real Estate Law are indefinitely
26 suspended until such time as Respondent provides proof
27 satisfactory to the Commissioner that Respondent has, within one

1 hundred twenty (120) days prior to the effective date of the
2 Decision herein or any date after said effective date, taken and
3 successfully completed the trust fund accounting and handling
4 course specified in paragraph (3), subdivision (a) of Section
5 10170.5 of the Business and Professions Code. Upon satisfaction
6 of this condition, the indefinite suspension provided in this
7 paragraph shall be stayed.

8 C. All licenses and licensing rights of Respondent
9 KEVIN L. HAYES under the Real Estate Law are suspended for a
10 period of sixty (60) days from the effective date of the
11 Decision herein; provided, however:

12 1. If Respondent petitions, thirty (30) days of said
13 sixty (60) day suspension (or a portion thereof) shall be stayed
14 upon condition that:

15 (a) Respondent pays a monetary penalty pursuant to
16 Section 10175.2 of the Code at the rate of \$100.00 for each day
17 of the suspension for a total monetary penalty of \$3,000.00.

18 (b) Said payment shall be in the form of a cashier's
19 check or certified check made payable to the Recovery Account of
20 the Real Estate Fund. Said check must be received by the
21 Department prior to the effective date of the Decision in this
22 matter.

23 (c) If Respondent fails to pay the monetary penalty
24 in accordance with the terms and conditions of the Decision, the
25 Commissioner may, without a hearing, vacate and set aside the
26 stay order, and order the immediate execution of all or any part
27 of the stayed suspension.

1 (d) No final subsequent determination be made, after
2 hearing or upon stipulation, that cause for disciplinary action
3 against Respondent occurred within two (2) years of the
4 effective date of the Decision herein. Should such a
5 determination be made, the Commissioner may, in his or her
6 discretion, vacate and set aside the stay order, and order the
7 execution of all or any part of the stayed suspension, in which
8 event the Respondent shall not be entitled to any repayment nor
9 credit, prorated or otherwise, for money paid to the Department
10 under the terms of this Decision.

11 (e) If Respondent pays the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within two (2) years from the
14 effective date of the Decision herein, then the stay hereby
15 granted shall become permanent.

16 2. Thirty (30) days of said sixty (60) day suspension
17 shall be stayed upon condition that:

18 (a) No final subsequent determination be made, after
19 hearing or upon stipulation, that cause for disciplinary action
20 against Respondent occurred within two (2) years of the
21 effective date of the Decision herein.

22 (b) Should such a determination be made, the
23 Commissioner may, in his or her discretion, vacate and set aside
24 the stay order, and order the execution of all or any part of
25 the stayed suspension, in which event the Respondent shall not
26 be entitled to any repayment nor credit, prorated or otherwise,
27 for money paid to the Department under the terms of this

1 Decision.

2 (c) If no order vacating the stay is issued, and if no
3 further cause for disciplinary action against the real estate
4 license of Respondent occurs within two (2) years from the
5 effective date of the Decision, then the stay hereby granted
6 shall become permanent.

7 D. Respondent shall, jointly and severally with
8 Respondent RED OAK REALTY AND LENDING, within sixty (60) days of
9 receiving an invoice therefor from the Commissioner, pay the
10 Commissioner's costs in the amount of \$3,937.78 of the audit
11 conducted pursuant to Section 10148 of the Business and
12 Professions Code that resulted in the determination that
13 Respondent committed the violations described in Paragraph I of
14 the Determination of Issues, above. If Respondent fails to pay
15 such cost within the sixty (60) days, the Commissioner may in
16 his or her discretion indefinitely suspend all license and
17 licensing rights of Respondent under the Real Estate Law until
18 payment is made in full or until Respondent enters into an
19 agreement satisfactory to the Commissioner to provide for
20 payment. Upon payment in full, any indefinite suspension
21 provided in this paragraph shall be stayed.

