

Mac Lennan

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED
MAR - 9 2004
DEPARTMENT OF REAL ESTATE

By *K. Medeiros*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BEACON PROPERTY MANAGEMENT INC.,)
13 and, WILBUR GIN, individually)
14 and as former designated officer)
15 of Beacon Property Management Inc.)
16 Respondents..)

No. H-30383 LA

STIPULATION
AND
AGREEMENT

17 It is hereby stipulated by and between BEACON PROPERTY
18 MANAGEMENT INC., and WILBUR GIN, individually and as former
19 designated officer of Beacon Property Management Inc. (sometimes
20 collectively referred to as "Respondents"), and the Complainant,
21 acting by and through Elliott Mac Lennan, Counsel for the
22 Department of Real Estate, as follows for the purpose of settling
23 and disposing of the Accusation filed on October 9, 2003, in this
24 matter:

25 ///

26 ///

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

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

12 3. Respondents filed a Notice of Defense pursuant to
13 Section 11506 of the Government Code for the purpose of
14 requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense of the allegations in the
23 Accusation and the right to cross-examine witnesses.

24 4. This Stipulation is based on the allegations
25 contained in the Accusation. In the interest of expedience and
26 economy, Respondents choose not to contest these allegations, but
27 to remain silent and understand that, as a result thereof, these

1 allegations, without being admitted or denied, will serve as a
2 prima facie basis for the disciplinary action stipulated to
3 herein. The Real Estate Commissioner shall not be required to
4 provide further evidence to prove said allegations.

5 5. This Stipulation is based on Respondents decision
6 not to contest the allegations set forth in the Accusation as a
7 result of the agreement negotiated between the parties. This
8 Stipulation is expressly limited to this proceeding and any
9 further proceeding initiated by or brought before the Department
10 of Real Estate based upon the facts and circumstances alleged in
11 the Accusation, and is made for the sole purpose of reaching an
12 agreed disposition of this proceeding without a hearing. The
13 decision of Respondents not to contest the allegations is made
14 solely for the purpose of effectuating this Stipulation. It is
15 the intent and understanding of the parties that this Stipulation
16 shall not be binding or admissible against Respondents in any
17 actions against Respondents by third parties.

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

1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusation against Respondents herein.

9 8. This Stipulation and the order made pursuant to
10 this Stipulation shall have no collateral estoppel or res
11 judicata effect in any proceeding(s) in which BEACON PROPERTY
12 MANAGEMENT INC. and/or WILBUR GIN and the Department are not
13 parties. This Stipulation is made and accepted with the express
14 understanding and agreement that it is for the purpose of
15 settling these proceedings only, and is not intended as, nor
16 shall be it be deemed, used, argued, or accepted as an
17 acknowledgement or admission of fact in any other judicial,
18 administrative, or other proceeding in which the Department is
19 not a party.

20 9. Respondents understand that by agreeing to this
21 Stipulation, Respondents agree to pay, pursuant to Business and
22 Professions Code Section 10148, the cost of the audit (LA 000445)
23 which led to this disciplinary action. The amount of said cost
24 is \$3,775.10.

25 ///

26 ///

27

1 MANAGEMENT INC., for which a real estate license is required, in
2 violation of Code Section 10159.2 and its conduct is a basis for
3 the suspension or revocation of Respondent's broker license
4 pursuant to Sections 10177(d) and 10177(h) of the Code.

5 ORDER

6 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT
7 TO THE WRITTEN STIPULATION OF THE PARTIES:

8 I. All licenses and licensing rights of Respondents
9 BEACON PROPERTY MANAGEMENT INC. and WILBUR GIN under the Real
10 Estate Law are suspended for a period of ninety (90) days from
11 the effective date of this Decision; provided, however, that
12 sixty (60) days of said suspension shall be stayed for one (1)
13 year upon the following terms and conditions:

14 A. Respondents shall obey all laws, rules and
15 regulations governing the rights, duties and responsibilities
16 of a real estate licensee in the State of California.

17 B. That no final subsequent determination be made,
18 after hearing or upon stipulation, that cause for disciplinary
19 action occurred within one (1) year of the effective date of this
20 Decision. Should such determination be made, the Commissioner
21 may, in her discretion, vacate and set aside the stay order and
22 reimpose all or a portion of the stayed suspension. Should no
23 such determination be made, the stay imposed herein shall become
24 permanent.

