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1 DEPARTMENT OF REAL ESTATE
185 Berry Street, Room 3400
2 San Francisco, CA 94107
3 Telephone: (415) 904-5917

FILED
OCT 12 1993

DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*
Lynda Montiel

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	
12	JAMES LEE ELLINGWOOD,)	NO. H-6762 SF
13	STEVE BLAIR, and)	<u>STIPULATION AND</u>
14	SHELDON KEITH PERRY,)	<u>AGREEMENT IN</u>
	<u>Respondents.</u>)	<u>SETTLEMENT AND ORDER.</u>

15 It is hereby stipulated by and between JAMES LEE
16 ELLINGWOOD, STEVE BLAIR, and SHELDON KEITH PERRY, and their
17 attorney of record, Phillip M. Adleson, and the Complainant, acting
18 by and through David B. Seals, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing of the
20 Accusation filed on July 31, 1992, in this matter as to all
21 Respondents:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondents
24 JAMES LEE ELLINGWOOD, STEVE BLAIR, and SHELDON KEITH PERRY, at a
25 formal hearing on the Accusation, which hearing was to be held in
26 accordance with the provisions of the Administrative Procedure Act
27 (APA), shall instead and in place thereof be submitted solely on

1 the basis of the provisions of this Stipulation and Agreement in
2 Settlement.

3 2. Respondents JAMES LEE ELLINGWOOD, STEVE BLAIR, and
4 SHELDON KEITH PERRY 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 August 20, 1992, Respondent JAMES LEE ELLINGWOOD
9 filed a Notice of Defense and on September 4, 1992, SHELDON KEITH
10 PERRY filed a Notice of Defense, both pursuant to Section 11505 of
11 the Government Code for the purpose of requesting a hearing on the
12 allegations in the Accusation. Respondents JAMES LEE ELLINGWOOD,
13 STEVE BLAIR, and SHELDON KEITH PERRY hereby freely and voluntarily
14 withdraw all and any such Notices of Defense. Respondents JAMES
15 LEE ELLINGWOOD, STEVE BLAIR, and SHELDON KEITH PERRY acknowledge
16 that they understand that by withdrawing said Notices of Defense
17 they will thereby waive their right to require the Commissioner to
18 prove the allegations in the Accusation at a contested hearing held
19 in accordance with the provisions of the APA and that they will
20 waive other rights afforded to them in connection with the hearing
21 such as the right to present evidence in defense of the allegations
22 in the Accusation and the right to cross-examine witnesses.

23 4. Respondents JAMES LEE ELLINGWOOD, STEVE BLAIR, and
24 SHELDON KEITH PERRY pursuant to the limitations set forth below,
25 hereby admit that the factual allegations or findings of fact as
26 set forth in Paragraphs I through XIII of the Accusation filed in
27 this proceeding are true and correct and the Real Estate

1 Commissioner shall not be required to provide further evidence of
2 such allegations.

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

15 6. The Order or any subsequent Order of the Real Estate
16 Commissioner made pursuant to this Stipulation and Agreement in
17 Settlement shall not constitute an estoppel, merger or bar to any
18 further administrative or civil proceedings by the Department of
19 Real Estate with respect to any matters which were not specifical-
20 ly alleged to be causes for accusation in this proceeding.

21 7. Respondent Blair has received, read and understands
22 the "Notice Concerning Costs of Subsequent Audits". Respondent
23 Blair understands that by agreeing to this Stipulation and
24 Agreement in Settlement, the findings set forth below in the
25 DETERMINATION OF ISSUES become final, and that the Commissioner may
26 charge Respondent Blair for the costs of any audit conducted
27 pursuant to Section 10148 of the Business and Professions Code to

1 determine if the violations have been corrected. The maximum costs
2 of said audit will not exceed \$1,400.00.

