

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

3 2. Respondents have received, read and understand the
4 Statement to Respondent, and the Discovery Provisions of the APA
5 filed by the Department of Real Estate in this proceeding.

6 3. On March 24, 2003, Respondents filed their Notices
7 of Defense pursuant to Section 11505 of the Government Code for
8 the purpose of requesting a hearing on the allegations in the
9 Accusation. Respondents hereby freely and voluntarily withdraw
10 said Notices of Defense. Respondents acknowledge that they
11 understand that by withdrawing said Notices of Defense they will
12 each thereby waive their rights to require the Commissioner to
13 prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA, and that they
15 will waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 4. Respondents, pursuant to the limitations set forth
20 below, hereby admit that the factual allegations in Paragraphs I
21 through V of the Accusation filed in this proceeding are true and
22 correct and the Real Estate Commissioner shall not be required to
23 provide further evidence of such allegations.

24 5. Without admitting the truth of the allegations
25 contained in the remaining paragraphs of the Accusation,
26 Respondents stipulate that they will not interpose a defense
27 thereto. This Stipulation is based on the factual allegations

1 as to Respondents contained in the Accusation. In the interests
2 of expedience and economy, Respondents choose not to contest
3 these remaining allegations, but to remain silent and understand
4 that, as a result thereof, these factual allegations, without
5 being admitted or denied, will serve as the basis for the
6 disciplinary action stipulated to herein. The Real Estate
7 Commissioner shall not be required to provide further evidence
8 to prove said factual allegations.

9 6. Respondents have received, read and understand the
10 "Notice Concerning Costs of Audits.". Respondents understand,
11 by agreeing to this Stipulation and Agreement, and after the
12 findings set forth below in the "Determination of Issues" become
13 final, that the Commissioner may charge Respondents for the costs
14 of the following audits that have been and may be conducted
15 pursuant to Section 10148 of the Business and Professions Code:

- 16 (a) Audit #OK 01-0246, report dated June 1, 2002,
17 for not more than \$3,949.00;
18 (b) Future follow-up audit, for not more than
19 \$4,400.00.

20 7. It is understood by the parties that the Real
21 Estate Commissioner may adopt the Stipulation and Agreement as
22 the decision in this matter thereby imposing the penalty and
23 sanctions on the real estate licenses and license rights of
24 Respondents, and each of them, as set forth in the below "Order".
25 In the event that the Commissioner in her discretion does not
26 adopt the Stipulation and Agreement, it shall be void and of no
27 effect, and Respondents shall retain the rights to a hearing and

1 proceeding on the Accusation under all the provisions of the
2 APA and shall not be bound by any admission or waiver made
3 herein.

4 8. The Order or any subsequent Order of the Real
5 Estate Commissioner made pursuant to this Stipulation and
6 Agreement shall not constitute an estoppel, merger or bar to any
7 further administrative or civil proceedings by the Department of
8 Real Estate with respect to any matters which were not specifically
9 alleged to be causes for accusation in this proceeding.

10 DETERMINATION OF ISSUES

11 By reason of the foregoing stipulations, admissions and
12 waivers, and for the purpose of settlement of the pending
13 Accusation as to Respondents without a hearing, it is stipulated
14 and agreed that the following determination of issues shall be
15 made:

16 I

17 The acts and/or omissions of Respondent E.F. FOLEY &
18 CO., INC., as stipulated above, violate Sections 10145(b),
19 10229(c), 10229(d), 10229(e), 10231.2, 10232.4, and 10234 of the
20 California Business and Professions Code (hereafter the Code),
21 and Section 2831.1 of Title 10, California Code of Regulations,
22 and constitute grounds for disciplinary action against the real
23 estate license and license rights of Respondent under the
24 provisions of Section 10177(d) of the Code.

25 II

26 The acts and/or omissions of Respondent PAMELA MARY
27 FOLEY, as stipulated above, constitute grounds for disciplinary

1 action against the real estate license and license rights of
2 Respondent under the provisions of Section 10177(h) of the Code.

