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## City Sues Broker over Housing Commission Deals

*Lawsuit cites evidence of fraud, violation of anti-corruption laws*

City Attorney Mara W. Elliott today filed a lawsuit against the real estate brokers who advised the San Diego Housing Commission to acquire two residential hotels in Mission Valley and in Kearny Mesa for use as long-term supportive housing for people who had been given temporary shelter under Operation Shelter to Home.

The lawsuit, which the City Council authorized this morning, cites evidence that real estate broker Kidder Mathews Inc. and agent Jim Neil breached their Broker Agreement with the Housing Commission, made fraudulent representations to the Housing Commission, violated conflict-of-interest disclosure laws, and had a prohibited financial interest in one of the contracts they participated in making.

The City seeks a court judgment voiding that transaction under a state anti-corruption law, section 1090 of the California Government Code. The City also seeks damages, including punitive damages and disgorgement, for the Housing Commission and the City for harm done to them in both transactions.

The state anti-corruption law was violated when Neil (1) identified the Residence Inn Hotel Circle in Mission Valley as a property for the Housing Commission to acquire, (2) purchased 40,000 shares of stock in the hotel's corporate owner, and (3) negotiated the \$67 million deal for the Housing Commission. Elliott estimates the value of Neil's stock may have increased by as much as \$250,000 since the sale.

Neil also earned commissions on both deals that exceeded the \$250,000 limit set in the signed Broker Agreement. In negotiating the deal to acquire the Residence Inn Kearny Mesa, Neil took a \$592,500 commission from the seller, inflating the cost of the hotel to the detriment of his client. The Housing Commission paid Neil's \$502,500 commission on the Hotel Circle hotel acquisition, even though it exceeded limits in the Broker Agreement.

The Housing Commission is a public agency that was created by the City under California Housing Authorities Law. The Housing Commission's decision-making body, the Board of Commissioners, and its staff have their own outside counsel. The City Council, which sits as the Housing Authority, directed that the lawsuit be filed on behalf of the City, the Housing Authority, and the Housing Commission.

**“The facts in this case are appalling, and the City Council is determined to get to the bottom of how millions of public dollars were spent,”** City Attorney Mara W. Elliott said. **“The Housing Commission’s brokers engineered a stock-market windfall on top of more than \$1 million in commissions while their client was trying to protect hundreds of unsheltered people from a devastating pandemic.”**

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The two hotels were purchased by the Housing Commission from different owners in the summer of 2020. The 144-unit Residence Inn at 5400 Kearny Mesa Road was owned by RT San Diego; the 192-unit Residence Inn at 1865 Hotel Circle South was owned by Chatham Lodging Trust.

At the time, the Housing Commission needed to provide housing and supportive services to hundreds of people who had been residing at the San Diego Convention Center under Operation Shelter to Home. On June 10, 2020, the Housing Commission entered into a Broker Agreement with Kidder Mathews Inc., a Washington corporation, and its agent, licensed real estate broker Jim Neil of San Diego, to provide real estate broker services, including identifying hotel properties for potential purchase and negotiating the purchase transactions. The agreement had a retroactive effective date of July 1, 2019.

Despite being public-agency consultants, neither Kidder Mathews nor Neil filed the legally required Statements of Economic Interest that would have disclosed their conflicts of interest. They also failed to comply with disclosure requirements set out in the Broker Agreement that would have revealed the conflicts and allowed the Housing Commission to use a different broker to purchase the hotels. In demanding broker commissions in excess of \$250,000, they also breached the covenant of good faith and fair dealing implied in every contract when they signed the Broker Agreement.

California Government Code section 1090 strictly prohibits public officials from participating in making contracts in which they have a financial interest. This anti-corruption law also prohibits private parties from providing compensation to public officials that would create a financial interest. The penalty for violating section 1090 is that the contract is null and void and all monies must be returned. As consultants to the Housing Commission, Neil and Kidder Mathews were acting as public officials and subject to section 1090's prohibitions.

The lawsuit will not result in the Hotel Circle property being returned to its previous owner or a disruption of the homelessness services being provided at either location.

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