

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

FILED
MAR 25 2004

DEPARTMENT OF REAL ESTATE

By Laurel G. Seal

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-2898 SD
12)
13 CAROL LEIGH MUNDELL and)
14 SAN DIEGO SUNRISE MANAGEMENT) STIPULATION AND AGREEMENT
15 COMPANY,)
16 Respondents.) IN SETTLEMENT AND ORDER

16 It is hereby stipulated by and between CAROL LEIGH
17 MUNDELL and SAN DIEGO SUNRISE MANAGEMENT COMPANY (Respondents)
18 and their attorney of record, David Bright of White and Bright,
19 LLP, and the Complainant, acting by and through David B. Seals,
20 Counsel for the Department of Real Estate, as follows for the
21 purpose of settling and disposing of the Accusation filed on
22 September 19, 2003, in this matter:

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

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement in Settlement.

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

7 3. A Notice of Defense was filed on October 6, 2003
8 by Respondents, pursuant to Section 11505 of the Government Code
9 for the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that they
12 understand that by withdrawing said Notice of Defense they will
13 thereby waive their right to require the Commissioner to prove
14 the allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that they will
16 waive other rights afforded to them in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondents choose not to contest these
23 allegations, but to remain silent and understand that, as a
24 result thereof, these factual allegations, without being admitted
25 or denied, will serve as a prima facie basis for the disciplinary
26 action stipulated to herein. The Real Estate Commissioner shall

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1 not be required to provide further evidence to prove said factual
2 allegations.

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

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

21 7. Respondents have received, read and understand the
22 "Notice Concerning Costs of Subsequent Audits". Respondents
23 understand that by agreeing to this Stipulation and Agreement in
24 Settlement, the findings set forth below in the DETERMINATION OF
25 ISSUES become final, and that the Commissioner may charge
26 Respondents for the costs of any audit for which they are charged
27 pursuant to Section 10148 of the Business and Professions Code

1 (hereinafter the "Code"). The reasonable cost of the audits
2 which led to this disciplinary action is \$14,937.24. The maximum
3 cost of the subsequent audits will not exceed \$7,500.

4
5 DETERMINATION OF ISSUES

6 I

7 By reason of the foregoing stipulations, admissions
8 and waivers and solely for the purpose of settlement of the
9 pending Accusation without a hearing, it is stipulated and agreed
10 that the facts alleged above are grounds for the suspension or
11 revocation of the licenses and license rights of Respondents
12 under Section 2831.2 the Regulations in conjunction with Section
13 10177(d) of the Code.

14 ORDER

15 1. All real estate licenses and license rights of
16 Respondents CAROL LEIGH MUNDELL and SAN DIEGO SUNRISE MANAGEMENT
17 COMPANY shall be suspended for a period of thirty (30) days from
18 the effective date of the Decision.

19 2. Said suspensions are stayed for a period of two
20 (2) years as to each Respondent upon the following terms and
21 conditions:

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

25 B. The Commissioner may, if a final subsequent
26 determination is made, after hearing or upon stipulation, that
27 cause for disciplinary action against the licenses of Respondents,

1 or either of them, has occurred within two (2) years from the
2 effective date of the Decision, vacate and set aside the stay order
3 and reimpose all or a portion of the stayed suspension as to that
4 Respondent.. Should no order vacating the stay be made pursuant to
5 this condition, the stay imposed herein as to each Respondent shall
6 become permanent; and,

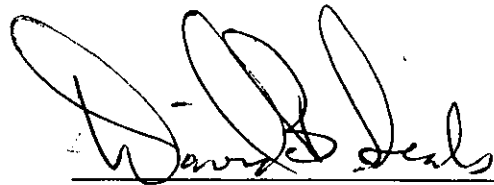
7 C. Respondent CAROL LEIGH MUNDELL shall, prior
8 to the effective date of this Decision, submit proof satisfactory
9 to the Commissioner of having taken and completed the continuing
10 education course on trust fund accounting and handling specified
11 in paragraph (3) of subdivision (a) of Section 10170.5 of the
12 Business and Professions Code from an approved continuing
13 education course provider. Said course may have been completed
14 within one hundred and twenty (120) days prior to the effective
15 date of the order herein. If Respondent fails to satisfy this
16 condition, the Commissioner may order the suspension of
17 Respondent's license until the Respondent presents such evidence.
18 The Commissioner shall afford Respondent the opportunity for
19 hearing pursuant to the Administrative Procedure Act to present
20 such evidence.