3
4 ORDER

5 A. All real estate licenses and license rights of
6 Respondents E.F. FOLEY & CO., INC. and PAMELA MARY FOLEY shall
7 be suspended for a period of thirty (30) days from the effective
8 date of the Decision.

9 B. Said suspensions are stayed for a period of two
10 (2) years as to each Respondent upon the following terms and
11 conditions:

12 (1) Respondents shall obey all laws, rules and
13 regulations governing the rights, duties and
14 responsibilities of a real estate licensee in
15 the State of California.

16 (2) The Commissioner may, if a final subsequent
17 determination is made, after hearing or upon
18 stipulation, that cause for disciplinary
19 action against the licenses of Respondents,
20 or either of them, has occurred within two
21 (2) years from the effective date of the
22 Decision, vacate and set aside the stay order
23 and reimpose all or a portion of the stayed
24 suspension as to that Respondent. Should
25 no order vacating the stay be made pursuant
26 to this condition, the stay imposed herein as
27 to each Respondent shall become permanent.

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(3) Respondent PAMELA MARY FOLEY shall, prior to the effective date of this decision, submit proof satisfactory to the Commissioner of having taken and completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code from an approved continuing education course provider. Said course may have been completed within one hundred and twenty (120) days prior to the effective date of the order herein. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of Respondent's license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for hearing pursuant to the Administrative Procedure Act to present such evidence.

(4) Pursuant to Section 10148 of the Business and Professions Code, Respondents E.F. FOLEY & CO., INC. and PAMELA MARY FOLEY shall pay the Commissioner's reasonable costs for audits as a result of the trust fund violations found herein, as follows:

1 (a) Audit #OK 01-0246, report dated
2 June 1, 2002, for not more than
3 \$3,949.00;

4 (b) Future follow-up audit, for not
5 more than \$4,400.00.

6 Both Respondents shall be jointly and
7 severally liable for payment of the entire
8 amounts of said costs. In calculating the
9 amount of the Commissioner's reasonable costs,
10 the Commissioner may use the estimated average
11 hourly salary for all Department personnel
12 performing audits of real estate brokers, and
13 shall include an allocation for travel costs,
14 including mileage, time to and from the
15 auditor's place of work and per diem.

16 Respondents shall pay such costs within sixty
17 (60) days of receiving an invoice from the
18 Commissioner detailing the activities
19 performed during the audit and the amount of
20 time spent performing those activities. The
21 Commissioner may, in her discretion, vacate
22 and set aside the stay order, if payment is
23 not timely made as provided for herein, or as
24 provided for in a subsequent agreement between
25 Respondents and the Commissioner. The
26 vacation and the set aside of the stay shall
27 remain in effect until payment is made in

1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

3 E.F. FOLEY & CO., INC.
4 Respondent

5 July 2, 2003 BY: Pamela Mary Foley
6 DATED PAMELA MARY FOLEY

8 July 2, 2003 Pamela Mary Foley
9 DATED PAMELA MARY FOLEY, Respondent

11 APPROVED AS TO FORM:

12
13 July 7, 2003 David J. Hofmann
14 DATED DAVID J. HOFMANN
15 Counsel for the Respondents

16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and shall become effective at 12 o'clock
19 noon on December 11, 2003.

20 IT IS SO ORDERED July 30, 2003.

21
22 PAULA REDDISH ZINNEMANN
23 Real Estate Commissioner

24 Paula Reddish Zinnemann
25
26
27

FILED
APR 29 2003

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

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

In the Matter of the Accusation of

E. F. FOLEY & CO., INC., and
PAMELA MARY FOLEY,

}
}

Case No. H-8352 SF

OAH No. N-2003040769

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**OFFICE OF ADMINISTRATIVE HEARING, THE ELIHU HARRIS STATE BUILDING,
1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612**

on **JUNE 26, 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.

