

1 DEPARTMENT OF REAL ESTATE
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3 Sacramento, CA 95818-7007
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FILED

FEB 07 2008

DEPARTMENT OF REAL ESTATE
By *L. Frost*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-4604 SAC.
13 GOLD VALLEY INVESTMENTS, INC.,) STIPULATION AND AGREEMENT
14 and RICHARD VERNON HOWELL,)
15 Respondents.)

16 It is hereby stipulated by and between Respondent
17 GOLD VALLEY INVESTMENTS, INC., a corporation (hereinafter
18 "Respondent GOLD VALLEY"), and RICHARD VERNON HOWELL
19 (hereinafter "Respondent HOWELL") acting in pro per, and the
20 Complainant, acting by and through Michael B. Rich, Counsel for
21 the Department of Real Estate, as follows for the purpose of
22 settling and disposing of the Accusation filed on December 6,
23 2006, in this matter (hereinafter "the Accusation"):

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and
26 Respondents at a formal hearing on the Accusation, which
27 hearing was to be held in accordance with the provisions of the

1 Administrative Procedure Act (APA), shall instead and in place
2 thereof be submitted solely on the basis of the provisions of
3 this Stipulation and Agreement.

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

8 3. On December 11, 2006, each Respondent filed a
9 Notice of Defense pursuant to Section 11505 of the Government
10 Code for the purpose of requesting a hearing on the allegations
11 in the Accusation. Respondents hereby freely and voluntarily
12 withdraw their respective Notices of Defense. Respondents
13 acknowledge that Respondents understand that by withdrawing
14 said Notices of Defense Respondents will thereby waive
15 Respondents' right to require the Commissioner to prove the
16 allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that Respondents
18 will waive other rights afforded to Respondents in connection
19 with the hearing such as the right to present evidence in
20 defense of the allegations in the Accusation and the right to
21 cross-examine witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations in the
24 Accusation pertaining to Respondents are true and correct and
25 stipulates and agrees that the Real Estate Commissioner shall
26 not be required to provide further evidence of such
27 allegations.

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

12 6. This Stipulation and Agreement shall not
13 constitute an estoppel, merger or bar to any further
14 administrative or civil proceedings by the Department of Real
15 Estate with respect to any matters which were not specifically
16 alleged to be causes for accusation in this proceeding.

17 7. Respondents understand that by agreeing to this
18 Stipulation and Agreement in Settlement, Respondents jointly and
19 severally agree to pay, pursuant to Section 10148 of the
20 Business and Professions Code (hereinafter "the Code"), the cost
21 of the audit that led to this disciplinary action. The amount
22 of said costs is \$2,696.90.

23 8. Respondents have received, read, and understand
24 the "Notice Concerning Costs of Audits". Respondents further
25 understand that by agreeing to this Stipulation and Agreement in
26 Settlement, the findings set forth below in the DETERMINATION OF
27 ISSUES become final, and that the Commissioner may charge

1 Respondent for the costs of a subsequent audit conducted
2 pursuant to Section 10148 of the Code. The maximum costs of
3 said audit will not exceed \$2,696.90.

4 DETERMINATION OF ISSUES

5 By reason of the foregoing stipulations, admissions
6 and waivers and solely for the purpose of settlement of the
7 pending Accusation without hearing, it is stipulated and agreed
8 that the following Determination of Issues shall be made:

9 I

10 The acts and omissions of Respondent GOLD VALLEY
11 INVESTMENTS, INC., and Respondent RICHARD VERNON HOWELL
12 described in the First Cause of Action of the Accusation are
13 grounds for the suspension or revocation of the licenses and
14 license rights of Respondents under the provisions of Sections
15 2831.1 and 2832.1 of Chapter 6, Title 10, California Code of
16 Regulations (hereinafter "Regulations") and Section 10145 of the
17 Code in conjunction with Section 10177(d) of the Code.

18 II

19 The acts and omissions of Respondent HOWELL described
20 in the Second Cause of Action of the Accusation are grounds for
21 the suspension or revocation of the licenses and license rights
22 of Respondent under Section 10159.2 of the Code in conjunction
23 with Section 10177(d) of the Code and under Section 10177(h) of
24 the Code.

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27 /

1 further cause for disciplinary action against the real estate
2 license of Respondent GOLD VALLEY occurs within two (2) years
3 from the effective date of the Decision, then the stay hereby
4 granted shall become permanent.

