

1 STACEY FULHORST, Executive Director
City of San Diego Ethics Commission
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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2006-10
11 GRUBB & ELLIS/BRE COMMERCIAL, and) **STIPULATION, DECISION, AND**
JOHN FRAGER,) **ORDER**
12 Respondents.)
13)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
17 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
18 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
19 Code [SDMC] relating to, among other things, the provisions of the City's Election Campaign
20 Control Ordinance [ECCO].

21 2. Respondent Grubb & Ellis / BRE Commercial [Grubb & Ellis] is a major donor
22 committee that made contributions to state and local committees of \$10,000 or more in a
23 calendar year.

24 3. At all times mentioned herein, Respondent John Frager [Frager] was employed by
25 Grubb & Ellis as the President and Chief Executive Officer.

26 4. Grubb & Ellis and Frager are referred to herein collectively as Respondents.

27 5. This Stipulation, Decision and Order [Stipulation] will be submitted for
28 consideration by the Ethics Commission at its next scheduled meeting, and the agreements

1 contained herein are contingent upon the approval of the Stipulation and the accompanying
2 Decision and Order by the Ethics Commission.

3 6. This Stipulation resolves all factual and legal issues raised in this matter by the
4 Ethics Commission without the necessity of holding an administrative hearing to determine the
5 Respondents' liability.

6 7. Respondents understand and knowingly and voluntarily waive any and all
7 procedural rights under the SDMC, including, but not limited to, a determination of probable
8 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
9 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
10 testifying at a hearing, the right to subpoena witnesses to testify at a hearing, and the right to
11 have the Ethics Commission or a hearing officer hear this matter. Respondents agree to hold the
12 City of San Diego harmless from any and all claims or damages resulting from the
13 Commission's investigation or this stipulated agreement, or any matter reasonably related
14 thereto. Respondents further agree that the terms of this Stipulation constitute compliance with
15 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
16 reference to each violation, and an order.

17 8. The Respondents acknowledge that this Stipulation is not binding upon any other
18 law enforcement or government agency and does not preclude the Ethics Commission from
19 referring this matter to, cooperating with, or assisting any other law enforcement or government
20 agency with regard to this or any other related matter.

21 9. The parties agree that in the event the Ethics Commission refuses to accept this
22 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics
23 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics
24 Commission becomes necessary, no member of the Ethics Commission or its staff shall be
25 disqualified because of prior consideration of this Stipulation.

26 **Summary of Law and Facts**

27 10. On June 29, 2005, Respondent Frager made a contribution in the amount of \$300 to
28 the Jerry Sanders for Mayor Committee in support of Sanders' candidacy in the July 26, 2005,

1 special election. In addition, on September 28, 2005, Respondent Frager made a contribution in
2 the amount of \$300 to the Jerry Sanders for Mayor Committee in support of Sanders' candidacy
3 in the November 8, 2005, special run-off election. Respondent Frager made both contributions
4 via a corporate credit card, and the credit card charges were ultimately paid by Respondent
5 Grubb & Ellis.

6 11. On October 20, 2005, at the behest of her husband, Respondent Frager, Kristen
7 Frager made a \$300 contribution to the Jerry Sanders for Mayor Committee in support of
8 Sanders' candidacy in the November 8, 2005, special run-off election. The contribution was
9 made via Respondent Frager's personal credit card.

10 12. Respondent Frager submitted an Expense Report to Respondent Grubb & Ellis in
11 which he sought reimbursement for the campaign contribution his spouse made to the Jerry
12 Sanders for Mayor Committee. The request was approved and Respondent Grubb & Ellis
13 subsequently issued a \$300 reimbursement check to Respondent Frager on November 28, 2005.

14 13. Because Respondent Grubb & Ellis paid the corporate credit card contributions
15 made by Respondent Frager and reimbursed Respondent Frager in full for the contribution made
16 by Respondent Frager's spouse, Respondent Grubb & Ellis is the true source of these
17 contributions.

18 14. Because Respondents made campaign contributions for the purpose of supporting a
19 candidate in a City of San Diego election, Respondents are required to comply with the
20 provisions of ECCO.

21 15. SDMC section 27.2943 prohibits any person from directly or indirectly making a
22 contribution in the name of another person. As set forth above, the Commission's investigation
23 reveals that Respondent Grubb & Ellis made three contributions to the Jerry Sanders for Mayor
24 Committee in the names of Respondent Frager and his spouse.

