

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-2380

FILED

FEB - 8 2011

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-10993 SF
12)
13 SMALL BUSINESS CAPITAL CORP.)
14 and MARK FEATHERS,) STIPULATION AND AGREEMENT
15 Respondents.) IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between SMALL BUSINESS CAPITAL CORP.
17 (SBCC), and MARK FEATHERS (FEATHERS), and their counsel JOSHUA A. ROSENTHAL,
18 and the Complainant, acting by and through Richard K. Uno, Counsel for the Department of
19 Real Estate; as follows for the purpose of settling and disposing of the Accusation filed on
20 August 26, 2010, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents at a formal hearing on the Accusation, which
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of
25 this Stipulation and Agreement In Settlement and Order.

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

4 3. On September 7, 2010, Respondents SBCC and FEATHERS, filed a Notice
5 of Defense pursuant to Section 11505 of the Government Code for the purpose of requesting a
6 hearing on the allegations in the Accusation. Respondents hereby freely and voluntarily
7 withdraw said Notices of Defense. Respondents acknowledge that they understand that by
8 withdrawing said Notices of Defense they will thereby waive their right to require the
9 Commissioner to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that they will waive other rights afforded to
11 them in connection with the hearing such as the right to present evidence in defense of the
12 allegations in the Accusation and the right to cross-examine witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
15 true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

17 5. It is understood by the parties that the Real Estate Commissioner may adopt
18 the Stipulation and Agreement In Settlement and Order as his Decision in this matter, thereby
19 imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set
20 forth in the below "Order". In the event that the Commissioner in his discretion does not adopt
21 the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect, and
22 Respondents shall retain the rights to a hearing and proceeding on the Accusation under all the
23 provisions of the APA and shall not be bound by any admission or waiver made herein.

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an
26 estoppel, merger or bar to any further administrative or civil proceedings by the Department of
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1 Real Estate with respect to any matters which were not specifically alleged to be causes for
2 accusation in this proceeding.

3 7. Respondents understand that by agreeing to this Stipulation and Agreement
4 In Settlement and Order, Respondents agree to pay, pursuant to Section 10148 of the Business
5 and Professions Code, the cost of the audit which led to this disciplinary action. The amount of
6 said cost is \$4,428.50.

7 8. Respondents have received, read and understand the "Notice Concerning
8 Costs of Subsequent Audits". Respondents understand that by agreeing to this Stipulation and
9 Agreement in Settlement and Order, the findings set forth below in the DETERMINATION OF
10 ISSUES become final, and that the Commissioner may charge Respondents for the cost of any
11 audit conducted pursuant to Section 10148 of the Business and Professions Code to determine if
12 the violations have been corrected. The maximum costs of said audit will not exceed \$4,428.50.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and waivers, and solely for
15 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
16 agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute
17 grounds for the suspension or revocation of the licenses and license rights of SMALL
18 BUSINESS CAPITAL CORP. under the provisions of Sections 2832.1 of Title 10 of the
19 California Code of Regulations (Regulations) and Sections 10145, 10177(d), 10177(g) and
20 10232 of the Business and Professions Code (the Code), and constitute grounds for the
21 suspension or revocation of the licenses and license rights of MARK FEATHERS under the
22 provisions of Section 2725 of the Regulations and Sections 10159.2, 10177(d) and 10177(h) of
23 the Code.

24 ORDER

25 A. SMALL BUSINESS CAPITAL CORP.

26 1. The corporate real estate broker license and license rights of Respondent
27 SMALL BUSINESS CAPITAL CORP. (SBCC), under the Real Estate Law are suspended for

1 a period of sixty (60) days from the effective date of this Order; provided, however, that if
2 SBCC petitions, thirty (30) days of said suspension shall be stayed upon condition that:

3 a. SBCC pays a monetary penalty pursuant to Section 10175.2 of the Business
4 and Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a
5 total monetary penalty of \$3,000.00.

6 b. Said payment shall be in the form of a cashier's check or certified check made
7 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
8 Department prior to the effective date of the Decision in this matter.

9 c. No further cause for disciplinary action against the real estate license of
10 SBCC occurs within one year from the effective date of the Decision in this matter.

11 d. If SBCC fails to pay the monetary penalty in accordance with the terms and
12 conditions of the Decision, the Commissioner may, without a hearing, order the immediate
13 execution of all or any part of the stayed suspension in which event the SBCC shall not be
14 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
15 under the terms of this Decision.

16 e. If SBCC pays the monetary penalty, and if no further cause for disciplinary
17 action against the real estate license of SBCC occurs within one (1) year from the effective date
18 of the Decision, the stay hereby granted shall become permanent.

19 2. The remaining thirty (30) days of said suspension shall be stayed for one (1)
20 year upon the following terms and conditions:

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

23 b. That no final subsequent determination be made, after hearing or upon
24 stipulation, that cause for disciplinary action occurred within one (1) year from the effective
25 date of this Order. Should such a determination be made, the Commissioner may, in his
26 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
27 suspension.