3 DETERMINATION OF ISSUES

4 I

5 The facts alleged above are grounds for the suspension or
6 revocation of the licenses and license rights of:

7 (1) Respondent JAMES LEE ELLINGWOOD under Section
8 10177(d) of the Code in conjunction with Section 2831.2, Title 10,
9 California Code of Regulations (Regulations);

10 (2) Respondent STEVE BLAIR under Section 10177(g) and
11 Section 10177(d) of the Code in conjunction with Sections 10145 and
12 10159.5 of the Code and 2731, 2831.1 and 2832.1 of the Regulations;
13 and,

14 (3) Respondent SHELDON KEITH PERRY under Section 10177(j)
15 of the Code.

16 ORDER

17 All licenses and licensing rights of Respondent JAMES LEE
18 ELLINGWOOD, Respondent STEVE BLAIR, and of Respondent SHELDON KEITH
19 PERRY under the Real Estate Law are suspended as to each Respondent
20 for a period of thirty (30) days from the effective date of this
21 Order; provided, however, that:

22 1. Respondent Blair shall pay, pursuant to Section 10148 of the
23 Business and Professions Code, the Commissioner's reasonable
24 cost for an audit to determine if Respondent Blair has
25 corrected the trust fund violations found in paragraph "2" of
26 the Determination of Issues. In calculating the amount of the
27 Commissioner's reasonable costs, the Commissioner may use the

1 estimated average hourly salary for all Department Audit
2 Section personnel performing audits of real estate brokers, and
3 shall include an allocation for travel costs, including
4 mileage, time to and from the auditor's place of work, and per
5 diem. The Commissioner's reasonable costs shall in no event
6 exceed \$1,400.00;

7 (a) Respondent Blair shall pay such cost within 45 days of
8 receipt of an invoice from the Commissioner detailing the
9 activities performed during the audit and the amount of
10 time spent performing those activities;

11 (b) Notwithstanding the provisions of paragraphs "2" and "3"
12 of this Order, if Respondent Blair fails to pay within 45
13 days from receipt of the invoice specified above, the
14 Commissioner's reasonable costs for an audit to determine
15 if Respondent has corrected the violations found in
16 paragraph "2" of the Determinations of Issues, the
17 Commissioner may order the indefinite suspension of
18 Respondent Blair's real estate license and license rights.
19 The suspension shall remain in effect until payment is
20 made in full, or until Respondent Blair enters into an
21 agreement satisfactory to the Commissioner to provide for
22 such payment. The Commissioner may impose further
23 reasonable disciplinary terms and conditions upon
24 Respondent Blair's real estate license and license rights
25 as part of any such agreement.

26 ///

27 ///

- 1 2. As to the thirty (30) day suspension for each Respondent,
2 fifteen (15) days of said suspension shall be stayed for
3 one (1) year upon the following terms and conditions:
- 4 (a) Said Respondent shall obey all laws, rules and
5 regulations governing the rights, duties and
6 responsibilities of a real estate licensee in the
7 State of California; and,
- 8 (b) That no final subsequent determination be made, after
9 hearing or upon stipulation, that cause for disciplinary
10 action occurred within one (1) year from the effective
11 date of this Order. Should such a determination be made,
12 the Commissioner may, in his discretion, vacate and set
13 aside the stay order and reimpose all or a portion of the
14 stayed suspension. Should no such determination be made,
15 the stay imposed herein shall become permanent.
- 16 3. The remaining fifteen (15) days of said 30-day suspension shall
17 be stayed as to each Respondent upon the condition that such
18 Respondent petitions pursuant to Section 10175.2 of the
19 Business and Professions Code and pays a monetary penalty
20 pursuant to Section 10175.2 of the Business and Professions
21 Code at a rate of \$125.00 for each day of the suspension for a
22 total monetary penalty of \$1,875.00:
- 23 (a) Said payment shall be in the form of a cashier's check or
24 certified check made payable to the Recovery Account of
25 the Real Estate Fund. Said check must be delivered to the
26 Department prior to the effective date of the Order in
27 this matter.

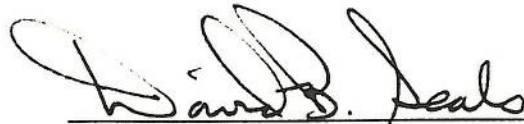
1 (b) No further cause for disciplinary action against the Real
2 Estate licenses of said Respondent occurs within one (1)
3 year from the effective date of the decision in this
4 matter.