5 C. Respondent GOLD VALLEY shall, jointly and
6 severally with Respondent HOWELL, within sixty (60) days of
7 receiving an invoice therefor from the Commissioner, pay the
8 Commissioner's costs in the amount of \$2,696.90 of the audit
9 conducted pursuant to Section 10148 of the Business and
10 Professions Code that resulted in the determination that
11 Respondent committed the violations described in Paragraph I of
12 the Determination of Issues, above. If Respondent fails to pay
13 such cost within the sixty (60) days, the Commissioner may in
14 his discretion suspend all license and licensing rights of
15 Respondent under the Real Estate Law until payment is made in
16 full or until Respondent enters into an agreement satisfactory
17 to the Commissioner to provide for payment. Upon payment in
18 full, any suspension provided in this paragraph shall be stayed.

19 D. Respondent GOLD VALLEY shall, jointly and
20 severally with Respondent HOWELL, pay the Commissioner's costs,
21 not to exceed \$2,696.90 of a subsequent audit conducted pursuant
22 to Section 10148 of the Business and Professions Code. In
23 calculating the amount of the Commissioner's reasonable cost,
24 the Commissioner may use the estimated average hourly salary for
25 all persons performing audits of real estate brokers, and shall
26 include an allocation for travel time to and from the auditor's
27 place of work. Respondent shall pay such cost within sixty (60)

1 days of receiving an invoice therefor from the Commissioner
2 detailing the activities performed during the audit and the
3 amount of time spent performing those activities. If Respondent
4 fails to pay such cost within the sixty (60) days of receiving
5 an invoice therefor from the Commissioner, the Commissioner may
6 in his discretion suspend all license and licensing rights of
7 Respondent under the Real Estate Law until payment is made in
8 full or until Respondent enters into an agreement satisfactory
9 to the Commissioner to provide for payment. Upon payment in
10 full, the suspension provided in this paragraph shall be stayed.

11 II

12 A. All licenses and licensing rights of Respondent
13 RICHARD VERNON HOWELL under the Real Estate Law are indefinitely
14 suspended until such time as Respondent provides proof
15 satisfactory to the Commissioner that Respondent has cured the
16 trust fund shortages alleged in the Accusation.

17 B. All licenses and licensing rights of Respondent
18 RICHARD VERNON HOWELL under the Real Estate Law are suspended
19 until such time as Respondent provides proof satisfactory to the
20 Commissioner that Respondent has, within one hundred twenty
21 (120) days prior to the effective date of the Decision herein or
22 any date after said effective date, taken and successfully
23 completed the trust fund accounting and handling course
24 specified in paragraph (3), subdivision (a) of Section 10170.5
25 of the Business and Professions Code. Upon satisfaction of this
26 condition, the suspension provided in this paragraph shall be
27 stayed.

1 C. All licenses and licensing rights of Respondent
2 RICHARD VERNON HOWELL, under the Real Estate Law are suspended
3 for a period of sixty (60) days from the effective date of the
4 Decision herein; provided, however:

5 1. Sixty (60) days of said sixty (60) day suspension
6 shall be stayed for two (2) years upon the following terms and
7 conditions;

8 (a) Respondent HOWELL shall obey all laws, rules and
9 regulations governing the rights, duties and responsibilities of
10 a real estate licensee of the State of California; and,

11 (b) That no final subsequent determination be made,
12 after hearing or upon stipulation, that cause for disciplinary
13 action against Respondent HOWELL occurred within two (2) years
14 of the effective date of the Decision herein.

15 (c) Should such a determination be made, the
16 Commissioner may, in his discretion, vacate and set aside the
17 stay order, and reimpose all or a portion of the stayed
18 suspension.

19 (d) If no order vacating the stay is issued, and if no
20 further cause for disciplinary action against the real estate
21 license of Respondent HOWELL occurs within two (2) years from
22 the effective date of the Decision, then the stay hereby granted
23 shall become permanent.