1 B. MARK FEATHERS

2 1. The real estate broker license and license rights of Respondent MARK
3 FEATHER (FEATHERS), under the Real Estate Law are suspended for a period of sixty (60)
4 days from the effective date of this Order; provided, however, that if FEATHERS petitions,
5 thirty (30) days of said suspension shall be stayed upon condition that:

6 a. FEATHERS pays a monetary penalty pursuant to Section 10175.2 of the
7 Business and Professions Code at the rate of \$100.00 per day for thirty (30) days of the
8 suspension for a total monetary penalty of \$3,000.00 before the effective date of the Stipulation
9 and Agreement.

10 b. Said payment shall be in the form of a cashier's check or certified check made
11 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
12 Department prior to the effective date of the Decision in this matter.

13 c. No further cause for disciplinary action against the real estate license of
14 FEATHERS occurs within one year from the effective date of the Decision in this matter.

15 d. If FEATHERS fails to pay the monetary penalty in accordance with the terms
16 and conditions of the Decision, the Commissioner may, without a hearing, order the immediate
17 execution of all or any part of the stayed suspension in which event FEATHERS shall not be
18 entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department
19 under the terms of this Decision.

20 e. If FEATHERS pays the monetary penalty, and if no further cause for
21 disciplinary action against the real estate license of Respondent occurs within one (1) year from
22 the effective date of the Decision, the stay hereby granted shall become permanent.

23 2. The remaining thirty (30) days of said suspension shall be stayed for one (1)
24 year upon the following terms and conditions:

25 a. FEATHERS shall obey all laws, rules and regulations governing the rights,
26 duties and responsibilities of a real estate licensee in the State of California, and,

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1 b. That no final subsequent determination be made, after hearing or upon
2 stipulation, that cause for disciplinary action occurred within one (1) year from the effective
3 date of this Order. Should such a determination be made, the Commissioner may, in his
4 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
5 suspension. Should no such determination be made, the stay imposed herein shall become
6 permanent.

7 3. All licenses and licensing rights of Respondent FEATHERS are indefinitely
8 suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having
9 taken and successfully completed the continuing education course on trust fund accounting and
10 handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and
11 Professions Code. Proof of satisfaction of this requirement includes evidence that FEATHERS
12 has successfully completed the trust fund account and handling continuing education course
13 within 120 days prior to the effective date of the Decision in this matter.

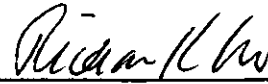
14 SMALL BUSINESS CAPITAL CORP. AND MARK FEATHERS

15 1. Pursuant to Section 10148 of the Business and Professions Code, SBCC and
16 FEATHERS, jointly and severally, shall pay for the cost of audit No. OK 090023 in the amount
17 of \$4,428.50 for the Commissioner's reasonable cost for: a) the audit which led to this
18 disciplinary action and, b) a subsequent audit to determine if Respondents have corrected the
19 trust fund violations found in the Determination of Issues. In calculating the amount of the
20 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
21 for all persons performing audits of real estate brokers, and shall include an allocation for travel
22 costs, including mileage, time to and from the auditor's place of work and per diem.
23 Respondents shall pay such cost within sixty (60) days of receiving an invoice from the
24 Commissioner detailing the activities performed during the audit and the amount of time spent
25 performing those activities. The Commissioner may, in his discretion, vacate and set aside the
26 stay order, if payment is not timely made as provided for herein, or as provided for in a
27 subsequent agreement between the Respondents and the Commissioner. The vacation and the

1 set aside of the stay shall remain in effect until payment is made in full, or until Respondents
2 enter into an agreement satisfactory to the Commissioner to provide for payment. Should no
3 order vacating the stay be issued, either in accordance with this condition, the stay imposed
4 herein shall become permanent.

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6 1/19/11

7 DATED

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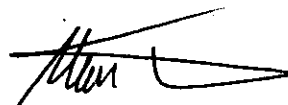
9 RICHARD K. UNO, Counsel
10 DEPARTMENT OF REAL ESTATE

11 * * *

12 I have read the Stipulation and Agreement in Settlement and Order and its terms
13 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
14 rights given to me by the California Administrative Procedure Act (including but not limited
15 to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly,
16 intelligently, and voluntarily waive those rights, including the right of requiring the
17 Commissioner to prove the allegations in the Accusation at a hearing at which I would have the
18 right to cross-examine witnesses against me and to present evidence in defense and mitigation
19 of the charges.

20 1-13-11

21 DATED

22 

23 MARK FEATHERS
24 Respondent

25 1-13-11

26 DATED

27 

SMALL BUSINESS CAPITAL CORP.
Respondent
By the Designated Officer of
Small Business Capital Corp.
MARK FEATHERS

* * *

I have reviewed this Stipulation and Agreement as to form and content and have advised my clients accordingly.