22 E. Respondent shall, jointly and severally with
23 Respondent RED OAK REALTY AND LENDING, pay the Commissioner's
24 costs, not to exceed \$3,937.78 of any audit conducted pursuant
25 to Section 10148 of the Business and Professions Code to
26 determine if Respondent has corrected the violations described
27 in Paragraph I of the Determination of Issues, above. In

1 calculating the amount of the Commissioner's reasonable cost,
2 the Commissioner may use the estimated average hourly salary for
3 all persons performing audits of real estate brokers, and shall
4 include an allocation for travel time to and from the auditor's
5 place of work. Respondent shall pay such cost within sixty (60)
6 days of receiving an invoice therefor from the Commissioner
7 detailing the activities performed during the audit and the
8 amount of time spent performing those activities. If Respondent
9 fails to pay such cost within the sixty (60) days, the
10 Commissioner may in his or her discretion indefinitely suspend
11 all license and licensing rights of Respondent under the Real
12 Estate Law until payment is made in full or until Respondent
13 enters into an agreement satisfactory to the Commissioner to
14 provide for payment. Upon payment in full, the indefinite
15 suspension provided in this paragraph shall be stayed.

16
17

18 May 3, 2007
19 DATED

Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

* * *

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

1 the Commissioner to prove the allegations in the Accusation at a
2 hearing at which I would have the right to cross-examine
3 witnesses against me and to present evidence in defense and
4 mitigation of the charges.

5 RED OAK REALTY AND LENDING
6 Respondent

7 4/26/07
8 DATED

By: Kevin L. Hayes
9 KEVIN L. HAYES, chief
Executive Officer and Designated
Broker/Officer

10 4/26/07
11 DATED

Kevin L. Hayes
12 KEVIN L. HAYES
Respondent

13 Approved as to form and content by counsel for
14 Respondents.

15
16 4-30-07
17 DATED

Jon P. Hoffman
18 JON P. HOFFMAN
Attorney for Respondents

19 III
20 II
21 I

22
23
24
25
26
27 H-4608 SAC

RED OAK REALTY AND LENDING
KEVIN L. HAYES

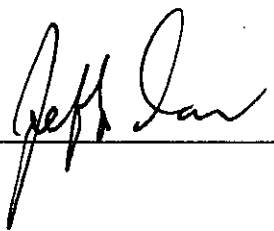
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* * *

The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter as to Respondent RED
OAK REALTY AND LENDING and Respondent KEVIN L. HAYES shall
become effective at 12 o'clock noon on JUL 05 2007

IT IS SO ORDERED G-8, 2007.

JEFF DAVI
Real Estate Commissioner



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
7 Telephone: (916) 227-0789

FILED
DEC 08 2008

DEPARTMENT OF REAL ESTATE

By S. Kelly

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 RED OAK REALTY AND LENDING, and) NO. H-4608 SAC
13 KEVIN L. HAYES,) ACCUSATION
14 _____ Respondents.)

15
16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for Causes of
18 Accusation against RED OAK REALTY AND LENDING, doing business
19 under the fictitious name of RED OAK PROPERTY MANAGEMENT, and
20 against KEVIN L. HAYES, is informed and alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

23 Respondents RED OAK REALTY AND LENDING, (hereinafter
24 referred to as "Respondent RED OAK") and KEVIN L. HAYES
25 (hereinafter referred to as "Respondent HAYES") are presently
26 licensed and/or have license rights under the Real Estate Law,
27 ///

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

3 II

4 The Complainant, CHARLES W. KOENIG, a Deputy Real
5 Estate Commissioner of the State of California, makes this
6 Accusation against Respondent in his official capacity and not
7 otherwise.

8 III

9 At all times herein mentioned, Respondent RED OAK was
10 and is licensed by the Department as a real estate broker
11 corporation acting by and through Respondent HAYES as its
12 designated broker officer.

13 IV

14 At all times herein mentioned, Respondent HAYES was
15 and is licensed by the Department as a real estate broker, and
16 as the designated broker officer of Respondent RED OAK.

17 V

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

26 ///

27 ///

1 VI

2 At all times herein mentioned, Respondents engaged in
3 the business of, acted in the capacity of, advertised, or
4 assumed to act as real estate brokers within the State of
5 California, within the meaning of Section 10131(b) of the Code,
6 including the operation and conduct of a property management
7 business with the public wherein, on behalf of others, for
8 compensation or in expectation of compensation, Respondents
9 leased or rented and offered to lease or rent and placed for
10 rent, and solicited listings of places for rent, and solicited
11 listings of places for rent, and solicited for prospective
12 tenants of real property or improvements thereon, and collected
13 rents from real property or improvements thereon.

14 VII

15 In so acting as a real estate broker as described in
16 Paragraph VI, above, Respondent RED OAK accepted or received
17 funds in trust (hereinafter "trust funds") from or on behalf of
18 owners, tenants and/or others in connection with the property
19 management activities.