21 D. Pursuant to Section 10148 of the Business and
22 Professions Code, Respondents CAROL LEIGH MUNDELL and SAN DIEGO
23 SUNRISE MANAGEMENT COMPANY shall pay the Commissioner's
24 reasonable cost for the audit which led to this disciplinary
25 action and a subsequent audit to determine if Respondent SAN
26 DIEGO SUNRISE MANAGEMENT COMPANY has corrected the trust fund
27 violation(s) found in the Determination of Issues. In

1 calculating the amount of the Commissioner's reasonable cost, the
2 Commissioner may use the estimated average hourly salary for all
3 persons performing audits of real estate brokers, and shall
4 include an allocation for travel time to and from the auditor's
5 place of work. Respondents CAROL LEIGH MUNDELL and SAN DIEGO
6 SUNRISE MANAGEMENT COMPANY shall pay such cost within 60 days of
7 receiving an invoice from the Commissioner detailing the
8 activities performed during the audit and the amount of time
9 spent performing those activities. The Commissioner may suspend
10 the licenses of Respondents CAROL LEIGH MUNDELL and SAN DIEGO
11 SUNRISE MANAGEMENT COMPANY pending a hearing held in accordance
12 with Section 11500, et seq., of the Government Code, if payment
13 is not timely made as provided for herein, or as provided for in
14 a subsequent agreement between Respondents CAROL LEIGH MUNDELL
15 and SAN DIEGO SUNRISE MANAGEMENT COMPANY and the Commissioner.
16 The suspension shall remain in effect until payment is made in
17 full or until Respondents CAROL LEIGH MUNDELL and SAN DIEGO
18 SUNRISE MANAGEMENT COMPANY enter into an agreement satisfactory
19 to the Commissioner to provide for payment, or until a decision
20 providing otherwise is adopted following a hearing held pursuant
21 to this condition.

22
23 DATED:

2/26/2004



DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

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2 I have read the Stipulation and Agreement, have
3 discussed it with my counsel, and its terms are understood by me
4 and are agreeable and acceptable to me. I understand that I am
5 waiving rights given to me by the California Administrative
6 Procedure Act (including but not limited to Sections 11506,
7 11508, 11509, and 11513 of the Government Code), and I willingly,
8 intelligently, and voluntarily waive those rights, including the
9 right of requiring the Commissioner to prove the allegations in
10 the First Amended Accusation at a hearing at which I would have
11 the right to cross-examine witnesses against me and to present
12 evidence in defense and mitigation of the charges.

13
14 DATED: Feb. 6, 2004 Carol Mundell
15 CAROL LEIGH MUNDELL
16 Respondent

17 DATED: Feb. 6, 2004 [Signature]
18 SAN DIEGO SUNRISE MANAGEMENT COMPANY
19 Respondent

20 I have reviewed the Stipulation and Agreement as to
21 form and content and have advised my clients accordingly.

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23 DATED: 2/11/04 David Bright
24 David Bright
25 White and Bright, LLP
26 Attorney for Respondents

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The foregoing Stipulation and Agreement in Settlement
is hereby adopted by the Real Estate Commissioner as his Decision
and Order and shall become effective at 12 o'clock noon on

APRIL 15, 2004.

IT IS SO ORDERED March 10, 2004.



JOHN R. LIBERATOR
Acting Real Estate Commissioner

FILED
NOV 25 2003

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

DEPARTMENT OF REAL ESTATE

Shelly Ely

In the Matter of the Accusation of

CAROL LEIGH MUNDELL and
SAN DIEGO SUNRISE MANAGEMENT
COMPANY,

}

Case No. H-2898 SD

OAH No. L-2003100519

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at **THE OFFICE OF ADMINISTRATIVE HEARINGS, 1350 FRONT STREET, ROOM 6022, SAN DIEGO, CALIFORNIA 92101** on **WEDNESDAY--FEBRUARY 11, 2004**, 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.

