

DEPARTMENT OF REAL ESTATE
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FILED
SEP 27 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
HOLT & COMPANY, INC.,)	DRE NO. H-4765 SAC
a Corporation, and)	
DONALD LEE HOLT,)	OAH NO. N-2007060663
)	
Respondents.)	<u>STIPULATION AND AGREEMENT</u>

It is hereby stipulated by and between Respondents HOLT & COMPANY, INC. (herein "H&C"), and DONALD LEE HOLT (herein "HOLT") (herein jointly "Respondents"), individually and jointly by and through C. Breck Jones, attorney of record herein for Respondents, and the Complainant, acting by and through Mary F. Clarke, Counsel for the Department of Real Estate (herein "the Department"), as follows for the purpose of settling and disposing of the Accusation filed on April 24, 2007, in this matter (herein "the Accusation"):

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents

DRE NO. H-4765 SAC

-1-

HOLT & COMPANY, INC., and
DONALD LEE HOLT

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act (APA), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement.

6 2. Respondents have received, read and understand the
7 Statement to Respondent, the Discovery Provisions of the APA, and
8 the Accusation filed by the Department in this proceeding.

9 3. On May 2, 2007, Respondents filed Notices of
10 Defense pursuant to Section 1605 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notices of Defense. Respondents acknowledge that
14 Respondents understand that by withdrawing said Notices of
15 Defense, Respondents will thereby waive Respondents' right to
16 require the Real Estate Commissioner (herein "the Commissioner")
17 to prove the allegations in the Accusation at a contested hearing
18 held in accordance with the provisions of the APA and that
19 Respondents will waive other rights afforded to Respondents in
20 connection with the hearing such as the right to present evidence
21 in defense of the allegations in the Accusation and the right to
22 cross-examine witnesses.

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

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

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

16 7. Respondents understand that by agreeing to this
17 Stipulation and Agreement, Respondents agrees to pay, pursuant to
18 Section 10148 of the California Business and Professions Code,
19 the cost of the audit which resulted in the determination that
20 Respondents committed the trust fund violation(s) found in
21 Paragraph I, below, of the Determination of Issues. The amount
22 of said costs is \$2,438.70.

23 8. Respondents further understand that by agreeing to
24 this Stipulation and Agreement, the findings set forth below in
25 the Determination Of Issues become final, and that the
26 Commissioner may charge said Respondents for the costs of any
27 audit conducted pursuant to Section 10148 of the California

1 Business and Professions Code to determine if the trust fund
2 violation(s) found in Paragraph I, below, of the Determination
3 of Issues have been corrected. The maximum costs of said audit
4 shall not exceed \$2,438.70.

5 DETERMINATION OF ISSUES

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

10 I

11 The acts and omissions of Respondents as described in
12 the Accusation are grounds for the suspension or revocation of
13 the licenses and license rights of Respondents under the
14 following provisions of the California Business and Professions
15 Code (herein "the Code") and/or Chapter 6, Title 10, California
16 Code of Regulations (herein "the Regulations"):

17 (a) as to Paragraph IX and Respondent H&C under
18 Section 10145 of the Code and Section 2832.1 of the Regulations
19 in conjunction with Section 10177(d) of the Code; and

20 (b) as to Paragraph XI and Respondent HOLT under
21 Section 10159.2 of the Code in conjunction with Sections
22 10177(g), 10177(h), and 10177(d) of the Code.

23 ORDER

24 A. All licenses and licensing rights of Respondents
25 under the Real Estate Law are indefinitely suspended until
26 Respondent HOLT submits proof satisfactory to the Commissioner
27 that Respondent HOLT has taken and completed at an accredited

1 institution the continuing education course on trust fund
2 accounting and handling specified in paragraph (3) of subdivision
3 (a) of Section 10170.5 of the Code. Said course must have been
4 completed not earlier than 120 days prior to the effective date
5 of the Decision herein.

6 B. All licenses and licensing rights of Respondents
7 under the Real Estate Law are suspended for a period of five (5)
8 days from the effective date of the Decision herein; provided,
9 however:

10 1. The five (5) day suspension shall be stayed
11 upon condition that:

12 (a) No final subsequent determination be
13 made, after hearing or upon stipulation,
14 that cause for disciplinary action
15 against Respondents occurred within two
16 (2) years of the effective date of the
17 Decision herein.

18 (b) Should such a determination be made, the
19 Commissioner may, in his or her
20 discretion, vacate and set aside the stay
21 order, and order the execution of all or
22 any part of the stayed suspension.

23 (c) If no order vacating the stay is issued,
24 and if no further cause for disciplinary
25 action against the real estate licenses
26 of Respondents occur within two (2) years
27 from the effective date of the Decision,

1 then the stay hereby granted shall become
2 permanent.