20 VIII

21 The aforesaid trust funds accepted or received by
22 Respondent RED OAK were deposited or caused to be deposited by
23 Respondent RED OAK into bank accounts maintained by Respondent
24 RED OAK for the handling of trust funds at Tri Counties Bank,
25 3320 Tully Road, Modesto, California, in Account No. 191030709,
26 entitled "Red Oak Realty And Lending, Red Oak Property
27 Management" (hereinafter "Bank Account #1").

IX

1
2 Within the three year period next preceding to the
3 filing of this Accusation, in connection with the collection and
4 disbursement of trust funds, Respondent RED OAK failed to
5 deposit and maintain the trust funds in a trust account or
6 neutral escrow depository, or to deliver said funds into the
7 hands of the owners of the funds, as required by Section 10145
8 of the Code, in such a manner that as of February 28, 2006,
9 there was a trust fund shortage in the approximate sum of
10 \$8,972.06 in Bank Account #1.

X

11
12 Within the three year period next preceding to the
13 filing of this Accusation, in connection with the collection and
14 disbursement of trust funds, as alleged above, Respondent RED
15 OAK failed to obtain the prior written consents of the
16 principals for the reduction of the aggregate balance of trust
17 funds in Trust Account #1 and Trust Account #2 to an amount less
18 than the existing aggregate trust fund liability to the owners
19 of said funds in conformance with Chapter 6, Title 10,
20 California Code of Regulations, Section 2832.1 (hereinafter
21 "Regulations").

XI

22
23 Within the three year period next preceding the filing
24 of this Accusation, in connection with the receipt and
25 disbursement of trust funds as above alleged, Respondent RED

26 OAK:

27 ///

- 1 (a) Failed to keep an accurate separate record for
2 each beneficiary or transaction, accounting for
3 all funds that have been deposited to the Bank
4 Account #1, containing all of the information
5 required by Section 2831.1 of the Regulations;
- 6 (b) Failed to reconcile the balance of separate
7 beneficiary or transaction records with the
8 control records of trust funds received and
9 disbursed at least once a month, and/or failed
10 to maintain a record of such reconciliations
11 as required by Section 2831.2 of the Regulations
12 for Bank Account #1; and,
- 13 (c) Failed to designate Bank Account #1, as a trust
14 account in the name of the broker as trustee and
15 deposited client trust funds into that account in
16 violation of Section 2832 of the Regulations;

17 XII

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

- 21 (a) As alleged in Paragraph IX, under Section
22 10145 of the Code in conjunction with Section
23 10177(d) of the Code;
- 24 (b) As alleged in Paragraph X, under Section 2832.1
25 of the Regulations in conjunction with Section
26 10177(d) of the Code;

27 ///

- 1 (c) As alleged in Paragraph XI(a), under Section
2 2831.1 of the Regulations in conjunction with
3 Section 10177(d) of the Code;
- 4 (d) As alleged in Paragraph XI(b), under Section
5 2831.2 of the Regulations in conjunction with
6 Section 10177(d) of the Code; and,
- 7 (e) As alleged in Paragraph XI(c), under Section 2832
8 of the Regulations in conjunction with Section
9 10177(d) of the Code.

10 SECOND CAUSE OF ACCUSATION

11 XIII

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

17 XIV

18 At all times above mentioned, Respondent HAYES was
19 responsible, as the designated broker/officer of Respondent RED
20 OAK, for the supervision and control of the activities conducted
21 on behalf of the corporation by its officers and employees.
22 Respondent HAYES failed to exercise reasonable supervision and
23 control over the property management and employment activities
24 of Respondent RED OAK. In particular, Respondent HAYES
25 permitted, ratified and/or caused the conduct described in the
26 First Cause of Accusation above to occur, and failed to take

27 ///

1 reasonable steps, including but not limited to the handling of
2 trust funds, maintaining of trust account records, and the
3 implementation of policies, rules, procedures, and systems to
4 ensure the compliance of Respondent RED OAK with the Real Estate
5 Law.

6 XV

7 The above acts and/or omissions of Respondent HAYES
8 constitute grounds for suspension or revocation of his real
9 estate broker license under the provisions of Section 10177(h)
10 of the Code and/or Section 10159.2(a) of the Code and Section
11 2725 of the Regulations in conjunction with Section 10177(d) of
12 the Code.

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

20
21
22 
23 CHARLES W. KOENIG
24 Deputy Real Estate Commissioner

25 Dated at Sacramento,
26 this 7th day of December, 2006.