Dated: NOVEMBER 25, 2003

DEPARTMENT OF REAL ESTATE
By *David B. Seals*
DAVID B. SEALS, Counsel

flag

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
SEP 19 2003

DEPARTMENT OF REAL ESTATE
By Juan Armenta

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 CAROL LEIGH MUNDELL and,) NO. H-2898 SD
13 SAN DIEGO SUNRISE MANAGEMENT) ACCUSATION
14 COMPANY,)
15 Respondents.)

16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California for cause of Accusation
18 against CAROL LEIGH MUNDELL (hereinafter "Respondent MUNDELL")
19 and SAN DIEGO SUNRISE MANAGEMENT (hereinafter "Respondent SDSM")
20 is informed and alleges as follows:

21 I

22 The Complainant, J. Chris Graves, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation in
24 his official capacity.

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II

Respondent SDSM is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code"), as a corporate real estate broker with Respondent MUNDELL as its designated officer.

III

Respondent MUNDELL at all times mentioned herein was licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code, as a real estate broker. Respondent MUNDELL at all times mentioned herein was the designated officer of Respondent SDSM.

IV

At all times mentioned herein, as the designated officer of Respondent SDSM, Respondent MUNDELL was responsible for the supervision and control of the activities conducted on behalf of Respondent SDSM by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent SDSM, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent SDSM committed such act or omissions while engaged in furtherance of the business or operation of

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1 Respondent SDSM and while acting within the course and scope of
2 their corporate authority and employment.

3 VI

4 That at all times herein mentioned, Respondent SDSM and
5 Respondent MUNDELL, and both of them, engaged in the business of,
6 acted in the capacity of, advertised, or assumed to act as real
7 estate brokers in the State of California within the meaning of
8 Sections 10131(b) of the Code, for or in expectation of
9 compensation, by leasing or renting or offering to lease or rent,
10 or placing for rent, or soliciting listings of places for rent,
11 or soliciting for prospective tenants, or negotiating the sale,
12 purchase or exchange of leases on real property, or on a business
13 opportunity, or collecting rents from real property, or
14 improvements thereon, or from business opportunities.

15 VII

16 That at all times mentioned herein, Respondent SDSM and
17 Respondent MUNDELL accepted or received funds in trust (hereafter
18 trust funds) from and on behalf of their principals placing them
19 in bank accounts and at times thereafter made disbursements of
20 such funds.

21 VIII

22 From March 27 through June 5, 2002 an investigative
23 audit (SD010045) was performed by the Department of the records
24 and bank records of Respondent SDSM for the period from January
25 1, 2000 through March 7, 2002, as said records related to its
26 activities as a real estate broker.

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IX

Respondent SDSM maintained approximately 95 trust accounts. However, only seven of those accounts were examined.

Those seven were designated as follows:

Account #4829555994 (hereinafter TA1) at Wells Fargo Bank, 401 B Street, Suite 2201, San Diego, CA 92101.

Account #4047104054 (hereinafter TA2) at Wells Fargo Bank, 401 B Street, Suite 2201, San Diego, CA 92101.

Account #2320022269 (hereinafter TA3) at Union Bank of California, 1980 Saturn Street, Monterey Park, CA 91755.

Account #4829555978 (hereinafter TA4) at Wells Fargo Bank, 401 B Street, Suite 2201, San Diego, CA 92101.

Account #4829555986 (hereinafter TA5) at Wells Fargo Bank, 401 B Street, Suite 2201, San Diego, CA 92101.

Account #2320022226 (hereinafter TA12) at Union Bank of California, 1980 Saturn Street, Monterey Park, CA 91755.

Account #4496810045 (hereinafter TA64) at Wells Fargo Bank, 401 B Street, Suite 2201, San Diego, CA 92101.