1-13-11

DATED

JOSHUA A. ROSENTHAL
MEDLIN & HARGRAVE

The foregoing Stipulation and Agreement In Settlement and Order is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective

at 12 o'clock noon on **FEB 24 2011**

IT IS SO ORDERED

2-1-2011

JEFF DAVI
Real Estate Commissioner

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1 RICHARD K. UNO, COUNSEL (SBN 98275)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 (916) 227-2380 (Direct)

FILED

AUG 26 2010

DEPARTMENT OF REAL ESTATE

By K. Mar

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

10 * * *

11 In the Matter of the Accusation of)
12 SMALL BUSINESS CAPITAL CORP.,) No. H-10993 SF
13 and MARK FEATHERS,) ACCUSATION
14 Respondents.)
15 _____)

16 The Complainant, E. J. Haberer, II, a Deputy Real Estate Commissioner of the
17 State of California for cause of Accusation against SMALL BUSINESS CAPITAL CORP.
18 (SBCC), and MARK FEATHERS (FEATHERS) is informed and alleges as follows:

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20 The Complainant makes this Accusation in his official capacity.

21 2

22 At all times mentioned herein, SBCC was licensed by the Department as a
23 corporate real estate broker dba "SB Capital".

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25 At all times mentioned herein, FEATHERS was licensed by the Department as a
26 real estate broker.

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At all times during the audit period, FEATHERS was licensed by the Department as the designated broker-officer of SBCC. As the designated broker-officer, FEATHERS was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of SBCC for which a real estate license is required to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

5

At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(b) of the Code, including the operation and conduct of a property management business wherein Respondent leased, rented, or offered to lease or rent, solicited listings for lease or rent, collected rents from tenants or lessees, or performed other services for real property owners and tenants or lessees, all for or in expectation of compensation.

FIRST CAUSE OF ACTION

6

Beginning on or about October 15, 2009 and intermittently through November 2, 2009, the Department conducted an audit of SBCC's property management business for the period of September 1, 2008 to August 31, 2009 as set forth in Audit No. OK 090023 (MLB), dated January 27, 2010. During the course of the property management activities described in Paragraph 5, Respondent received and disbursed funds held in trust on behalf of others.

7

The following facts were ascertained by the audit for the period referred to above:

a. SBCC maintained two bank accounts:

(1) Trust #1 was located at Wells Fargo Bank, 100 Main Street, Los Altos, CA 94022, designated as the "SB Capital, Brokers Trust Account", Account No. 9296668610;

1 (2) Trust #2 was located at The Private Bank, 505 Hamilton Ave., Suite 110,
2 Palo Alto, CA 94301, designated as the "SB Capital CA Dept. RE License
3 #01449179 Brokers Trust Account for SBC Portfolio Fund, LLC", Account No.
4 140007139;

5 b. Trust #2 was used initially and then replaced by Trust #1 for property
6 management activities. Deposits consisted of rents and security deposits collected from tenants.
7 Disbursements consisted of payments for expenses related to the properties managed, remittances
8 to owners and to SBCC for management fees;

9 c. Trust Fund Accountability was established for Trust #1 and as of July 31, 2009
10 a shortage of \$40,050.42 was discovered, in violation of Section 10145 of the Code;

11 d. SBCC failed to obtain the written consent of every owner of the trust funds to
12 allow the balance of the trust account to fall to an amount less than the existing aggregate trust
13 fund liability of the broker to all owners of the funds in violation of Section 2832.1 of the
14 Regulations. After discovery, SBCC failed to notify owners of the trust funds of the trust
15 account shortages and

16 e. SBCC failed to file a Threshold Notice in a timely fashion as required by
17 Section 10232 of the Code.

18 8

19 The acts and omissions of Respondent SBCC described in Paragraph 7, above,
20 constitute violations of Section 2832.1 (Trust Fund Handling) of the Regulations and Sections
21 10145 (Trust Fund Handling) and 10232 (Threshold Notice) of the Code and constitute grounds
22 for disciplinary action under Sections 10177(d) (Willful Disregard/Violation of Real Estate Law)
23 and 10177 (g) (Negligence/Incompetence Real Estate Licensee) of the Code.

24 SECOND CAUSE OF ACTION


25 9

26 Complainant refers to Paragraphs 1 through 8, above, and incorporates them
27 herein by reference.

At all times during the audit period, FEATHERS was responsible, as the designated broker-officer of SBCC, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees to ensure its compliance with the Real Estate Law and the Regulations. FEATHERS failed to exercise reasonable supervision and control over the property management brokering activities of SBCC. In particular, FEATHERS permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to occur, and failed to take reasonable steps, including but not limited to the handling of trust funds, supervision of employees, and the implementation of policies, rules, procedures, and systems to ensure the compliance of the corporation with the Real Estate Law and the Regulations.

The above acts and/or omissions of FEATHERS violate Section 2725 (Broker Supervision) of the Regulations and Section 10159.2 (Responsibility/Designated Officer) of the Code and are grounds for disciplinary action under the provisions of Section 10177(d) (Willful Disregard/Violation of Real Estate Law and 10177(h) (Broker Supervision) of the Code.

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


 E. J. HABERER, II
 Deputy Real Estate Commissioner

Dated at Oakland, California,
 this 25th day of August, 2010.