

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6

FILED
JAN 21 2004

DEPARTMENT OF REAL ESTATE

Shelly Ely

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)

No. H-8442 SF

11)
12 BOBBY FRED HELMS,)

STIPULATION AND AGREEMENT

13)
14 Respondent.)
15)

16 It is hereby stipulated by and between Respondent
17 BOBBY FRED HELMS, (hereinafter "Respondent") appearing in
18 propria persona, and the Complainant, acting by and through
19 Michael B. Rich, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on May 31, 2003, in this matter (hereinafter
22 "the Accusation"):

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and
25 Respondents at a formal hearing on the Accusation, which
26 hearing was to be held in accordance with the provisions of the
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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. The Respondent has received, read and
5 understands the Statement to Respondent, the Discovery
6 Provisions of the APA, and the Accusation filed by the
7 Department of Real Estate in this proceeding.

8 3. On June 17, 2003, Respondent filed a Notice of
9 Defense pursuant to Section 11505 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense
14 Respondent will thereby waive his right to require the
15 Commissioner to prove the allegations in the Accusation at a
16 contested hearing held in accordance with the provisions of the
17 APA and that Respondent will waive other rights afforded to him
18 in connection with the hearing such as the right to present
19 evidence in defense of the allegations in the Accusation and
20 the right to cross-examine witnesses.

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

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

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

22 7. Respondent understands that by agreeing to this
23 Stipulation and Agreement in Settlement, Respondent agrees to
24 pay, pursuant to Section 10148 of the Business and Professions
25 Code, the cost of the audit that led to this disciplinary action.
26 The amount of said costs is \$4,373.12.
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1 8. Respondent has received, read, and understands
2 the "Notice Concerning Costs of Audits". Respondent further
3 understands that by agreeing to this Stipulation and Agreement
4 in Settlement, the findings set forth below in the DETERMINATION
5 OF ISSUES become final, and that the Commissioner may charge
6 Respondent for the costs of any subsequent audit conducted
7 pursuant to Section 10148 of the Business and Professions Code
8 to determine if the violations have been corrected. The maximum
9 costs of said audit will not exceed \$5,449.56.

10
11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations, admissions
13 and waivers and solely for the purpose of settlement of the
14 pending Accusation without hearing, it is stipulated and agreed
15 that the following Determination of Issues shall be made:

16 I

17 The conduct of Respondent, as described in the
18 Accusation, constitutes cause for the suspension or revocation
19 of the real estate license and license rights of Respondent
20 under the provisions of: Section 10177(d) of the Business and
21 Professions Code (hereinafter the "Code") in conjunction with
22 Sections 10145, 10148, 10161.8, 10163, 10165 and 10176(i) of
23 the Code, and Sections 2726, 2752, 2831, 2831.2, and 2834 of
24 Title 10, California Code of Regulations.

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The real estate broker license and all license rights of Respondent BOBBY FRED HELMS under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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1 Estate Commissioner or conditions attaching to the restricted
2 license.

3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations, or restrictions
6 of a restricted license until two (2) years have elapsed from
7 the effective date of this Decision.

8 4. Respondent shall, within nine (9) months from the
9 effective date of this Decision, present evidence satisfactory
10 to the Real Estate Commissioner that Respondent has, since the
11 most recent issuance of an original or renewal real estate
12 license, taken and successfully completed the continuing
13 education requirements of Article 2.5 of Chapter 3 of the Real
14 Estate Law for renewal of a real estate license. If Respondent
15 fails to satisfy this condition, the Commissioner may order the
16 suspension of the restricted license until Respondent presents
17 such evidence. The Commissioner shall afford Respondent the
18 opportunity for a hearing pursuant to the Administrative
19 Procedure Act to present such evidence.

20 5. Respondent shall, within six (6) months from the
21 effective date of this Decision, take and pass the Professional
22 Responsibility Examination administered by the Department
23 including the payment of the appropriate examination fee. If
24 Respondent fails to satisfy this condition, the Commissioner may
25 order suspension of Respondent's license until Respondent passes
26 the examination.