1 II. Respondent BEACON PROPERTY MANAGEMENT INC. shall
2 submit proof satisfactory to the Commissioner that any designated
3 officer employed by Respondent, including James Lee Notley, has
4 taken and completed at an accredited institution the continuing
5 education course on trust fund accounting and handling specified
6 in paragraph (3) of subdivision (a) of Section 10170.5 of the
7 Business and Professions Code. Proof of satisfaction of this
8 requirement includes evidence that the designated officer has
9 successfully completed the trust fund account and handling course
10 within 120 days prior to the effective date of the Decision in
11 this matter.

12 In the event of a change of designated officers after
13 the effective date but during the one (1) year period set forth
14 in Paragraphs I and III (c) below, the new designated officer
15 must take and complete at an accredited institution the
16 continuing education course on trust fund accounting and handling
17 specified in paragraph (3) of subdivision (a) of Section 10170.5
18 of the Business and Professions Code. Proof of satisfaction of
19 this requirement includes evidence that the designated officer
20 has successfully completed the trust fund account and handling
21 course within 120 days prior to or after the, continuing or new
22 designated officer's employment date.

24 III. The initial thirty (30) day portion of said
25 ninety (90) day suspension shall commence on the effective date
26
27

1 of this Decision; provided, however, that if Respondents
2 petition, said suspension shall be stayed upon condition that:

3 (a) Pursuant to Section 10175.2 of the Business
4 and Professions Code, Respondent BEACON PROPERTY MANAGEMENT INC.
5 and Respondent WILBUR GIN each pay a monetary penalty of thirty-
6 three dollars and thirty-three cents (\$33.33) per day totaling
7 one thousand (\$1,000) dollars each, or two thousand dollars
8 (\$2,000) in total for both Respondents.

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

14 (c) No further cause for disciplinary action
15 against the real estate license of Respondents occur within one
16 (1) year from the effective date of the Decision in this matter.

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

24 (e) If Respondents pay the monetary penalty and if
25 no further cause for disciplinary action against the real estate
26
27

1 licenses of Respondents occur within two (2) years from the
2 effective date of the Decision, the stay hereby granted shall
3 become permanent.

4 IV. Pursuant to Section 10148 of the Business and
5 Professions Code, Respondents BEACON PROPERTY MANAGEMENT INC. and
6 WILBUR GIN shall pay the Commissioner's reasonable cost for: (a)
7 the audit (LA 000445) which led to this disciplinary action and
8 (b) a subsequent audit to determine if Respondent BEACON PROPERTY
9 MANAGEMENT INC. is now in compliance with the Real Estate Law.
10 The cost of the audit which led to this disciplinary action is
11 \$3,775.10. In calculating the amount of the Commissioner's
12 reasonable cost, the Commissioner may use the estimated average
13 hourly salary for all persons performing audits of real estate
14 brokers, and shall include an allocation for travel time to and
15 from the auditor's place of work. Said amount for the prior and
16 subsequent audit shall not exceed \$7,550.20.

17
18 Respondents shall pay such cost within 60 days of
19 receiving an invoice from the Commissioner detailing the
20 activities performed during the audit and the amount of time
21 spent performing those activities.

22 The Commissioner may suspend the license of a
23 Respondent pending a hearing held in accordance with Section
24 11500, et seq., of the Government Code, if payment is not timely
25 made as provided for herein, or as provided for in a subsequent
26 agreement between the Respondent and the Commissioner. The
27

1 suspension shall remain in effect until payment is made in full
2 or until a Respondent enters into an agreement satisfactory to
3 the Commissioner to provide for payment, or until a decision
4 providing otherwise is adopted following a hearing held pursuant
5 to this condition.

6
7
8 DATED: 12-3-04

E. J. Lennan
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

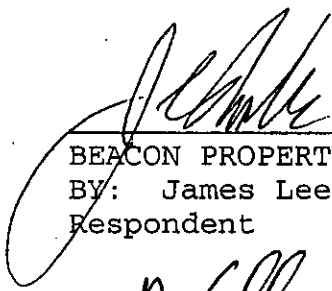
9
10 * * *

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

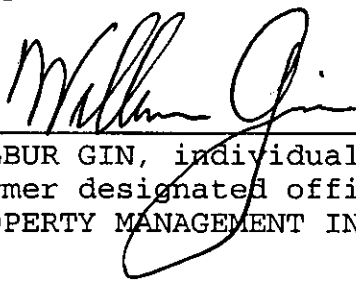
21 Respondents can signify acceptance and approval of the
22 terms and conditions of the Stipulation by faxing a copy of its
23 signature page, as actually signed by Respondents, to the
24 Department at the following telephone/fax number: (213) 576-6917,
25 Attention: Elliott Mac Lennan. Respondents agree, acknowledge
26 and understand that by electronically sending to the Department a
27

1 fax copy of Respondents' actual signatures as they appear on the
2 Stipulation and Agreement, that receipt of the faxed copy by the
3 Department shall be as binding on Respondents as if the
4 Department had received the original signed Stipulation.