5 (c) If any Respondent fails to pay the monetary penalty in
6 accordance with the terms and conditions of the Order, the
7 Commissioner may, without a hearing, order the immediate
8 execution of all or any part of the stayed suspension as
9 to such Respondent in which event such Respondent shall
10 not be entitled to any repayment nor credit, prorated or
11 otherwise, for the money paid to the Department under the
12 terms of this Order.

13 (d) As to each Respondent who pays the monetary penalty and if
14 no further cause for disciplinary action against the real
15 estate licenses of said Respondent occurs within one (1)
16 year from the effective date of the Decision, the stay
17 hereby granted shall become permanent as to that
18 Respondent.

19 9/15/93

20 DATED



20 DAVID B. SEALS, Counsel
21 DEPARTMENT OF REAL ESTATE

21 * * *

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

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

6 Sept 7, 1993
7 DATED

James Lee Ellingwood
8 JAMES LEE ELLINGWOOD
9 Respondent

10 Sept 7, 1993
11 DATED

Steve Blair
12 STEVE BLAIR, Respondent

13 Sept. 7, 1993
14 DATED

Sheldon Keith Perry
15 SHELDON KEITH PERRY
16 Respondent

17 I have reviewed the Stipulation and Agreement as to form
18 and content and have advised my client accordingly.

19 September 10, 1993
20 DATED

Phillip M. Adleson
21 Phillip M. Adleson
22 Attorney for Respondents

23 * * *

24 The foregoing Stipulation and Agreement in Settlement is
25 hereby adopted by the Real Estate Commissioner as Decision and
26 Order and shall become effective at 12 o'clock noon on
27 November 1st, 1993.

IT IS SO ORDERED September 30, 1993.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
BY: **John R. Liberator**
Chief Deputy Commissioner

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AUG 11 1992

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770

DEPARTMENT OF REAL ESTATE

5 Telephone: (415) 904-5917

By David B. Seals

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 JAMES LEE ELLINGWOOD,) NO. H-6762 SF
13 STEVE BLAIR and) ACCUSATION
14 SHELDON KEITH PERRY,)
15 Respondents.)

16 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against JAMES LEE ELLINGWOOD (ELLINGWOOD), STEVE BLAIR (BLAIR),
19 and SHELDON KEITH PERRY (PERRY) is informed and alleges as
20 follows:

21 I

22 That Respondents are presently licensed and/or have
23 license rights under the Real Estate Law, Part 1 of Division 4 of
24 the Business and Professions Code (hereinafter Code).

25 II

26 That the Complainant, EDWARD V. CHIOLO, a Deputy Real
27 Estate Commissioner of the State of California, acting in his

1 official capacity as such and not otherwise, makes this Accusation
2 against Respondents.

3 III

4 At all times mentioned herein until on or about October
5 31, 1990 ELLINGWOOD was licensed by the Department of Real Estate
6 (hereinafter Department) as a real estate broker doing business as
7 (dba) Excel Financial. On October 31, 1990 ELLINGWOOD cancelled
8 his dba of Excel Financial with the Department.

9 IV

10 On or about October 31, 1990 BLAIR and PERRY signed an
11 agreement providing that BLAIR would be the broker of record
12 (designated broker) for Excel Financial. However, BLAIR did not
13 register Excel Financial as a dba with the Department until April
14 14, 1992.

15 V

16 On or about October 31, 1990 ELLINGWOOD terminated PERRY
17 from his employ and in turn BLAIR employed PERRY.

18 VI

19 That at all times herein mentioned, Respondents
20 ELLINGWOOD and BLAIR engaged in the business of, acted in the
21 capacity of, advertised, or assumed to act as real estate brokers
22 in the State of California within the meaning of Section 10131 of
23 the Code for or in expectation of compensation.

24 VII

25 That at all times mentioned herein, Respondents
26 ELLINGWOOD and BLAIR accepted or received funds in trust
27 (hereafter trust funds) from and on behalf of their principals

1 placing them in their operating account and at times thereafter
2 made disbursements of such funds.