1 6. Pursuant to Section 10148 of the Business and
2 Professions Code, Respondent shall pay the Commissioner's
3 reasonable cost for: a) the audit which led to this disciplinary
4 action and, b) a subsequent audit to determine if Respondent has
5 corrected the trust fund violations found in Paragraph I of the
6 Determination of Issues. In calculating the amount of the
7 Commissioner's reasonable cost, the Commissioner may use the
8 estimated average hourly salary for all persons performing
9 audits of real estate brokers, and shall include an allocation
10 for travel time to and from the auditor's place of work.
11 Respondent shall pay such cost within sixty (60) days of
12 receiving an invoice from the Commissioner detailing the
13 activities performed during the audit and the amount of time
14 spent performing those activities. The Commissioner may suspend
15 the restricted license issued to Respondent pending a hearing
16 held in accordance with Section 11500, et seq., of the
17 Government Code, if payment is not timely made as provided for
18 herein, or as provided for in a subsequent agreement between the
19 Respondent and the Commissioner. The suspension shall remain in
20 effect until payment is made in full or until Respondent enters
21 into an agreement satisfactory to the Commissioner to provide
22 for payment, or until a decision providing otherwise is adopted
23 following a hearing held pursuant to this condition.

24 7. Respondent shall prior to the effective date of
25 the Decision provide evidence satisfactory to the Commissioner
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1 that Respondent has cured the trust fund shortages alleged in
2 the Accusation.

3 8. Any restricted real estate broker license issued to
4 Respondent may be suspended or revoked for a violation by
5 Respondent of any of the conditions attaching to the restricted
6 license.

7 9. Respondent shall, prior to and as a condition of
8 the issuance of the restricted license, submit proof
9 satisfactory to the Commissioner of having taken and
10 successfully completed the continuing education course on trust
11 fund accounting and handling specified in subdivision (a) of
12 Section 10170.5 of the Business and Professions Code. Proof of
13 satisfaction of this requirement includes evidence that
14 Respondent has successfully completed the trust fund account and
15 handling continuing education course within 120 days prior to
16 the effective date of the Decision in this matter.

17 10. Respondent shall prior to the effective date of
18 the Decision provide evidence satisfactory to the Commissioner
19 that Respondent has paid \$143.50 to Bernard De Jager.

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22
23 12/9/03

24 DATED

Michael B. Rich
25 MICHAEL B. RICH, Counsel
26 DEPARTMENT OF REAL ESTATE
27

* * *

1
2 I have read the Stipulation and Agreement and its
3 terms are understood by me and are agreeable and acceptable to
4 me. I understand that I am waiving rights given to me by the
5 California Administrative Procedure Act (including but not
6 limited to Sections 11506, 11508, 11509, and 11513 of the
7 Government Code), and I willingly, intelligently, and
8 voluntarily waive those rights, including the right of
9 requiring the Commissioner to prove the allegations in the
10 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 SEPTEMBER 4, 2003 Bobby F. Helms
15 DATED BOBBY FRED HELMS
16 Respondent

* * *

17
18 The foregoing Stipulation and Agreement for
19 Settlement is hereby adopted by the Real Estate Commissioner as
20 her Decision and Order and shall become effective at 12 o'clock
21 noon on FEBRUARY 10, 2004.

22 IT IS SO ORDERED December 16, 2003.

23 JOHN R. LIBERATOR
24 Chief Deputy Commissioner

25
26 John R. Liberator
27

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

FILED
AUG 29 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BOBBY FRED HELMS,

Case No. H-8442 SF

OAH No. N-2003070590

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--SEPTEMBER 9, 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: AUGUST 29, 2003

By

Michael B. Rich
MICHAEL B. RICH, Counsel

S.E.

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
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7 Telephone: (916) 227-0789
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FILED
MAY 31 2003

DEPARTMENT OF REAL ESTATE

By Shelly Elzy

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
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13 BOBBY FRED HELMS,)
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Respondents.