DEPARTMENT OF REAL ESTATE

Dated: APRIL 24, 2003

By *Deidre L. Johnson*
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789

FILED
MAR 14 2003

DEPARTMENT OF REAL ESTATE

By *Pathleen Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 E. F. FOLEY & CO., INC., and) NO. H-8352 SF
15 PAMELA MARY FOLEY,)
16) ACCUSATION
17 Respondents.)
18)

17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against E. F. FOLEY & CO., INC., and PAMELA MARY
20 FOLEY, is informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22 I

23
24 Respondents E. F. FOLEY & CO., INC., and PAMELA MARY
25 FOLEY are presently licensed and/or have license rights under the
26 Real Estate Law, Part 1 of Division 4 of the California Business
27 and Professions Code (hereafter the Code).

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II

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent E. F. FOLEY & CO., INC. (hereafter EFFC) was and is licensed by the State of California Department of Real Estate (hereafter Department) as a real estate broker corporation.

IV

At all times herein mentioned, Respondent PAMELA MARY FOLEY (hereafter FOLEY) was and is licensed by the Department as an individual real estate broker, and as the designated broker officer of EFFC. At all times herein mentioned, FOLEY was and is the President and fifty percent shareholder of EFFC, and directed its activities for which a real estate license is required.

V

Within the last three years, EFFC engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan banking and brokerage business with the public wherein borrowers and lenders were solicited for loans secured directly or collaterally by liens on real property, wherein EFFC either brokered or funded such loans, wherein EFFC sold undivided interests in secured

1 promissory notes to investors, and wherein EFFC serviced loans
2 on behalf of others, for or in expectation of compensation.

3 FIRST CAUSE OF ACTION

4 VI

5 Beginning in or about June of 2002, the Department
6 conducted an audit of the books and records of Respondent EFFC
7 for the time period of September 1, 2000 to March 31, 2002
8 (hereafter the audit period), as set forth in more detail in
9 Department Audit Report No. OK01-0246, dated June 1, 2002, and
10 accompanying working papers and exhibits. During the audit
11 period, Respondent EFFC was a threshold broker, and also was a
12 multi-lender broker that sold undivided interests in secured
13 loans to multiple third party investors per loan. In acting as
14 a mortgage loan broker as alleged above, Respondent EFFC accepted
15 or received funds in trust from or on behalf of lenders and/or
16 borrowers.

17 VII

18 The trust funds accepted or received by Respondent EFFC
19 during the audit period were deposited or caused to be deposited
20 from time to time into the following trust accounts at Comerica
21 Bank in San Jose, California:

- 22 (a) Trust Account #1: Account No. 1890618349, entitled
23 "E.F. Foley & Co. Inc. Trust Account," used for new
24 funds from investors to either fund loans or purchase
25 portions of existing secured notes; and
26 (b) Trust Account #2: Account No. 1890576349, entitled
27 "E.F. Foley & Co. Inc. Trust Account #3," used for

1 loan servicing of borrower monthly payments and
2 payoffs on private investor loans.

3 VIII

4 During the audit period, as to Trust Account # 1,
5 Respondents failed to maintain a separate record for each
6 beneficiary or transaction containing all information required
7 by Section 2831.1 of Title 10, California Code of Regulations
8 (hereafter the Regulations).

9 IX

10 During the audit period, when selling secured notes
11 funded by EFFC or otherwise owned by it, Respondent EFFC failed
12 to place trust funds received from investors to purchase the
13 notes, or undivided interests in the notes, into a neutral
14 escrow depository pursuant to Section 10145(b) of the Code.

15 X

16 In or about October of 2000, EFFC brokered Loan #981
17 in the sum of \$254,000.00, secured by real property located at
18 9920 SW Beaverton-Hillsdale Highway, Beaverton, Oregon, in
19 which Respondent PAMELA FOLEY and her husband and EFFC Chairman
20 Michael Foley, as co-trustees of the Foley Family Trust, were the
21 borrowers. Prior to solicitation of an investor for the loan,
22 Respondents failed to submit written notice to the Department,
23 along with a copy of a lender/purchaser disclosure statement
24 disclosing their intent to benefit from the loan other than as
25 an agent in the transaction pursuant to Sections 10231.2 and
26 10232.5 of the Code.

