

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

JAN 21 2014

BUREAU OF REAL ESTATE

By *L. Frost*

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

11 * * *

12 In the Matter of the Accusation of)
13 CHRISTIAN CHURCH HOMES OF) NO. H-11416 SF
14 NORTHERN CALIFORNIA and)
15 MERRILL DEAN CLUM,) STIPULATION AND AGREEMENT
16 Respondents.)

17 It is hereby stipulated by and between Respondents CHRISTIAN CHURCH
18 HOMES OF NORTHERN CALIFORNIA and MERRILL DEAN CLUM (collectively referred
19 to herein as "Respondents"), acting by and through James Diamond, Esq., Counsel for
20 Respondents, and the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for
21 the Department of Real Estate ("Department"), as follows for the purpose of settling and
22 disposing of the Accusation filed on June 25, 2012, in this matter:

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

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

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

14 4. This Stipulation is based on the factual allegations contained in the
15 Accusation. In the interest of expedience and economy, Respondents choose not to contest these
16 factual allegations, but to remain silent and understand that, as a result thereof, these factual
17 statements will serve as a prima facie basis for the "Determination of Issues" and "Order" set
18 forth below. The Commissioner shall not be required to provide further evidence to prove such
19 allegations.

20 5. This Stipulation and Respondents' decision not to contest the
21 Accusation are made for the purpose of reaching an agreed disposition in this proceeding and are
22 expressly limited to this proceeding and any other proceeding or case in which the Department,
23 the state or federal government, an agency of this state, or an agency of another state is involved.

24 6. It is understood by the parties that the Commissioner may adopt the
25 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and
26 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"

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1 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and
2 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing
3 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound
4 by any admission or waiver made herein.

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

9 8. Respondents understand that by agreeing to this Stipulation and
10 Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and
11 Professions Code ("the Code"), the costs of the audit which resulted in the determination that
12 Respondents committed the trust fund violation(s) found in the Determination of Issues. The
13 amount of such costs is \$7,014.00.

14 9. Respondents further understand that by agreeing to this Stipulation
15 and Agreement, the findings set forth below in the Determination of Issues become final, and
16 that the Commissioner may charge said Respondents for the costs of any audit conducted
17 pursuant to Section 10148 of the Code to determine if the violations have been corrected. The
18 maximum costs of said audit shall not exceed \$7,014.00.

19 10. Respondents understand that by agreeing to this Stipulation and
20 Agreement, Respondents agree to pay, pursuant to Section 10106 of the Code, the costs of the
21 investigation and enforcement of this case which resulted in the determination that Respondents
22 committed the violation(s) found in the Determination of Issues. The amount of such cost is
23 \$1,790.30.

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations, admissions and waivers and solely for the
26 purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that
27 the following determination of issues shall be made:

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I.

The acts and omissions of Respondent CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA under the provisions of Section 10177(d) of the Code, in conjunction with Sections 10145 and 10146 of the Code and Sections 2831.1, 2832, and 2834 of Title 10 of the California Code of Regulations.

II.

The acts and omissions of Respondent MERRILL DEAN CLUM as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent MERRILL DEAN CLUM under the provisions of Sections 10177(g) and 10177(h) and of the Code.

ORDER

I.

All licenses and licensing rights of Respondent CHRISTIAN CHURCH HOMES OF NORTHERN CALIFORNIA ("Respondent") under the Real Estate Law are suspended for a period of Sixty (60) days from the effective date of this Order; provided, however, that:

1. Thirty (30) days of said suspension shall be stayed for two (2) years 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 two (2) years 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 re-impose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

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

4 ii. That no final subsequent determination be made, after
5 hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years
6 from the effective date of this Order. Should such a determination be made, the Commissioner
7 may, in his discretion, vacate and set aside the stay order and re-impose all or a portion of the
8 stayed suspension. Should no such determination be made, the stay imposed herein shall
9 become permanent.

10 b. Thirty (30) days of said suspension shall be stayed, upon the
11 condition that Respondent petitions pursuant to Section 10175.2 of the Code and pays a
12 monetary penalty pursuant to Section 10175.2 of the Code at a rate of \$50.00 for each day of the
13 suspension for a total monetary penalty of \$1,500.00.

14 i. Said payment shall be in the form of a cashier's check or
15 certified check made payable to the Department of Real Estate. Said check must be delivered to
16 the Department prior to the effective date of the Decision in this matter.

17 ii. No further cause for disciplinary action against the real
18 estate license of Respondent occurs within two (2) years from the effective date of the decision
19 in this matter.

20 iii. If Respondent fails to pay the monetary penalty in
21 accordance with the terms and conditions of the Decision, the Commissioner may, without a
22 hearing, order the immediate execution of all or any part of the stayed suspension, in which
23 event, Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for
24 money paid to the Department under the terms of this decision.

25 iv. If Respondent pays the monetary penalty, and if no further
26 cause for disciplinary action against the real estate license of Respondent occurs within two (2)

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2 I have read the Stipulation and Agreement and its terms are understood by me
3 and are agreeable and acceptable to me. I understand that I am waiving rights given to me by
4 the California Administrative Procedure Act (including but not limited to Sections 11506,
5 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and
6 voluntarily waive those rights, including the right of requiring the Commissioner to prove the
7 allegations in the Accusation at a hearing at which I would have the right to cross-examine
8 witnesses against me and to present evidence in defense and mitigation of the charges.
9 Respondents can signify acceptance and approval of the terms and conditions of this
10 Stipulation and Agreement by faxing a copy of the signature page, as actually signed by
11 Respondents, to the Department at fax number (916) 227-9458. Respondents agree,
12 acknowledge and understand that by electronically sending to the Department a fax copy of
13 Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of
14 the faxed copy by the Department shall be as binding on Respondents as if the Department had
15 received the original signed Stipulation and Agreement.

16
17 March 15, 2013
18 DATED

Merrill Dean Clum
MERRILL DEAN CLUM,
Respondent

19 March 15, 2013
20 DATED

Merrill Dean Clum
MERRILL DEAN CLUM,
As Designated Officer of Respondent
CHRISTIAN CHURCH HOMES OF
NORTHERN CALIFORNIA

21 ***

22
23 *I have reviewed this Stipulation and Agreement and Order as to form and
24 content and have advised my clients accordingly.*

25 DATED

26 James T. Diamond, Esq., Attorney for
27 Respondents CHRISTIAN CHURCH
HOMES OF NORTHERN CALIFORNIA
and MERRILL DEAN CLUM

H-11416 SF

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I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges. Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at fax number (916) 227-9458. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

DATED

MERRILL DEAN CLUM,
Respondent

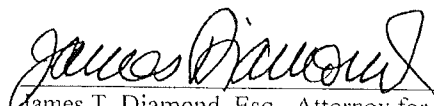
DATED

MERRILL DEAN CLUM,
As Designated Officer of Respondent
CHRISTIAN CHURCH HOMES OF
NORTHERN CALIFORNIA

* * *

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

3/15/13
DATED



James T. Diamond, Esq., Attorney for
Respondents CHRISTIAN CHURCH
HOMES OF NORTHERN CALIFORNIA
and MERRILL DEAN CLUM