5
6 DATED: January 28, 2004


BEACON PROPERTY MANAGEMENT INC.
BY: James Lee Notley, D.O.
Respondent

7
8
9
10 DATED: JAN. 30, 2004



WILBUR GIN, individually and as
former designated officer of BEACON
PROPERTY MANAGEMENT INC. Respondent

11
12
13
14 * * *

15 The foregoing Stipulation and Agreement is hereby
16 adopted as my Decision and Order and shall become effective at 12
17 o'clock noon on APR - 8 2004

18 IT IS SO ORDERED March 3, 2004

19
20
21 JOHN R. LIBERATOR
22 Acting Real Estate Commissioner

23 
24
25
26
27

*Sacto
3/15*

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

FILED
DEC - 4 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

BEACON PROPERTY MANAGEMENT INC.,
ET AL.,

By *R. Mulerhlo*

Case No. H-30383 LA

OAH No. L-2003100659

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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on March 26, 2004, at the hour of 9:00 a.m., 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: DEC - 4 2003

By *E. J. Lennan*
ELLIOTT MAC LENNAN, Counsel

cc: Beacon Property Mgmt Inc.
Wilbur Gin.
Sacto/OAH/ST

Handwritten initials/signature

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED
OCT - 9 2003
DEPARTMENT OF REAL ESTATE

By *Katherine Derholt*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-30383 LA
12 BEACON PROPERTY MANAGEMENT INC. and)	
13 WILBUR GIN, individually and as)	<u>A C C U S A T I O N</u>
14 former designated officer of)	
15 Beacon Property Management Inc.)	
)	
16 Respondents.)	
)	
)	
)	

18 The Complainant, Maria Suarez, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against BEACON PROPERTY MANAGEMENT INC. and WILBUR GIN,
21 individually and as former designated officer of Beacon Property
22 Management Inc., is informed and alleges as follows:

23 1.

24 The Complainant, Maria Suarez, acting in her official
25 capacity as a Deputy Real Estate Commissioner of the State of
26 California, makes this Accusation against BEACON PROPERTY
27

1 MANAGEMENT INC. ("BPM") and WILBUR GIN, individually and as
2 former designated officer of Beacon Property Management Inc.
3 ("GIN")

4 2.

5 All references to the "Code" are to the California
6 Business and Professions Code and all references to "Regulations"
7 are to Title 10, Chapter 6, California Code of Regulations.

8 3.

9 BPM and GIN (sometimes hereinafter referred to as
10 Respondents) are presently licensed or have license rights under
11 the Real Estate Law (Part 1 of Division 4 of the Business and
12 Professions Code, hereinafter "Code").

13 4.

14 At all time herein mentioned, GIN was licensed by the
15 Department as the designated officer of BPM, to qualify BPM and
16 to act for BPM as a real estate broker and, as provided by Code
17 Section 10159.2, was responsible for the supervision and control
18 of the activities conducted on behalf of BPM by BPM's officers,
19 managers and employees as necessary to secure full compliance
20 with the provisions of the Real Estate Law including the
21 supervision of the salespersons licensed to the corporation in
22 the performance of acts for which a real estate license is
23 required. BPM'S corporate real estate broker license was
24 originally issued on January 30, 2001. GIN was originally
25 licensed as a real estate broker on October 31, 1995. GIN was
26

1 the designated officer of BPM from January 30, 2001 until January
2 31, 2002.

3 5.

4 Whenever reference is made in an allegation in the
5 Accusation to an act or omission of BPM, such allegation shall be
6 deemed to mean that the officers, directors, managers, employees,
7 agents and real estate licensees employed by or associated with
8 BPM, including GIN, committed such act or omission while engaged
9 in the furtherance of BPM's business or operation and while
10 acting within the course and scope of BPM's corporate authority,
11 agency and employment.

12 6.

13 At all times mentioned, in the City of Rancho
14 Cucamonga, County of Los Angeles, BPM acted as corporate real
15 estate broker and conducted licensed activities within the
16 meaning of Code Section 10131(b) of the Code in that BPM operated
17 a property management brokerage.

18 7.

19 On July 26, 2001, the Department completed an audit
20 examination of the books and records of BPM pertaining to its
21 property management activities requiring a real estate license as
22 described in Paragraph 6. The audit examination covered a period
23 of time beginning on October 1, 2000 to May 31, 2001. The audit
24 examination revealed violations of the Code and the Regulations
25 as set forth below, and more fully discussed in Audit Report LA
26
27

1 000455 and the exhibits and workpapers attached to said audit
2 report.