25 16. SDMC section 27.2944 requires any person who makes a contribution on behalf of
26 another to disclose to the recipient the fact that the person is serving as an intermediary for the
27 contribution, and to provide specific information regarding the intermediary and the true source
28 of the contribution. The Commission's investigation reveals that Respondent Frager failed to

1 disclose to the Jerry Sanders for Mayor Committee that he and his spouse were serving as
2 intermediaries for Respondent Grubb & Ellis when they made contributions to this Committee.

3 17. SDMC section 27.2950 prohibits contributions to City candidates by anyone other
4 than an individual. As discussed above, Respondent Grubb & Ellis is a non-individual that made
5 three contributions to the Jerry Sanders for Mayor Committee by paying the corporate credit card
6 contributions made by Respondent Frager and reimbursing Respondent Frager for the
7 contribution made by Respondent Frager's spouse.

8 18. SDMC section 27.2935 limits contributions to City candidates to \$300 per election.
9 As discussed above, Respondent Grubb & Ellis paid for the contributions made by both
10 Respondent Frager and his spouse in support of Sanders' candidacy in the November 8, 2005,
11 special run-off election, and consequently made contributions to the Jerry Sanders for Mayor
12 Committee totaling \$600 for that election.

13 Counts

14 **Counts 1 through 3 – Violations of SDMC section 27.2943**

15 19. Respondent Grubb & Ellis made three contributions to the Jerry Sanders for
16 Mayor Committee in the names of Respondent Frager and his spouse, in violation of the
17 prohibition on making contributions in the name of another person as set forth in SDMC section
18 27.2943.

19 **Counts 4 through 6 - Violations of SDMC section 27.2944**

20 20. Respondent Frager failed to disclose to the Jerry Sanders for Mayor Committee
21 that he and his spouse were serving as intermediaries for Respondent Grubb & Ellis when they
22 made contributions to this Committee, as required by SDMC section 27.2944.

23 **Counts 7 through 9 – Violations of SDMC section 27.2950**

24 21. Respondent Grubb & Ellis made three contributions to the Jerry Sanders for
25 Mayor Committee by reimbursing Respondent Frager and his spouse for their contributions.
26 These contributions by Respondent Grubb & Ellis constitute contributions by an organization to
27 a City candidate in violation of SDMC section 27.2950.

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1 **Count 10 – Violation of SDMC section 27.2935**

2 22. Respondent Grubb & Ellis paid the corporate credit card contributions made by
3 Respondent Frager and reimbursed Respondent Frager in full for the contribution made by
4 Respondent Frager’s spouse. Consequently, Respondent Grubb & Ellis made contributions to
5 the Jerry Sanders for Mayor Committee totaling \$600 for a single election, in violation of the
6 \$300 contribution limit set forth in SDMC section 27.2935.

7 **Factors in Mitigation**

8 23. Respondents have cooperated with the Ethics Commission investigation.

9 24. Respondent Frager was not aware that Respondent Grubb & Ellis could not pay
10 for the campaign contributions made by its employees. In fact, Respondent Grubb & Ellis
11 publicly disclosed that it made contributions totaling \$900 to the Sanders campaign on a
12 campaign statement that was filed with the Secretary of State and the San Diego City Clerk.

13 **Factors in Aggravation**

14 25. On two separate occasions, Respondent Frager filled out a contribution remittance
15 form that properly included the following notification required by SDMC section 27.2945: “It is
16 unlawful for a contributor to be reimbursed by any organization, business, or similar entity for a
17 contribution supporting or opposing a City candidate.” In addition, the remittance form advised
18 that City law “permits only personal checks.”

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1 **Conclusion**

2 26. Respondents agree to pay a fine in the amount of \$3,000 for violating SDMC
3 sections 27.2935, 27.2943, 27.2944, and 27.2950. This amount must be paid no later than June
4 23, 2006. The submitted payment will be held pending Commission approval of this Stipulation
5 and execution of the Decision and Order set forth below.

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7 DATED: _____
8 STACEY FULHORST, Executive Director
9 ETHICS COMMISSION, Petitioner

10 DATED: _____
11 JOHN FRAGER, President and Chief Executive
12 Officer of GRUBB & ELLIS/BRE COMMERCIAL,
13 Respondent

14 DATED: _____
15 JOHN FRAGER, Respondent

16 **DECISION AND ORDER**

17 The Ethics Commission considered the above Stipulation at its meeting on _____,
18 2006. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
19 with the Stipulation, Respondents pay a fine in the amount of \$3,000.

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21 DATED: _____
22 Dorothy Leonard, Chair
23 SAN DIEGO ETHICS COMMISSION
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