

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013

4 Telephone: (213) 576-6982

FILED
SEP 3 0 2008
DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-34263 LA
12) L-2007110837
13 RODEO REALTY, INC., and)
14 SYDNEY LEIBOVITCH as) STIPULATION AND AGREEMENT
15 designated broker-officer)
16 of Rodeo Realty, Inc.,)
17)
18)
19 Respondents.)
20)

21 It is hereby stipulated by and between RODEO REALTY,
22 INC., and SYDNEY LEIBOVITCH (sometimes referred to as
23 Respondents) and their attorneys, Robert J. Carlson and Sanford
24 J. Michelman, and the Complainant, acting by and through James
25 R. Peel, Counsel for the Department of Real Estate, as follows
26 for the purpose of settling and disposing of the Accusation
27 filed on August 29, 2007, in this matter.

1. All issues which were to be contested and all
evidence which was to be presented by Complainant and
Respondents at a formal hearing on the Accusation, which hearing

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

5 2. Respondents have received, read and understand the
6 Statement to Respondent, the Discovery Provisions of the
7 Administrative Procedure Act ("APA") and the Accusation filed by
8 the Department of Real Estate in this proceeding.

9 3. On September 14, 2007, Respondents filed a Notice
10 of Defense pursuant to Section 11506 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents hereby freely and voluntarily withdraw
13 said Notices of Defense. Respondents acknowledge that they
14 understand that by withdrawing said Notices of Defense they will
15 thereby waive their right to require the Commissioner to prove
16 the allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that they will
18 waive other rights afforded to them in connection with the
19 hearing, such as the right to present evidence in defense of the
20 allegations in the Accusation and the right to cross-examine
21 witnesses.

22 4. This Stipulation is based on the factual
23 allegations contained in the Accusation filed in this
24 proceeding. In the interest of expedience and economy,
25 Respondents choose not to contest these factual allegations, but
26 to remain silent and understand that, as a result thereof, these
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1 factual statements, will serve as a prima facie basis for the
2 disciplinary action stipulated to herein. However, the
3 Respondents do not admit the truth of the allegations. The Real
4 Estate Commissioner shall not be required to provide further
5 evidence to prove such allegations.

6 5. This Stipulation and Respondents' decision not to
7 contest the Accusation is made for the purpose of reaching an
8 agreed disposition of this proceeding and is expressly limited
9 to this proceeding and any other proceeding or case in which the
10 Department of Real Estate ("Department"), the state or federal
11 government, or an agency of this state, another state or the
12 federal government is involved.

13 6. It is understood by the parties that the Real
14 Estate Commissioner may adopt the Stipulation as his decision
15 in this matter thereby imposing the penalty and sanctions on
16 Respondents' real estate licenses and license rights as set
17 forth in the below "Order". In the event that the Commissioner
18 in his discretion does not adopt the Stipulation, the
19 Stipulation shall be void and of no effect, and Respondents
20 shall retain the right to a hearing on the Accusation under all
21 the provisions of the APA and shall not be bound by any
22 stipulation or waiver made herein.
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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 conduct which was not specifically
6 alleged to be causes for accusation in this proceeding.

7 DETERMINATION OF ISSUES

8 By reason of the foregoing stipulations and waivers
9 and solely for the purpose of settlement of the pending
10 Accusation without a hearing, it is stipulated and agreed that
11 the following determination of issues shall be made:

12 The conduct, acts and/or omissions of Respondents
13 RODEO REALTY, INC. and SYDNEY LEIBOVITCH, as set forth in the
14 Accusation, constitute cause for the suspension or revocation of
15 all of the real estate license rights of Respondents under the
16 provisions of Section 10177(g) of the Business and Professions
17 Code ("Code") for violation of Code Section 10177(g).
18

19
20 ORDER

21 I

22 All licenses and licensing rights of Respondents RODEO
23 REALTY, INC., and SYDNEY LEIBOVITCH under the Real Estate Law
24 are suspended for a period of thirty (30) days from the
25 effective date of this Decision; provided, however, that the
26 thirty (30) days shall be stayed upon condition that:
27

1 a. Respondents shall each pay a monetary penalty
2 pursuant to Section 10175.2 of the Business and Professions Code
3 at the rate of \$83.30 for each day of the suspension for a total
4 monetary penalty of \$2,499 (\$4,998 for both Respondents).

5 b. Said payment shall be in the form of a
6 cashier's check or certified check made payable to the Recovery
7 Account of the Real Estate Fund. Said check must be received by
8 the Department prior to the effective date of the Decision in
9 this matter.

10 c. If Respondents fail to pay the monetary penalty
11 in accordance with the terms and conditions of the Decision, the
12 Commissioner may, without a hearing, order the immediate
13 execution of all or any part of the stayed suspension in which
14 event the Respondents shall not be entitled to any repayment nor
15 credit, prorated or otherwise, for money paid to the Department
16 under the terms of this Decision.