3 8.

4 At all times mentioned, in connection with the
5 activities described in Paragraph 6, above, BPM accepted or
6 received funds in trust (trust funds) from or on behalf of owners
7 and tenants, and thereafter made disposition of such funds.

8 Respondent BPM maintained twenty-three trust accounts during the
9 audit period into which were deposited certain of these funds at
10 Bank of America, Rancho Cucamonga, California. The following
11 seven of the twenty-three trust accounts were scheduled by the
12 departmental auditor for this audit:

13 "Las Brisas Fontana Pacifica
14 Account No. 00568-13845" (T/A #1)

15 "Laurel Tree Apts.
16 Account No. 00568-14293" (T/A #2)

17 "BPM/F & M Plaza
18 Account No. 00569-08381" (T/A #3)

19 "BPM/The Country Village
20 Account No. 00563-14408" (T/A #4)

21 "Country Village SDA
22 Account No. 00564-08380" (T/A #5)

23 "Country Village Rec. Acct.
24 Account No. 00564-08379" (T/A #6)

25 "BPM/The Country Village - MM
26 Account No. 00568-0976" (T/A #7)
27

1
2 With respect to the licensed activities referred to in
3 Paragraph 6, and the audit examination including the exhibits and
4 workpapers referred to in Paragraph 7, it is alleged that BPM:

5 (a) Failed to maintain an accurate and complete
6 adequate control record in the form of a columnar record in
7 chronological order for receipts and disbursements from the
8 security deposits records of trust funds received for The Country
9 Village Apartment, T/A #4, as required by Code Section 10145 and
10 Regulation 2831.

11 (b) With respect to T/A #1 through T/A #7, failed to
12 place funds, including funds received in certain property
13 management transactions such as rents collected from tenants,
14 accepted on behalf of another into the hands of the owner of the
15 funds, into a neutral escrow depository or into a trust fund
16 account in the name of the broker as trustee at a bank or other
17 financial institution not later than three business days
18 following receipt of the funds by the broker or by the broker's
19 salesperson, as required by Code Section 10145 and Regulation
20 2832.

21
22 (c) Permitted unlicensed and unbonded persons Kelly
23 Vickers to be an authorized signatory on the trust accounts T/A
24 #1 through T/A #7. Moreover, GIN was not a signatory on all of
25 the seven trusts accounts, to wit, GIN was not a signatory on
26 T/A #1, T/A #2, T/A #3 and T/A #4, in violation of Code Section
27

1 10145 and Regulation 2834.

2 (d) During the audit period, BPM employed or
3 compensated Barbara Moran to perform acts for which a real estate
4 license is required, with full knowledge that she was not
5 licensed by the Department as real estate salesperson or as real
6 estate broker, or as real estate salespersons employed by a real
7 estate broker, in violation of Code Section 10137. Barbara Moran
8 was the resident manager of Laurel Tree Apartment yet she managed
9 and signed rental agreements for the Las Brisas Apartment, which
10 is at a different location.

11 (e) BPM commenced activities requiring a real estate
12 license during October 2000 when BPM was not licensed as a
13 corporate real estate broker until January 30, 2001, in violation
14 of Code Section 10130.

15 10.

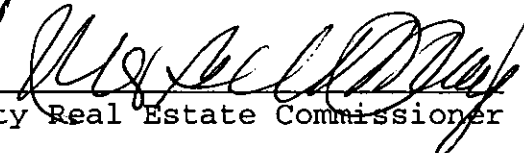
16
17 The conduct of Respondent BPM, described in Paragraph
18 9, above, violated the Code and the Regulations as set forth
19 below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
22 9(a)	Code Section 10145 and Regulation 2831
23 9(b)	Code Section 10145 and Regulation 2832
24 9(c)	Code Section 10145 and Regulation 2834
25 9(d)	Code Section 10137

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent
5 BEACON PROPERTY MANAGEMENT INC. and WILBUR GIN, individually and
6 as former designated officer of Beacon Property Management Inc.,
7 under the Real Estate Law (Part 1 of Division 4 of the Business
8 and Professions Code) and for such other and further relief as
9 may be proper under other applicable provisions of law.

10 Dated at Los Angeles, California

11 this ~~30th~~ day of September 2013.

12
13 
14 Deputy Real Estate Commissioner

15
16
17
18
19
20
21
22
23 cc: Beacon Property Management Inc.
24 c/o Wilbur Gin
25 Maria Suarez
26 Sacto
27 ST
Audits