

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED
MAR - 5 2004

DEPARTMENT OF REAL ESTATE

By Laursid G. Z...

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6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-8129 SF
12)
13 DAVID ELIOT WEST,) STIPULATION AND AGREEMENT
14) IN SETTLEMENT AND ORDER
15 Respondent.)

16 It is hereby stipulated by and between DAVID ELIOT WEST
17 (hereinafter Respondent) and his attorney of record, Christopher
18 D. N. Hanson, and the Complainant, acting by and through David B.
19 Seals, Counsel for the Department of Real Estate, as follows for
20 the purpose of settling and disposing of the Accusation filed on
21 June 14, 2002, in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act (APA), shall instead and in place thereof be
27

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

3 2. Respondent has received, read and understands the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. A Notice of Defense was filed on July 2, 2002 by
8 Respondent, pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that he
12 understands that by withdrawing said Notice of Defense he will
13 thereby waive his right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that he will waive
16 other rights afforded to him in connection with the hearing such
17 as the right to present evidence in defense of the allegations in
18 the Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual allegations
20 contained in the Accusation. In the interests of expedience and
21 economy, Respondent chooses not to contest these allegations, but
22 to remain silent and understands that, as a result thereof, these
23 factual allegations, without being admitted or denied, will serve
24 as a prima facie basis for the disciplinary action stipulated to
25 herein. The Real Estate Commissioner shall not be required to
26 provide further evidence to prove said factual allegations.

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

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

18 7. Respondent has received, read and understand the
19 "Notice Concerning Costs of Subsequent Audits". Respondent
20 understands that by agreeing to this Stipulation and Agreement in
21 Settlement, the findings set forth below in the DETERMINATION OF
22 ISSUES become final, and that the Commissioner may charge
23 Respondent for the costs of any audit for which he is charged
24 pursuant to Section 10148 of the Business and Professions Code
25 (hereinafter the "Code"). The reasonable cost of the audit which
26 led to this disciplinary action is \$2,340.23. The maximum cost of
27 the subsequent audit will not exceed \$3,081.48.

///
H-8129 SF

DETERMINATION OF ISSUES

I

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondent DAVID ELIOT WEST under Section 10177(d) of the Code in conjunction with Section 10145 of the Code.

ORDER

I

All licenses and licensing rights of Respondent DAVID ELIOT WEST under the Real Estate Law are suspended for a period of one hundred twenty (120) days from the effective date of this Order; provided, however, that:

1. Ninety (90) days of said suspension shall be stayed for one (1) year upon the following terms and conditions:

A. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,

B. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year from the effective date of this Order. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and

1 reimpose all or a portion of the stayed suspension.
2 Should no such determination be made, the stay imposed
3 herein shall become permanent.

4 2. The remaining thirty (30) days of said 120-day
5 suspension shall be stayed upon the condition that Respondent
6 petition pursuant to Section 10175.2 of the Business and
7 Professions Code and pays a monetary penalty pursuant to Section
8 10175.2 of the Business and Professions Code at a rate of \$100
9 for each day of the suspension for a total monetary penalty of
10 \$3,000:

11 A. Said payment shall be in the form of a
12 cashier's check or certified check made payable to the
13 Recovery Account of the Real Estate Fund. Said check
14 must be delivered to the Department prior to the
15 effective date of the Order in this matter.

16 B. No further cause for disciplinary action
17 against the Real Estate licenses of said Respondent
18 occurs within one (1) year from the effective date of
19 the decision in this matter.

20 C. If Respondent fails to pay the monetary
21 penalty as provided above prior to the effective date
22 of this Order, the stay of the suspension shall be
23 vacated as to Respondent and the order of suspension
24 shall be immediately executed, under this Paragraph 2
25 of this Order, in which event Respondent shall not be
26 entitled to any repayment nor credit, prorated or
27

1 otherwise, for the money paid to the Department under
2 the terms of this Order.

3 D. If Respondent pays the monetary penalty
4 and any other moneys due under this Stipulation and
5 Agreement and if no further cause for disciplinary
6 action against the real estate licenses of Respondent
7 occurs within one (1) year from the effective date of
8 this Order, the entire stay hereby granted under
9 Paragraphs 1 and 2 of this Order shall become
10 permanent.