17 d. If Respondents pay the monetary penalty the
18 stay hereby granted shall become permanent.
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24 DATED: Aug 22, 2008

James R. Peel
JAMES R. PEEL, Counsel for the
Department of Real Estate

* * *

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

13 Respondents can signify acceptance and approval of the
14 terms and conditions of this Stipulation and Agreement by faxing
15 a copy of the signature page, as actually signed by Respondents,
16 to the Department at the following telephone/fax number:
17 (213) 576-6917. Respondents agree, acknowledge and understand
18 that by electronically sending to the Department a fax copy of
19 his or her actual signature as it appears on the Stipulation and
20 Agreement, that receipt of the faxed copy by the Department
21 shall be as binding on Respondent as if the Department had
22 received the original signed Stipulation and Agreement.

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Further, if the Respondents are represented, the Respondents' Counsel can signify his or her agreement to the terms and conditions of the Stipulation and Agreement by submitting that signature via fax.

DATED: 8/13/08


RODEO SEALOW, INC.
Respondent

DATED: 8/18/08


SWENBY ZILIBOVITCH
Respondent

DATED: 8/14/08


ROBERT V. CARLSON
Counsel for Respondents

DATED: 8/19/08


BARFORD J. MICHELMAN
Counsel for Respondents

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and order in this matter, and shall become effective at 12 o'clock noon on _____

IT IS SO ORDERED _____

JEFF DAVI
Real Estate Commissioner

1 Further, if the Respondents are represented, the
2 Respondents' Counsel can signify his or her agreement to the
3 terms and conditions of the Stipulation and Agreement by
4 submitting that signature via fax.

5
6 DATED: _____

RODEO REALTY, INC.
Respondent

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8 DATED: _____

SYDNEY LEIBOVITCH
Respondent

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11 DATED: _____

ROBERT J. CARLSON
Counsel for Respondents

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13
14 DATED: _____

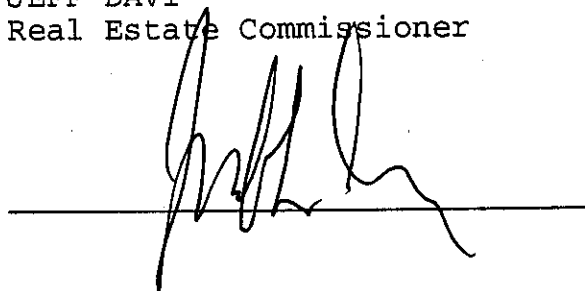
SANFORD J. MICHELMAN
Counsel for Respondents

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16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and Order in this matter, and shall
19 become effective at 12 o'clock noon on October 20, 2008.

20 IT IS SO ORDERED 9-18-08

21 JEFF DAVI
22 Real Estate Commissioner

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SACTO
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FILED
AUG 29 2007

DEPARTMENT OF REAL ESTATE

[Handwritten signature]

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)
7

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-34263 LA
12	RODEO REALTY, INC., and)	<u>A C C U S A T I O N</u>
13	SYDNEY LEIBOVITCH as)	
14	designated broker-officer)	
15	of Rodeo Realty, Inc.,)	
	Respondents.)	

16 The Complainant, Robin L. Trujillo, a Deputy Real
17 Estate Commissioner, for cause of accusation against RODEO
18 REALTY, INC., and SYDNEY LEIBOVITCH, individually and as
19 designated broker-officer of Rodeo Realty, Inc., is informed and
20 alleges as follows:

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1.

1 The Complainant, Robin L. Trujillo, a Deputy Real
2 Estate Commissioner of the State of California, makes this
3 Accusation in her official capacity.
4

2.

5 Respondent RODEO REALTY, INC. (hereinafter "RODEO
6 REALTY") is presently licensed and at all times relevant herein
7 was licensed by the Department of Real Estate of the State of
8 California ("Department") under the Real Estate Law, Part 1 of
9 Division 4 of the California Business and Professions Code
10 (hereinafter "Code") as a corporate real estate broker.
11 Respondent RODEO REALTY was originally licensed by the Department
12 as a corporate real estate broker on or about January 30, 1987.
13
14

3.

15 At all times relevant herein, Respondent RODEO REALTY
16 was and is authorized to act as a real estate broker by and
17 through Respondent SYDNEY LEIBOVITCH as the designated officer
18 and broker responsible, pursuant to the provisions of Code
19 Section 10159.2, for the supervision and control of the
20 activities conducted on behalf of Respondent RODEO REALTY by
21 Respondent RODEO REALTY's officers and employees.
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4.

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2 At all times material herein, Respondent RODEO REALTY,
3 engaged in the business of, acted in the capacity of, advertised
4 or assumed to act as a real estate broker within the meaning of
5 Code Section 10131(a), representing another or others in the
6 purchase, sale or exchange of real property

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8 5.