NO. H-8442 SF

ACCUSATION

16 The Complainant, LES R. BETTENCOURT, a Deputy Real
17 Estate Commissioner of the State of California, for Cause of
18 Accusation against BOBBY FRED HELMS doing business under the
19 fictitious names of CAMBRIDGE PROPERTIES & INVESTMENT REAL ESTATE
20 and H & H ASSOCIATES (hereinafter referred to as "Respondent"),
21 is informed and alleges as follows:

22 FIRST CAUSE OF ACCUSATION

23 I

24 At all times herein mentioned, Respondent is presently
25 licensed and/or has license rights under the Real Estate Law,
26 Part 1 of Division 4 of the California Business and Professions
27 Code (hereafter the "Code").

1 II

2 At all time herein mentioned, Respondent was licensed
3 as a Real Estate Broker.

4 III

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

9 IV

10 Within the last three years, Respondent engaged in
11 activities on behalf of others for which a real estate license is
12 required, for or in expectation of compensation, by leasing or
13 renting, offering to lease or rent, soliciting prospective
14 tenants for, collecting rents on, and/or managing certain real
15 properties in California.

16 V

17 Beginning in June of 2002, the Department conducted an
18 audit of the above business activities of Respondent for the time
19 period of May 1, 2001 through July 17, 2002. During the course
20 of the activities described above, Respondent received and
21 disbursed funds in trust on behalf of others.

22 VI

23 Within the last three years, Respondent deposited the
24 above trust funds into a bank account at Bank of America in San
25 Francisco, California, bearing account number 10477-08720, in the
26 name of "Bobby Fred Helms, Trustee Cambridge Properties for

27 ///

1 Bernie & Marita DeJeger" (hereinafter referred to as "Trust
2 Account #1").

3 VII

4 Within the last three years, Respondent deposited the
5 above trust funds into a bank account at Bank of America in San
6 Francisco, California, bearing account number 10471-08723, in the
7 name of "Bobby Fred Helms, Trustee Cambridge Properties for
8 Sadikin & Alena Budiman" (hereinafter referred to as "Trust
9 Account #2").

10 VIII

11 In connection with the collection and disbursement of
12 trust funds, Respondent failed to deposit and maintain the trust
13 funds in a trust account or neutral escrow depository, or to
14 deliver them into the hands of the owners of the funds, as
15 required by Section 10145 of the Code, in such a manner that as
16 of January 25, 2002, there was a trust fund shortage in Trust
17 Account #1 in the approximate sum of \$78.70.

18 IX

19 In connection with the collection and disbursement of
20 trust funds, Respondent failed to deposit and maintain the trust
21 funds in a trust account or neutral escrow depository, or to
22 deliver them into the hands of the owners of the funds, as
23 required by Section 10145 of the Code, in such a manner that as
24 of January 25, 2002, there was a trust fund shortage in Trust
25 Account #2 in the approximate sum of \$3,943.00.

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1 X

2 In connection with said trust funds in Trust Account
3 #1, held on behalf of another or others, Respondent converted
4 said trust funds to his own use and benefit or to purposes not
5 authorized by the rightful owners of said funds. The exact
6 amount of said converted trust funds is unknown to Complainant,
7 but well known to Respondent and is not less than \$143.50.

8 XI

9 In connection with the receipt and disbursement of
10 trust funds as above alleged, and as set forth in Audit No. OK
11 010264, dated September 20, 2002, and accompanying working papers
12 and exhibits, Respondent:

13 (a) Failed to maintain a written control record of all
14 trust funds received and disbursed containing all
15 information required by Section 2831 of the
16 Regulations, including but not limited to
17 recordation of all deposits, recordation of dates
18 of receipt, and recordation of accurate dates of
19 deposit of trust funds;

20 (b) Failed to reconcile the balance of separate
21 beneficiary or transaction records with the
22 control records of trust funds received and
23 disbursed at least once a month, and/or failed
24 to maintain a record of such reconciliations
25 as required by Section 2831.2 of the Regulations;

26 (c) Permitted either Sadikin Budiman or Alena Budiman,
27 a person who neither held a California real estate

1 license nor was bonded, to be a signatory on Trust
2 Account #2 in violation of Section 2834 of the
3 Regulations; and,

4 (d) Permitted Robert Fred Helms, a person who held a
5 California real estate salesperson license but who
6 was not on record with the Department of Real
7 Estate as having been licensed with Respondent, to
8 be a signatory on Trust Account #1 and Trust
9 Account #2 in violation of Section 2834 of the
10 Regulations.