11 3. Respondent shall, prior the effective date of this
12 Stipulation and Agreement, submit proof satisfactory to the
13 Commissioner of having taken and successfully completed the
14 continuing education course on trust fund accounting and handling
15 specified in subdivision (a) of Section 10170.5 of the Business
16 and Professions Code. Proof of satisfaction of this requirement
17 includes evidence that Respondent has successfully completed the
18 trust fund account and handling continuing education course
19 within 120 days prior to the effective date of the Stipulation
20 and Agreement in this matter.

21 4. Prior to the effective date of this Stipulation
22 and Agreement Respondent shall provide evidence satisfactory to
23 the Real Estate Commissioner that the shortages alleged in the
24 Accusation have been cured.

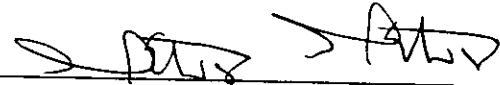
25
26 DATED: 1/21/2004


27 DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

1 * * *

2 I have read the Stipulation and Agreement, have
3 discussed it with my counsel, and its terms are understood by me
4 and are agreeable and acceptable to me. I understand that I am
5 waiving rights given to me by the California Administrative
6 Procedure Act (including but not limited to Sections 11506,
7 11508, 11509, and 11513 of the Government Code), and I willingly,
8 intelligently, and voluntarily waive those rights, including the
9 right of requiring the Commissioner to prove the allegations in
10 the Accusation at a hearing at which I would have the right to
11 cross-examine witnesses against me and to present evidence in
12 defense and mitigation of the charges.

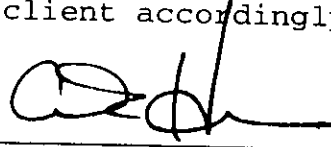
13
14 DATED: 1/6/04


15 DAVID ELIOT WEST
16 Respondent

17 * * *

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

20 DATED: 7 Jan 04


21 Christopher D. N. Hanson
22 Attorney for Respondent

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JOHN R. LIBERATOR
Chief Deputy Commissioner

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
OCT 29 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DAVID ELIOT WEST

Case No. H-8129 SF

OAH No. N-2002070786

Respondent

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

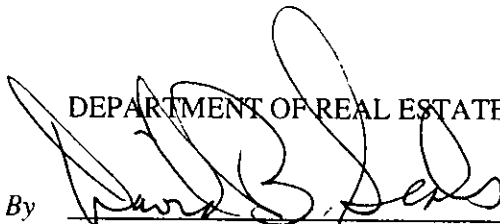
You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY -- DECEMBER 15, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: OCTOBER 29, 2003

DEPARTMENT OF REAL ESTATE
By 
DAVID B. SEALS,, Counsel

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
SEP 11 2002

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DAVID ELIOT WEST

By Shelly Ely

Case No. H-8129 SF

OAH No. N2002070786

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **TUESDAY--NOVEMBER 19, 2002**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: SEPTEMBER 11, 2002

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
JUN 14 2002

DEPARTMENT OF REAL ESTATE

By Juan Antonio

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-8129 SF
13) ACCUSATION
14 DAVID ELIOT WEST,)
Respondent.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against DAVID ELIOT WEST (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

20 The Complainant, Les R. Bettencourt, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation against Respondent in his official capacity.

23 II

24 Respondent is licensed and/or has license rights under
25 the Real Estate Law, Part 1 of Division 4 of the California
26 Business and Professions Code (hereinafter "Code") as a real
27 estate broker dba West Management Company.

1 III

2 At various times mentioned herein, Respondent engaged
3 in the business of, acted in the capacity of, advertised, or
4 assumed to act as a real estate broker within the State of
5 California, within the meaning of Section 10131(b) of the Code by
6 leasing or renting or offering to lease or rent, or placing for
7 rent, or soliciting listings of places for rent, or soliciting
8 for prospective tenants, or negotiating the sale, purchase or
9 exchanges of leases on real property, or a business opportunity,
10 or collecting rents from real property, or improvements thereon,
11 or from business opportunities, for or in expectation of
12 compensation.

13 IV

14 That at all times mentioned herein, Respondent accepted
15 or received funds in trust (hereafter trust funds) from and on
16 behalf of his principals placing them in accounts and at times
17 thereafter made disbursements of such funds.