9 All further references to "Respondents", unless
10 otherwise specified, include the parties identified in Paragraphs
11 2 through 4 above, and also include the employees, agents and
12 real estate licensees employed by or associated with said
13 parties, who at all times herein mentioned were engaged in the
14 furtherance of the business or operations of said parties and who
15 were acting within the course and scope of their authority and
16 employment.

17 UNLAWFUL REFERRAL OF CUSTOMERS FOR COMPENSATION

18 (Business and Professions Code Section 10177.4)

19 "Participation Agreement"

20 6.

21 Beginning on or about August 30, 2004, Respondents, and
22 each of them, in connection with their real estate sales
23 activities set forth in Paragraph 4 above, engaged in a
24 reinsurance program with Fidelity National Group of Insurers,
25 and its affiliates, including Fidelity Title, Chicago Title, and
26 Ticor Title (hereafter collectively referred to as "FNF").
27 Pursuant to this agreement, in connection with the sale of homes

1 brokered by Respondents, the title companies would issue title
2 insurance policies, and in exchange, Respondents would claim,
3 demand and receive compensation in the form of reinsurance
4 "premiums" and additional periodic distributions of capital.

5 7.

6 Specifically, on or about August 30, 2004, Respondent
7 LEIBOVITCH, under the name of P.R.R.I., Inc., a California
8 corporation which Respondent owned or controlled, executed a
9 "Participation Agreement" with FNF. Pursuant to the
10 Participation Agreement, Respondents would claim, demand and
11 receive fees and compensation for every real estate transaction
12 in which the parties purchased title insurance from one of the
13 FNF affiliates.

14 8.

15 In 2005, the California Department of Insurance (DOI)
16 held public hearings relating to the business practice of
17 entering into the types of reinsurance agreements described
18 above. At these hearings, it was determined that the typical
19 loss ratio as to title insurance is three to five percent. DOI
20 found that there is in fact little or no risk transferred to the
21 reinsurer (such as, in this case, the real estate broker) in
22 exchange for the portion of premium they are collecting.
23 Further, DOI found that in California, the normal practice is not
24 to have a reinsurer in connection with title business. DOI
25 determined that the reinsurance agreements of the type entered
26 into between FNF and related affiliates and Respondents were not
27 legitimate reinsurance agreements. Rather, these agreements were

1 created as part of a scheme under which title insurers were
2 paying real estate brokers illegal rebates in the form of
3 "premiums" on fictitious reinsurance paid to captive reinsurers
4 in exchange for the brokers channeling business to the title
5 companies.

6 9.

7 For the period between September of 2004 and September
8 of 2005, Respondents and Respondents' corporation PRRI claimed,
9 demanded and received distributions of \$34,622.09 in fees and
10 compensation for referring parties to FNF and FNF affiliates as a
11 result of real property purchase and sale transactions negotiated
12 by Respondent RODEO REALTY.

13 10.

14 The conduct, acts and/or omissions of Respondent RODEO
15 REALTY as set forth in Paragraphs 2 through 9 above are in
16 violation of Code Section 10177.4, and constitute grounds to
17 suspend or revoke Respondent RODEO REALTY's real estate broker
18 license pursuant to Business and Professions Code Sections
19 10177(d) and 10177(g) for claiming, demanding or receiving
20 commissions, fees or other consideration from a title insurance
21 company for referral of customers to the title insurance company.

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11.

The conduct, acts and/or omissions of Respondent LEIBOVITCH, as set forth in Paragraphs 2 through 9 above, are in violation of Code Section 10177.4, and constitute grounds to suspend or revoke Respondent's real estate licenses and/or license rights pursuant to Business and Professions Code Sections 10177(g) and/or 10177(d).

12.

The conduct, acts and/or omissions of Respondents RODEO REALTY and LEIBOVITCH in claiming or taking a secret or undisclosed amount of compensation, commission or profit in relation to the referral of customers to FNF affiliated title insurance companies constitutes grounds to discipline Respondents' real estate licenses and/or licensing rights pursuant to Business and Professions Code Sections 10176(g) and/or 10177(j).

13.

The failure of Respondent LEIBOVITCH to ensure Respondent RODEO REALTY's full compliance with the Real Estate Law, as set forth in Paragraphs 2 through 9 above, in violation of Code Section 10159.2, constitutes grounds to discipline the broker license and license rights of Respondent LEIBOVITCH, pursuant to Code Sections 10177(d), 10177(g) and/or 10177(h), for failing to exercise required supervision over the activities of the officers, employees and agents of Respondent RODEO REALTY.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and/or license rights of Respondent RODEO REALTY, INC., a corporate real estate broker, and Respondent SYDNEY LEIBOVITCH, individually and as designated broker-officer of Rodeo Realty, Inc., and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California
this 29 day of August, 2007.



ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Rodeo Realty, Inc.
Sydney Leibovitch
Robin L. Trujillo
Sacto.