X

The adjusted balance of TA5 as of February 28, 2002 was Sixty Thousand Two Hundred Seventy-Eight and 0/100 Dollars (\$60,278.00) and the trust fund accountability in the account as of February 28, 2002 was Sixty-Three Thousand Two Hundred Seventy-Eight and 0/100 Dollars (\$63,278.00). Therefore, Respondent, as of February 28, 2002, had a trust fund shortage of Three Thousand and 0/100 Dollars (\$3,000.00).

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XI

In TA5 Respondent SDSM caused the disbursement of trust funds from the trust account without the written consent of every principal who was an owner of the funds, causing the balance of the funds in the account to be an amount less than the existing aggregate trust fund liability of Respondent SDSM to all owners of said funds in TA5 in violation of Section 10145 of the Code and Section 2832.1, Title 10, California Code of Regulations (hereinafter the "Regulations").

XII

Respondent SDSM entered into exclusive agreements to manage rental properties located at 437 Grand Avenue, Spring Valley (hereinafter "#437 Property") and 835 Grand Avenue, Spring Valley (hereinafter "#835 Property") and owned by Kenneth Ham(hereinafter "Ham"). Neither agreement had a definite, specified date of final and complete termination in violation of Section 10176(f) of the Code.

XIII

Ham terminated Respondent SDSM's services regarding both the #437 Property and the #835 Property no later than April 30, 2001 but Respondent SDSM continued to have activity on the #835 Property account through August 29, 2001, including the collection of a \$200.00 management fee on that date. As of March 7, 2002 there was still a balance owing to Ham of \$2.62 for the #437 Property and \$3.49 for the #835 Property, all in violation of Section 10145 of the Code.

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XIV

Between December 1, 2001 and February 18, 2002 there were at least fifteen automatic debits to TA1 that were incorrectly recorded on the property record or control record from the amount that cleared the bank or was shown as an adjustment in violation of Sections 2831 and 2831.1 of the Regulations.

XV

Respondent SDSM failed to reconcile on a monthly basis the total of all separate records with the control record for TA1 in violation of Section 2831.2 of the Regulations.

XVI

Respondent SDSM collected excess management fees for some rental properties, including but not limited to the properties designated as 1457 and 3848, where rent checks were returned for insufficient funds and did not disclose such compensation to the owners of such properties in violation of Section 10176(g) of the Code.

XVII

During the period of the audit, Respondent SDSM used the name "Sunrise Management" but Respondent SDSM did not hold a license bearing that fictitious name in violation of Section 2731 of the Regulations.

XVIII

At all times mentioned herein, Respondent MUNDELL failed to exercise reasonable supervision over the activities of Respondent SDSM, and permitted, ratified and/or caused the

1 conduct described above. Respondent MUNDELL failed to reasonably
2 or adequately review, oversee, inspect and manage the personnel
3 and activities of Respondent SDSM, and/or to establish reasonable
4 policies, rules, procedures and systems for such review,
5 oversight, inspection and management.

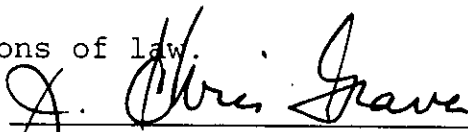
6 XIX

7 The acts and/or omissions of Respondents described
8 above are grounds for the revocation or suspension of
9 Respondents' licenses under the following sections of the
10 Business and Professions Code and the Regulations:

11 (a) As to Respondent SDSM under Sections 10176(f) and (g)
12 of the Code and Section 10177(d) of the Code in
13 conjunction with Section 10145 of the Code and Sections
14 2731, 2831, 2831.1, 2831.2 and 2832.1 of the
15 Regulations; and

16 (b) As to Respondent MUNDELL only, under Section 10177(g)
17 and/or 10177(h) of the Code.

18 WHEREFORE, Complainant prays that a hearing be
19 conducted on the allegations of this Accusation and that upon
20 proof thereof, a decision be rendered imposing disciplinary
21 action against all licenses and license rights of Respondents
22 under the Real Estate Law (Part 1 of Division 4 of the Business
23 and Professions Code), and for such other and further relief as
24 may be proper under other provisions of law.

25 
26 J. CHRIS GRAVES
27 Deputy Real Estate Commissioner

26 Dated at San Diego, California,
27 this 28th day of May, 2003.