

FILED

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DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CHRISTIAN CHURCH HOMES OF NORTHERN)
13 CALIFORNIA and MERRILL DEAN CLUM,)
14 Respondents.)

No. H-11416 SF
ACCUSATION

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16 The Complainant, E. J. HABERER II, in his official capacity as Deputy Real
17 Estate Commissioner of the State of California, for cause of Accusation against CHRISTIAN
18 CHURCH HOMES OF NORTHERN CALIFORNIA (hereinafter "CCH") and MERRILL
19 DEAN CLUM (hereinafter "CLUM") (collectively "Respondents"), is informed and alleges as
20 follows:

21 THE RESPONDENTS

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23 At all times relevant herein, CCH was and is licensed and/or has license rights
24 under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code)
25 (hereinafter "Code"), as a corporate real estate broker with CLUM as it designated officer-
26 broker.

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At all times herein mentioned, CLUM is licensed and/or has license rights under the Code. In addition, CLUM was and is licensed by the Department as the designated officer-broker of CCH and pursuant to Section 10159.2 of the Code, was responsible for the supervision of the activities of the officers, agents, real estate licensees, and employees of CCH.

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At all times herein mentioned, CCH and CLUM were, and continue to be, 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 Sections 10131(a) and 10131(b) of the Code (Broker defined), including the operation of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, CCH leased or rented and offered to lease or rent, and placed for rent, and solicited listings of places for rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents for the real property or improvements thereon.

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Whenever reference is made in an allegation in this Accusation to an act or omission of CCH, such allegation shall be deemed to mean that CCH, CLUM, CCH's employees, agents and/or real estate licensees employed by or associated with CCH committed such acts or omissions while acting within the course and scope of their authority and employment with CCH and in the furtherance of the business or operations of CCH.

FIRST CAUSE OF ACTION
The CCH Audit

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Complainant incorporates by reference that each and every allegation contained in Paragraphs 1 through 4, above, as if fully set forth herein.

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2 Intermittently between October 24, 2011, and January 20, 2012, an auditor with
3 the Department conducted an audit of the books and records of CCH on a random sampling basis
4 at CCH's main office located at 303 Hagenberger Road, Suite 201, Oakland, California 94621,
5 wherein the Department's auditor examined the books and records of CCH for the period
6 September 1, 2010 to September 30, 2011 (the "Audit Period"), with the auditor issuing his audit
7 report on or about March 12, 2012.

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9 In so acting as real estate property managers, as described in Paragraph 3 above,
10 CCH and/or CLUM, on behalf of CCH, accepted or received funds in trust (hereinafter "trust
11 funds") from or on behalf of borrowers, lenders, owners, tenants and others in connection with
12 the leasing, renting, and collection of rents on real property or improvements thereon, as alleged
13 herein and thereafter from time to time made disbursements of said funds.

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15 The aforementioned trust funds accepted or received by Respondents were
16 deposited or caused to be deposited by Respondents into one or more bank accounts (hereinafter
17 "trust fund accounts") maintained by Respondents for the handling of property management trust
18 funds, including, but not necessarily limited to, the following bank accounts maintained by CCH
19 at the Wells Fargo Bank, P.O. Box 6995, Portland, Oregon 97228:

20 (a) Beth Eden Housing Account, Account number XXXX4417 ("Bank
21 Account #1");

22 (b) SR Thea Bowman Manner Account; account number XXX6901 ("Bank
23 Account #2);

24 (c) Downs Senior Housing Associates, account number XXX2581 ("Bank
25 Account #3"); and

26 (d) Fargo Senior Center, Inc., account XXXX2553 ("Bank Account #4")

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In addition, the aforementioned trust funds accepted or received by Respondents were deposited or caused to be deposited by Respondents into one or more investment accounts (hereinafter "Morgan Stanley accounts") maintained by Respondents for the handling of property management trust funds, including, but not necessarily limited to, the following investment accounts maintained by CCH at Morgan Stanley Smith Barney, 2175 North California Blvd., Walnut Creek, CA 94596:

(a) Beth Eden Housing Development Security Deposit MGD by CCH; account number XXXXX12-350 ("Morgan Stanley Account #1");

(b) St Columba Development Corp, Sister Thea Bowman Manner Security Deposit Account; account number XXX10-350 ("Morgan Stanley Account #2");

(c) Downs Senior Housing Assoc Security Account, account number XXXXX12-350 ("Morgan Stanley #3"); and,

(d) Beth Eden Housing Development Security Deposit MGD by CCH; account number XXX18-350 ("Morgan Stanley #4")

In the course of the activities described in Paragraph 5, above, for the audit period, CCH and CLUM:

(a) For the times relevant to the operation of CLUM, CCH failed to designate one or more bank account as a trust account under the name of CCH and CLUM as trustee in violation of Sections 10145 and 10146 of the Code and Section 2832, Chapter 6, Title 10, California Code of Regulations (hereinafter "Commissioner's Regulations");