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XI

During the audit period, as to Loan #981, EFFC or affiliates of EFFC, to wit, the FOLEYS, had an interest in the property securing the loan, or contractual rights to acquire or develop the property securing the loan, and EFFC negotiated the loan with multiple investors in violation of the prohibition against self-dealing in multi-lender loans under Section 10229(d) of the Code

XII

During the audit period, as to Loan #981, EFFC failed to timely prepare and deliver to investors, or cause to be delivered, an accurate written lender/purchaser disclosure statement containing multi-lender loan-to-value ratios required by Section 10232.4 of the Code, prior to each investor becoming obligated to make the loan or purchase the note, prior to EFFC's receipt of funds from each investor, and/or prior to disbursement of the investor's funds for the loan or purchase.

XIII

During the audit period, as to Loan #981, EFFC negotiated the loan secured by the above Oregon property with multiple investors in violation of the prohibition against multi-lender loans secured by out-of-state under Section 10229(c) of the Code.

XIV

During the audit period, EFFC funded loans as the lender and became the named beneficiary on the notes and deeds of trust securing the loans. Upon resale to the public of undivided

1 interests in such notes, Respondent EFFC failed to timely record
2 or cause to be recorded assignments of deeds of trust in the
3 names of the investors within 10 working days after EFFC received
4 each investor's funds or after close of escrow, as required by
5 Section 10234 of the Code.

6 XV

7 During the audit period, as to multi-lender loans,
8 Respondent EFFC failed to obtain, and/or to retain in its
9 records, signed statements or completed statements from each
10 investor as to each investor's qualifications of income or net
11 worth for the loan, indicating that the investment in each
12 transaction did not exceed either 10% of his or her net worth,
13 or 10% of his or her adjusted gross income, as required by
14 Section 10229(e) of the Code.

15 XVI

16 The acts and/or omissions of Respondent EFFC as alleged
17 above constitute grounds for disciplinary action under the
18 following provisions:

- 19 (a) As to Paragraph VIII, under Section 2831.1 of
20 Title 10, California Code of Regulations in
21 conjunction with Section 10177(d) of the Code.
- 22 (b) As to Paragraph IX, under Section 10145(b) of the
23 Code in conjunction with Section 10177(d) of the
24 Code.
- 25 (c) As to Paragraph X, under Sections 10231.2 and
26 10232.5 of the Code in conjunction with Section
27 10177(d) of the Code.

- 1 (d) As to Paragraph XI, under Section 10229(d) of the
2 Code in conjunction with Section 10177(d) of the
3 Code.
- 4 (e) As to Paragraph XII, under Section 10232.4 of the
5 Code in conjunction with Section 10177(d) of the
6 Code.
- 7 (f) As to Paragraph XIII, under Section 10229(c)
8 of the Code in conjunction with Section 10177(d)
9 of the Code.
- 10 (g) As to Paragraph XIV, under Section 10234 of the
11 Code in conjunction with Section 10177(d) of the
12 Code.
- 13 (h) As to Paragraph XV, under Section 10229(e) of the
14 Code in conjunction with Section 10177(d) of the
15 Code.

16 SECOND CAUSE OF ACTION

17 XVII

18 At all times mentioned herein, Respondent FOLEY failed
19 to exercise reasonable supervision and control of the activities
20 of EFFC for which a real estate license is required. In
21 particular, FOLEY caused, permitted, and/or ratified the conduct
22 described above, and/or failed to take reasonable steps to
23 implement effective supervision that would have prevented it,
24 including but not limited to: (a) the establishment of policies,
25 rules, procedures, and systems to review, oversee, inspect and
26 manage matters including but not limited to trust fund account
27 records, neutral escrow depositories, lender/purchaser disclosures,

1 multi-lender loans, recordation of deeds of trust and assignments,
2 and (b) the establishment of systems for monitoring compliance
3 with such policies, rules, procedures, and systems, to ensure
4 compliance by the company with the Real Estate Law.

5 XVIII

6 The acts and/or omissions of FOLEY as alleged above
7 constitute grounds for disciplinary action under the provisions
8 of Section 10177(h) of the Code.

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

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19 
20 LES R. BETTENCOURT
21 Deputy Real Estate Commissioner

22
23 Dated at Oakland, California,
24 this 24th day of January, 2003.