24 D. Respondent HOWELL shall, jointly and severally
25 with Respondent GOLD VALLEY, within sixty (60) days of receiving
26 an invoice therefor from the Commissioner, pay the
27 Commissioner's costs in the amount of \$2,696.90 of the audit

1 conducted pursuant to Section 10148 of the Business and
2 Professions Code that resulted in the determination that
3 Respondent committed the violations described in Paragraph I of
4 the Determination of Issues, above. If Respondent fails to pay
5 such cost within the sixty (60) days, the Commissioner may in
6 his discretion suspend all license and licensing rights of
7 Respondent under the Real Estate Law until payment is made in
8 full or until Respondent enters into an agreement satisfactory
9 to the Commissioner to provide for payment. Upon payment in
10 full, any suspension provided in this paragraph shall be stayed.

11 E. Respondent HOWELL shall, jointly and severally
12 with Respondent GOLD VALLEY, pay the Commissioner's costs, not
13 to exceed \$2,696.90 of a subsequent audit conducted pursuant to
14 Section 10148 of the Business and Professions Code. In
15 calculating the amount of the Commissioner's reasonable cost,
16 the Commissioner may use the estimated average hourly salary for
17 all persons performing audits of real estate brokers, and shall
18 include an allocation for travel time to and from the auditor's
19 place of work. Respondent shall pay such cost within sixty (60)
20 days of receiving an invoice therefor from the Commissioner
21 detailing the activities performed during the audit and the
22 amount of time spent performing those activities. If Respondent
23 fails to pay such cost within the sixty (60) days of receiving
24 an invoice therefor from the Commissioner, the Commissioner may
25 in his discretion suspend all license and licensing rights of
26 Respondent under the Real Estate Law until payment is made in
27 full or until Respondent enters into an agreement satisfactory

1 to the Commissioner to provide for payment. Upon payment in
2 full, the suspension provided in this paragraph shall be stayed.

3
4
5 12/21/07
6 DATED

Michael B. Rich
MICHAEL B. RICH, Counsel
Department of Real Estate

7 * * *

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

19 GOLD VALLEY INVESTMENTS, INC.
20 Respondent

21 12-19-07
22 DATED

By: Richard Vernon Howell
RICHARD VERNON HOWELL
Designated Broker/Officer

23
24
25 12-19-07
26 DATED
27 Respondent

Richard Vernon Howell
RICHARD VERNON HOWELL

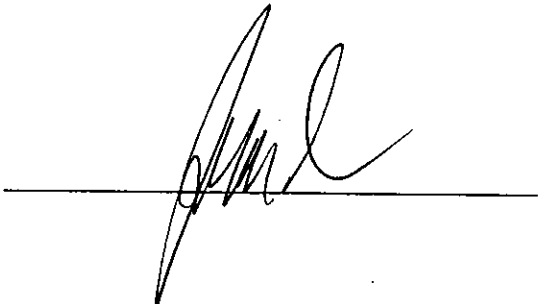
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The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter as to Respondent
GOLD VALLEY INVESTMENTS, INC., and Respondent RICHARD VERNON
HOWELL, and shall become effective at 12 o'clock noon on
FEB 27 2008

IT IS SO ORDERED 2-4-08

JEFF DAVI
Real Estate Commissioner



1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789

FILED
DEC 06 2006

DEPARTMENT OF REAL ESTATE

By J. El

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GOLD VALLEY INVESTMENTS, INC.,) NO. H-4604 SAC
13 and RICHARD VERNON HOWELL,) ACCUSATION
14 Respondents.)

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for Causes of
17 Accusation against GOLD VALLEY INVESTMENTS, INC., and RICHARD
18 VERNON HOWELL, is informed and alleges as follows:

19 FIRST CAUSE OF ACCUSATION

20 I

21 Respondents GOLD VALLEY INVESTMENTS, INC., (hereinafter
22 referred to as "Respondent GOLD VALLEY") and RICHARD VERNON
23 HOWELL (hereinafter referred to as "Respondent HOWELL") are
24 presently licensed and/or have license rights under the Real
25 Estate Law, Part 1 of Division 4 of the California Business and
26 Professions Code (hereinafter the "Code").

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II

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent GOLD VALLEY was and is licensed by the Department as a real estate broker corporation acting by and through Respondent HOWELL as its designated broker officer.

IV

At all times herein mentioned, Respondent HOWELL was and is licensed by the Department as a real estate broker, and as the designated broker officer of Respondent GOLD VALLEY.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent GOLD VALLEY, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent GOLD VALLEY committed such act or omission while engaged in the furtherance of the business or operations of Respondent GOLD VALLEY and while acting within the course and scope of their corporate authority and employment.