3 VIII

4 That from January 11 to January 22, 1991 and on April
5 10, 1992 investigative audits were made by the Department of the
6 records and bank records of Respondents ELLINGWOOD and BLAIR dba
7 Excel Financial for the period from April 1, 1990 to December 31,
8 1990 as said records related to its activities as a real estate
9 broker.

10 IX

11 That it was ascertained by said audit that Respondents
12 ELLINGWOOD and BLAIR maintained two trust fund accounts - Trust
13 Account/CDG, Excel Financial (Trust #1) and Excel Financial Trust
14 Account (Trust #2) at Bank of the West, 1010 South First Street,
15 San Jose, California 95110. Trust #2 was used to deposit
16 borrowers' monthly payments and payoffs. Disbursements were made
17 from this account to investors and for servicing fees. The
18 adjusted balance of Trust #2 as of November 30, 1990 was a
19 negative TWO THOUSAND EIGHT HUNDRED SEVENTY NINE and 10/100
20 DOLLARS (-\$2,879.10).

21 X

22 That it was further ascertained by said audit that
23 Respondents ELLINGWOOD and BLAIR's accountability for Trust #2 as
24 of November 30, 1990, was TWO THOUSAND NINETY EIGHT and 96/100
25 DOLLARS (\$2,098.96) and that therefore Respondents ELLINGWOOD and
26 BLAIR as of November 30, 1990 had a shortage in Trust #2 of TWO
27

1 THOUSAND NINETY EIGHT and 96/100 DOLLARS (\$2,098.96). The
2 shortage was due to unauthorized withdrawals by Respondent PERRY.

3 XI

4 It was ascertained by said audits that on November 28,
5 1990 two checks in the amounts of \$3,500 and \$1,500 were written
6 to the IRA of PERRY's wife and to PERRY's IRA, respectively, from
7 Trust #2. These withdrawals were made without the consent of all
8 the beneficiaries of Trust #2.

9 XII

10 It was further ascertained by said audits that
11 Respondents ELLINGWOOD and BLAIR failed to reconcile the balance
12 of all separate beneficiary or transaction records with the record
13 of all trust funds received and disbursed as to Trust #2.

14 XIII

15 It was further ascertained by said audits that
16 Respondent BLAIR used the fictitious name EXCEL FINANCIAL in his
17 real estate business without holding a license from the Department
18 in that name.

19 XIV

20 That by reason of the facts as alleged in Paragraphs IX,
21 X and XI above, Respondent BLAIR violated Section 10145 of the
22 Code and Section 2832.1, Title 10, California Code of Regulations
23 (Regulations) and said acts and/or omissions constitute grounds
24 for disciplinary action under the provisions of Section 10177(d)
25 of the Code.

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XV

By reason of the facts alleged in Paragraph XI above, Respondent BLAIR has been guilty of acts and/or omissions constituting grounds for disciplinary action under the provisions of Section 10177(h) of the Code.

XVI

By reason of the facts alleged in Paragraph XI above, Respondent PERRY has been guilty of acts and/or omissions constituting grounds for disciplinary action under the provisions of Section 10176(i) or 10177(j) of the Code.

XVII

By reason of the facts as alleged in Paragraph XII above, Respondents ELLINGWOOD and BLAIR violated Section 2831.2 of the Regulations and Section 10177(g) of the Code and said acts and/or omissions constitute grounds for disciplinary action under the provisions of Section 10177(d) and 10177(g) of the Code, respectively.

XVIII

By reason of the facts as alleged in Paragraphs IV and XIII above, Respondent BLAIR violated Sections 10159.5 and 10177(g) of the Code and Regulation 2731 and said acts and/or omissions constitute grounds for disciplinary action under the provisions of Section 10177(d) and 10177(g) of the Code, as appropriate.

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

1 licenses and license rights of Respondent under the Real Estate
2 Law (Part 1 of Division 4 of the Business and Professions Code),
3 and for such other and further relief as may be proper under other
4 provisions of law.

Edward V. Chio

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

7 Dated at San Francisco, California

8 this 31st day of July, 1992.

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