(b) For the all times relevant hereto, CCH deposited tenant security deposit receipts into one or more Morgan Stanley accounts as identified in paragraph 9, above, which constitutes violations of Sections 10145 and 10146 of the Code and Section 2832 of the Regulations;

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1 (c) CLUM and CCH failed to maintain accurate separate beneficiary records
2 for each Bank Account identified in Paragraph 8 above, and each Morgan Stanley investment
3 accounts identified in Paragraph 9 above. Each such failure to maintain accurate separate
4 beneficiary records constitutes a separate violation of Section 2831.1 of the Commissioner's
5 Regulations;

6 (d) CLUM and CCH having failed to maintain separate beneficiary records,
7 also failed to reconcile the separate beneficiary records for each beneficiary whose funds were
8 deposited into the Bank Accounts identified in Paragraph 8 above, and the Morgan Stanley
9 investment accounts identified in Paragraph 9, above. Each constitutes a separate violation of
10 Section 2831.2 of the Commissioner's Regulations; and

11 (e) At all times relevant herein, Don Stump, Lielani Siegfried, Cynthia
12 Lappin, and Doral Main were not licensed by the Department in any capacity, yet had signatory
13 authority on certain CCH bank accounts and Morgan Stanley investment accounts. As CCH
14 had unlicensed signatories on its purported trust accounts, CCH was required to maintain a
15 fidelity bond in an amount at least equal to the maximum amount of the trust funds to which the
16 aforementioned unlicensed individuals had access. CCH carried "employee dishonesty
17 coverage" in an amount of up to \$500,000. However, this coverage includes a per claim
18 deductible of \$5,000.00 and per claim "Defense Expense" coverage of \$5,000.00. The
19 limitations on covered defense expenses indicates that CCH's employee dishonesty coverage is
20 a "burning limits" policy where the principal coverage is reduced by defense expenses incurred
21 over and above the first \$5,000. Additionally, as the policy contains a \$5,000 deductible, the
22 CCH is responsible for the first \$5,000 in losses to trust funds. Therefore, the "employee
23 dishonesty coverage" does not comply with the fidelity bond coverage in violation of Section
24 2834 of the Regulations (Non-licensee Fidelity Bond requirement for Trust Fund signatories).

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26 CCH's acts and/or omissions as alleged in Paragraphs 5 through 9, above, violate
27 Sections 10085, 10085.5, 10145, 10146, and 10160 of the Code; and Sections 2753, 2831.2,

1 2832, 2832.1, 2834, and 2970 of the Commissioner's Regulations each of which jointly and
2 severally constitute grounds for discipline of CCH under Section 10177(d) of the Code.

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4 SECOND CAUSE OF ACTION

5 Failure to Supervise
6 As to CLUM only

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8 Complainant incorporates by reference the each and every allegation contained in
9 Paragraphs 1 through 11, above, as if fully set forth herein.

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11 At all times mentioned herein, CLUM failed to exercise reasonable
12 supervision over the activities of CCH's officers, agents, real estate licensees and employees of
13 CCH, and permitted, ratified and/or caused the conduct described above. CLUM failed to
14 reasonably or adequately review, oversee, inspect, manage, and supervise the activities of the
15 officers, agents, real estate licensees and employees of CCH and/or to establish reasonable
16 policies, rules, procedures and systems for such review, oversight, supervision, inspection and
17 management.

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19 The facts described herein constitute cause for the suspension or revocation of the
20 licenses and license rights of CLUM under Section 10177(g) (negligence or incompetence)
21 and/or Section 10177(h) (failure to supervise) of the Code.

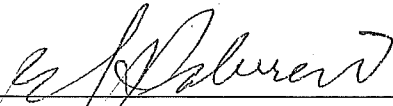
22 THIRD CAUSE OF ACTION

23 Recovery of Reasonable Costs of Investigation and Enforcement

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25 Section 10106 of the Code provides, in pertinent part, that in any order issued in
26 resolution of a disciplinary proceeding before the department, the Commissioner may request the
27 administrative law judge to direct a licensee found to have committed a violation of this part to
pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered revoking all licenses and
3 license rights of CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA and
4 MERRILL DEAN CLUM under the Real Estate Law (Part 1 of Division 4 of the Business and
5 Professions Code), for the cost of investigation and enforcement as permitted by law, and for
6 such other and further relief as may be proper under other provisions of law.

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9 E. J. HABERER II,
Deputy Real Estate Commissioner

10 Dated at Oakland, California

11 this 14 day of June, 2012.
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14 **DISCOVERY DEMAND**

15 Pursuant to Sections 11507.6, *et seq.* of the *Administrative Procedures Act*, the Department
16 of Real Estate hereby makes demand for discovery pursuant to the guidelines set forth in
17 the *Administrative Procedures Act*. Failure to provide Discovery to the Department of Real
18 Estate may result in the exclusion of witnesses and documents at the hearing on this
19 Accusation and for other sanctions that the Office of Administrative Hearings deems
20 appropriate.
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