11 XII

12 Respondent failed to maintain copies of all listings,
13 deposit receipts, canceled checks and trust records and other
14 documents executed by him or obtained by him in connection with
15 transactions for which a real estate license is required for a
16 period of three years as required by Section 10148 of the Code.

17 XIII

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 to Paragraph VIII, under Section 10145 of the
22 Code in conjunction with Section 10177(d) of the
23 Code;

24 (b) As to Paragraph IX, under Section 10145 of the
25 Code in conjunction with Section 10177(d) of the
26 Code;

- 1 (c) As to Paragraph X under Section 10176(i) of the
2 Code;
- 3 (d) As to Paragraph XI(a), under Section 2831 of the
4 Regulations in conjunction with Section 10177(d)
5 of the Code;
- 6 (e) As to Paragraph XI(b), under Section 2831.2 of the
7 Regulations in conjunction with Section 10177(d)
8 of the Code;
- 9 (f) As to Paragraph XI(c), under Section 2834 of the
10 Regulations in conjunction with Section 10177(d)
11 of the Code;
- 12 (g) As to Paragraph XI(d), under Section 2834 of the
13 Regulations in conjunction with Section 10177(d)
14 of the Code; and,
- 15 (h) As alleged in Paragraph XII, under Section 10148
16 of the Code in conjunction with Section 10177(d)
17 of the Code.

18 SECOND CAUSE OF ACCUSATION

19 XIV

20 There is hereby incorporated in this Second, separate
21 and distinct Cause of Accusation, all of the allegations
22 contained in Paragraphs I, II, III and IV of the First Cause of
23 Accusation with the same force and effect as if herein fully set
24 forth.

25 XV

26 Respondent employed Robert Fred Helms, a licensed real
27 estate salesperson, without a written employment agreement.

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XVI

Respondent did not notify the Commissioner of the Department of Real Estate of his employment of Robert Fred Helms.

XVII

The failure of Respondent to notify the Commissioner of the Department of Real Estate in writing on the prescribed form within five days of his employment of Robert Fred Helms as alleged above constitutes grounds for disciplinary action under Section 2752 of the Regulations in conjunction with Business and Professions Code Section 10161.8.

XVIII

The failure of Respondent to have and/or maintain a written employment agreement for his employment of Robert Fred Helms as alleged above constitutes grounds for disciplinary action under Section 2726 of the Regulations.

THIRD CAUSE OF ACCUSATION

XIX

There is hereby incorporated in this Third, separate and distinct, Cause of Accusation, all of the allegations contained in Paragraphs I, II, III, and IV of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XX

Respondent has failed to maintain on file with the Real Estate Commissioner a new address for his principal place of business for his real estate brokerage activities.

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1 XXI

2 Respondent maintains more than one place of business
3 and failed to apply for and procure an additional license for
4 each branch office so maintained.

5 XXII

6 The facts alleged above are a violation of Section 2715
7 of the Regulations of the Real Estate Commissioner, Title 10,
8 Chapter 6, California Code of Regulations (hereafter the
9 "Regulations"), and/or Section 10163 of the Code and are grounds
10 for the suspension or revocation of Respondent's license under
11 the provisions of Section 10165 and/or Section 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 action
16 against all license(s) and license rights of Respondents under
17 the Real Estate Law (Part 1 of Division 4 of the Business and
18 Professions Code), and for such other and further relief as may
19 be proper under other provisions of law.

20 
21

22 LES R. BETTENCOURT
23 Deputy Real Estate Commissioner

24 Dated at Oakland, California,
25

26 this 28th day of May, 2003
27