3 C. Respondents shall, within 60 days of receiving an
4 invoice therefor from the Commissioner, pay the Commissioner's
5 costs in the amount of \$2,438.70 of the audit conducted pursuant
6 to Section 10148 of the Code that resulted in the determination
7 that Respondents committed the violations described in Paragraph
8 I of the Determination of Issues, above. If Respondents fail to
9 pay such cost within the 60 days, the Commissioner may in his or
10 her discretion indefinitely suspend all licenses and licensing
11 rights of Respondents under the Real Estate Law until payment is
12 made in full or until Respondents enter into an agreement
13 satisfactory to the Commissioner to provide for payment. Upon
14 payment in full, any indefinite suspension provided in this
15 paragraph shall be stayed.

16 D. Respondents shall pay the Commissioner's costs, not
17 to exceed \$2,438.70, of any audit conducted pursuant to Section
18 10148 of the Code to determine if Respondents have corrected the
19 violations described in Paragraph I of the Determination of
20 Issues, above. In calculating the amount of the Commissioner's
21 reasonable cost, the Commissioner may use the estimated average
22 hourly salary for all persons performing audits of real estate
23 brokers, and shall include an allocation for travel time to and
24 from the auditor's place of work. Respondents shall pay such
25 cost within 60 days of receiving an invoice therefor from the
26 Commissioner detailing the activities performed during the audit
27 and the amount of time spent performing those activities. If

1 Respondents fail to pay such cost within the 60 days, the
2 Commissioner may in his or her discretion indefinitely suspend
3 all licenses and licensing rights of Respondents under the Real
4 Estate Law until payment is made in full or until Respondents
5 enter into an agreement satisfactory to the Commissioner to
6 provide for payment. Upon payment in full, the indefinite
7 suspension provided in this paragraph shall be stayed.

8
9 8-13-07
DATED

Mary F. Clarke
MARY F. CLARKE
Counsel for the Complainant

11 * * *

12 I have read the Stipulation and Agreement and discussed
13 it with my attorney and its terms are understood by me and are
14 agreeable and acceptable to me. I understand that I am waiving
15 rights given to me by the California Administrative Procedure Act
16 (including but not limited to Sections 1606, 1608, 1609, and
17 11513 of the Government Code), and I willingly, intelligently,
18 and voluntarily waive those rights, including the right of
19 requiring the Commissioner to prove the allegations in the
20 Accusation at a hearing at which I would have the right to
21 cross-examine witnesses against me and to present evidence in
22 defense and mitigation of the charges.

23 HOLT & COMPANY, INC., Respondent

24 8/20/07
DATED

By:

Donald Lee Holt
DONALD LEE HOLT, Designated Officer

26 8/20/07
DATED

Donald Lee Holt
DONALD LEE HOLT, Respondent

1 * * *

2 I have reviewed the Stipulation and Agreement as to
3 form and content and have advised my clients accordingly.

4 Aug 16, 2007
5 DATED

6 C. Breck Jones
C. BRECK JONES
Attorney for Respondents

7 * * *

8 The foregoing Stipulation and Agreement is hereby
9 adopted by me as my Decision in this matter as to Respondent HOLT
10 & COMPANY, INC., and Respondent DONALD LEE HOLT and shall become
11 effective at 12 o'clock noon on October 17, 2007,
12 2007.

13 IT IS SO ORDERED 9-19, 2007.

14
15 JEFF DAVI
Real Estate Commissioner

16
17 [Signature]
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MARY F. CLARKE, Counsel (SBN 186744)
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APR 24 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
HOLT & COMPANY, INC.,)
a Corporation, and,)
DONALD LEE HOLT,)
Respondents.)

NO. H-4765 SAC

ACCUSATION

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against HOLT & COMPANY, INC., a Corporation (herein "H&C"), and DONALD LEE HOLT (herein "HOLT"), is informed and alleges as follows:

I

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

At all times herein mentioned, Respondents H&C and HOLT (herein "Respondents") were and now are licensed and/or have

1 license rights under the Real Estate Law (Part 1 of Division 4
2 of the Business and Professions Code) (herein "the Code").

3 III

4 At all times herein mentioned H&C was and now is
5 licensed by the Department of Real Estate of the State of
6 California (herein "the Department") as a corporate real estate
7 broker by and through HOLT as designated officer-broker of H&C
8 to qualify said corporation and to act for said corporation as a
9 real estate broker.