18 V

19 From August 7, 2001 to August 21, 2001 an investigative
20 audit was conducted by the Department of the records and bank
21 records of Respondent for the period from July 1, 2000 to June 1,
22 2001, as said records related to his activities as a real estate
23 broker described above.

24 VI

25 Respondent maintained eleven accounts for his real
26 estate activities. In conjunction with the audit the Department
27 examined two accounts into which trust funds were placed. The two

1 accounts were at The Mechanics Bank, One Kaiser Plaza, Oakland,
2 CA 94612. One was designated as Acct. #16004531 under the name
3 West Management, David West Rental Trust (hereinafter "Trust #1")
4 and the other was designated as Acct. #16004515 under the name
5 West Management, David West Rental Trust (hereinafter "Trust
6 #2").

7 VII

8 The adjusted balance of Trust #1 as of June 1, 2001 was
9 negative Nine Hundred Thirty-Two and 63/100 Dollars (-\$932.63)
10 and the trust fund accountability in the account as of June 1,
11 2001 was Two Thousand Two Hundred Twenty-Seven and 94/100 Dollars
12 (\$2,227.94). Therefore, Respondent, as of June 1, 2001, had a
13 trust fund shortage of Three Thousand One Hundred Sixty and
14 57/100 Dollars (\$3,160.57).

15 VIII

16 The adjusted balance of Trust #2 as of June 1, 2001 was
17 Six Thousand Nine Hundred Twenty-One and 66/100 Dollars
18 (\$6,921.66) and the trust fund accountability in the account as
19 of June 1, 2001 was Nine Thousand Thirty-Seven and 47/100 Dollars
20 (\$9,037.47). Therefore, Respondent, as of June 1, 2001, had a
21 trust fund shortage of Two Thousand One Hundred Fifteen and
22 81/100 Dollars (\$2,115.81).

23 IX

24 The identifiable shortages referred to in Paragraphs
25 VII and VIII were due to negative balances (\$1,565.36 and
26 \$1,764.97, respectively). Shortages of \$1,595.21 in Trust #1 and
27 \$350.84 in Trust #2 could not be identified.

1 X

2 Respondent caused the disbursement of trust funds from
3 Trust #1 and Trust #2 without the written consent of every
4 principal who was an owner of the funds, causing the balance of
5 the funds in the accounts to be an amount less than the existing
6 aggregate trust fund liability of Respondent to all owners of
7 said funds in violation of Section 10145 of the Code and Section
8 2832.1, Title 10, California Code of Regulations (hereinafter the
9 "Regulations").

10 XI

11 For both Trust #1 and Trust #2 Respondent failed to
12 reconcile the balance of all separate beneficiary records with
13 the balance of the record of all trust funds received and
14 disbursed on a monthly basis in violation of Section 2831.2 of
15 the Regulations.

16 XII

17 For both Trust #1 and Trust #2 Respondent failed to
18 maintain a separate record for each beneficiary or transaction in
19 violation of Section 2831.1 of the Regulations.

20 XIII

21 For both Trust #1 and Trust #2 Respondent converted
22 funds by paying himself management fees from beneficiary accounts
23 which had negative balances in violation of Sections 10145 and
24 10176(i) of the Code.

25 XIV

26 The acts and/or omissions of Respondent as described
27 above are grounds for the suspension or revocation of

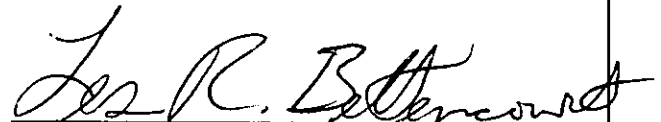
1 Respondent's licenses and license rights under Section 10145 of
2 the Code and Sections 2831.1, 2831.2 and 2832.1 of the
3 Regulations in conjunction with Section 10177(d) of the Code.

4 PRIOR DISCIPLINE

5 XIV

6 Effective May 10, 1991, in Case No. H-6391 SF, the Real
7 Estate Commissioner ordered the revocation of the real estate
8 licenses and license rights of Respondent with the right to a
9 restricted real estate broker license for violation of Code
10 Section 490.

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

18
19 

20 LES R. BETTENCOURT
Deputy Real Estate Commissioner

21 Dated at Oakland, California,
22 this 10th day of May, 2002.