VI

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California

1 within the meaning of Section 10131(b) of the Code, including the
2 operation and conduct of a property management business with the
3 public wherein, on behalf of others, for compensation or in
4 expectation of compensation, Respondents leased or rented and
5 offered to lease or rent and placed for rent, and solicited
6 listings of places for rent, and solicited listings of places for
7 rent, and solicited for prospective tenants of real property or
8 improvements thereon, and collected rents from real property or
9 improvements thereon.

10 VII

11 In so acting as a real estate broker as described in
12 Paragraph VI, above, Respondent GOLD VALLEY accepted or received
13 funds in trust (hereinafter "trust funds") from or on behalf of
14 owners, tenants and/or others in connection with the property
15 management activities.

16 VIII

17 The aforesaid trust funds accepted or received by
18 Respondent GOLD VALLEY were deposited or caused to be deposited
19 by Respondent GOLD VALLEY into a bank account maintained by
20 Respondent GOLD VALLEY for the handling of trust funds at Bank of
21 America, Florin Center Branch, P. O. Box 37176, San Francisco,
22 California, Account No. 09059-05580, entitled "Richard V. Howell
23 Gold Valley Real Estate Trust Account" (hereinafter "Trust
24 Account #1").

25 IX

26 Within the three year period next preceding to the
27 filing of this Accusation, in connection with the collection and

1 disbursement of trust funds, Respondents failed to deposit and
2 maintain the trust funds in a trust account or neutral escrow
3 depository, or to deliver said funds into the hands of the owners
4 of the funds, as required by Section 10145 of the Code, in such a
5 manner that as of September 23, 2004, there was a trust fund
6 shortage in the approximate sum of \$2,000.00.

7 X

8 Within the three year period next preceding to the
9 filing of this Accusation, in connection with the collection and
10 disbursement of trust funds, as alleged above, Respondents failed
11 to obtain the prior written consents of the principals for the
12 reduction of the aggregate balance of trust funds in Trust
13 Account #1 to an amount less than the existing aggregate trust
14 fund liability to the owners of said funds in conformance with
15 Chapter 6, Title 10, California Code of Regulations, Section
16 2832.1 (hereinafter "Regulations").

17 XI

18 Within the three year period next preceding to the
19 filing of this Accusation, in connection with the collection and
20 disbursement of trust funds, as alleged above, Respondents:
21 Failed to keep a separate record for each beneficiary or
22 transaction, accounting for all funds that have been deposited to
23 the broker's trust account, containing all of the information
24 required by Section 2831.1 of the Regulations, including, but not
25 limited to an accurate daily balance after posting transactions
26 for Trust Account #1, such that Trust Account #1 contained
27 \$641.72 in unidentified funds.

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XII

The acts and/or omissions of Respondents as alleged above constitute grounds for disciplinary action under the following provisions:

- (a) As alleged in Paragraph IX, under Section 10145 of the Code in conjunction with Section 10177(d) of the Code;
- (b) As alleged in Paragraph X, under Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code; and,
- (c) As alleged in Paragraph XI, under Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code; .

SECOND CAUSE OF ACCUSATION

XIII

There is hereby incorporated in this Second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs I through XII, inclusive, of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XIV

At all times above mentioned, Respondent HOWELL was responsible, as the designated broker/officer of Respondent GOLD VALLEY, for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees. Respondent HOWELL failed to exercise reasonable supervision and control over the property management and

1 employment activities of Respondent GOLD VALLEY. In particular,
2 Respondent HOWELL permitted, ratified and/or caused the conduct
3 described in the First Cause of Accusation above to occur, and
4 failed to take reasonable steps, including but not limited to the
5 handling of trust funds, employment of salesperson licensees, and
6 the implementation of policies, rules, procedures, and systems to
7 ensure the compliance of Respondent GOLD VALLEY with the Real
8 Estate Law.

9 XV

10 The above acts and/or omissions of Respondent HOWELL
11 constitute grounds for suspension or revocation of his real
12 estate broker license under the provisions of Section 10177(h) of
13 the Code and/or Section 10159.2(a) of the Code in conjunction
14 with Section 10177(d) of the Code.

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

22
23 
24 CHARLES W. KOENIG
25 Deputy Real Estate Commissioner

26 Dated at Sacramento,
27 this 27th day of October, 2006.