10 IV

11 At all times herein mentioned, HOLT was and now is
12 licensed by the Department as a real estate broker, individually
13 and as designated officer-broker of H&C. As said designated
14 officer-broker, HOLT was at all times mentioned herein
15 responsible pursuant to Section 10159.2 of the Code for the
16 supervision of the activities of the officers, agents, real
17 estate licensees and employees of H&C for which a license is
18 required.

19 V

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

1 VI

2 At all times herein mentioned Respondents engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as real estate brokers within the State of California
5 within the meaning of Sections 10131(b) and 10131(d) of the Code,
6 including:

- 7 (a) the operation and conduct of a property management
8 business with the public wherein, on behalf of
9 others, for compensation or in expectation of
10 compensation, Respondent leased or rented and
11 offered to lease or rent, and placed for rent, and
12 solicited listings of places for rent, and
13 solicited for prospective tenants of real property
14 or improvements thereon, and collected rents from
15 real property or improvements thereon; and
16 (b) the operation and conduct of a mortgage loan
17 brokerage with the public wherein, on behalf of
18 others, for compensation or in expectation of
19 compensation, Respondent solicited lenders and
20 borrowers for loans secured directly or
21 collaterally by liens on real property, and
22 wherein Respondent arranged, negotiated,
23 processed, and consummated such loans.

24 VII

25 In so acting as a real estate broker, as described in
26 Paragraph VI above, Respondent accepted or received funds in
27 trust (herein "trust funds") from or on behalf of buyers, owners,

1 tenants, borrowers, lenders and others in connection with the
2 leasing, renting, and collection of rents on real property or
3 improvements thereon, and in connection with the negotiating and
4 arranging of mortgage loans, as alleged herein, and thereafter
5 from time to time made disbursements of said funds.

6 VIII

7 The aforesaid trust funds accepted or received by
8 Respondent were deposited or caused to be deposited by Respondent
9 into one or more bank accounts (herein "trust fund accounts")
10 maintained by Respondent for the handling of trust funds at
11 Sacramento, California, branch of River City Bank, including but
12 not necessarily limited to:

- 13 (a) "Holt & Company, Inc., DBA Holt Financial
14 Services, Client Trust Account", account number
15 211032697 (herein "Trust Account #1"); and
16 (b) "Holt & Company, Inc., DBA Realty Management Co.,
17 Client Trust Account", account number 211056634
18 (herein "Trust Account #2").

19 IX

20 On or about between January 1, 2005, and on or about
21 February 28, 2006, in connection with the collection and
22 disbursement of said trust funds, Respondents caused, suffered
23 or permitted the balance of funds in:

- 24 (a) Trust Account #1 to be reduced to an amount which
25 as of February 28, 2006, was approximately
26 \$1,496.19 less than the aggregate liability of
27 Respondent H&C to all owners of such funds,

1 without the prior written consent of the owners
2 of such funds; and

3 (b) Trust Account #2 to be reduced to an amount
4 which as of February 28, 2006, was approximately
5 \$16,450.99 less than the aggregate liability of
6 Respondent H&C to all owners of such funds,
7 without the prior written consent of the owners
8 of such funds.

9 X

10 On or about between January 1, 2005, and on or about
11 February 28, 2006, in the course of the property management and
12 mortgage loan and trust fund handling activities described in
13 Paragraphs VI and VII above, Respondent H&C violated, and
14 Respondent HOLT willfully caused, suffered and permitted
15 Respondent H&C to violate, Section 2742(c) of Chapter 6, Title
16 10, California Code of Regulations (herein "the Regulations") in
17 that during said period Respondent H&C was not in good legal
18 standing with the Office of the Secretary of State.

19 XI

20 At all times mentioned herein, Respondent HOLT failed
21 to exercise reasonable supervision over the acts of Respondent
22 H&C and its agents and employees in such a manner as to allow the
23 acts and omissions on the part of H&C, described above, to occur.

24 XII

25 The facts alleged above are grounds for the suspension
26 or revocation of the licenses and license rights of Respondent
27 under the following provisions of the Code and/or the Regulations:

- 1 (a) as to Paragraph IX and Respondents H&C and HOLT
2 under Section 10145 of the Code and Section 2832.1
3 of the Regulations in conjunction with Section
4 10177(d) of the Code;
- 5 (b) as to Paragraph X and Respondents H&C and HOLT
6 under Section 10145 of the Code and Section
7 2742(a) of the Regulations in conjunction with
8 Section 10177(d) of the Code;
- 9 (c) as to Paragraph XI and Respondent HOLT under
10 Section 10159.2 of the Code in conjunction with
11 Sections 10177(g), 10177(h), and 10177(d) of the
12 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 licenses 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 applicable provisions of law.

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

26 Dated at Sacramento, California
27 this 26th day of March, 2007.