

Sect 2

Department of Real Estate
320 West Fourth St., #350
Los Angeles, CA 90013

(213) 576-6982 (office)
(213) 576-6911 (direct)

FILED

AUG 29 2008

DEPARTMENT OF REAL EST/
BY: [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-34563 LA
)	
AUSTIN MCBRIDE CORPORATION,)	
)	
a real estate corporation,)	<u>STIPULATION</u>
)	<u>AND</u>
doing business as Re/Max Real)	<u>AGREEMENT</u>
)	
Estate Consultant, Re/Max of the)	
)	
Desert, Re/Max of Coronado and)	
)	
First-Com Mortgage Inc.;)	
)	
LORENZO LAYTON LOMBARDELLI,)	
)	
individually and as designated)	
)	
officer of Austin McBride)	
)	
Corporation,)	
)	
)	
Respondents.)	
)	
)	
)	

It is hereby stipulated by and between Respondents
AUSTIN MCBRIDE CORPORATION, a corporate real estate broker, and
LORENZO LAYTON LOMBARDELLI, individually and as designated
officer of AUSTIN MCBRIDE CORPORATION, (sometimes collectively
referred to as "Respondents"), represented by Steven F. Spierer,
Esq., and the Complainant, acting by and through Elliott Mac
Lennan, Counsel for the Department of Real Estate, as follows for
the purpose of settling and disposing of the Accusation

1 ("Accusation") filed on December 6, 2007, in this matter:

2 1. All issues which were to be contested and all
3 evidence which was to be presented by Complainant and Respondents
4 at a formal hearing on the Accusation, which hearing was to be
5 held in accordance with the provisions of the Administrative
6 Procedure Act ("APA"), shall instead and in place thereof be
7 submitted solely on the basis of the provisions of this
8 Stipulation and Agreement ("Stipulation").

9 2. Respondents have received, read and understand the
10 Statement to Respondent, the Discovery Provisions of the APA and
11 the Accusation filed by the Department of Real Estate in this
12 proceeding.

13 3. Respondents timely filed a Notice of Defense
14 pursuant to Section 11506 of the Government Code for the purpose
15 of requesting a hearing on the allegations in the Accusation.
16 Respondents hereby freely and voluntarily withdraw said Notice of
17 Defense. Respondents acknowledge that they understand that by
18 withdrawing said Notice of Defense they thereby waive their right
19 to require the Commissioner to prove the allegations in the
20 Accusation at a contested hearing held in accordance with the
21 provisions of the APA and that they will waive other rights
22 afforded to them in connection with the hearing such as the right
23 to present evidence in their defense the right to cross-examine
24 witnesses.
25

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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation. In the interest of
3 expedience and economy, Respondents choose not to contest these
4 allegations, but to remain silent and understand that, as a
5 result thereof, these factual allegations, without being admitted
6 or denied, will serve as a prima facie basis for the disciplinary
7 action stipulated to herein. The Real Estate Commissioner shall
8 not be required to provide further evidence to prove said factual
9 allegations.

10 5. This Stipulation and Respondents decision not to
11 contest the Accusation is made for the purpose of reaching an
12 agreed disposition of this proceeding and is expressly limited to
13 this proceeding and any other proceeding or case in which the
14 Department of Real Estate ("Department"), the state or federal
15 government, or any agency of this state, another state or federal
16 government is involved, and otherwise shall not be admissible in
17 any other criminal or civil proceedings.

18 6. It is understood by the parties that the Real
19 Estate Commissioner may adopt this Stipulation as his Decision in
20 this matter thereby imposing the penalty and sanctions on
21 Respondents' real estate licenses and license rights as set forth
22 in the "Order" below. In the event that the Commissioner in his
23 discretion does not adopt the Stipulation, it shall be void and
24 of no effect and Respondents shall retain the right to a hearing
25 and proceeding on the Accusation under the provisions of the APA
26
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and shall not be bound by any stipulation or waiver made herein.

1
2 7. The Order or any subsequent Order of the Real
3 Estate Commissioner made pursuant to this Stipulation shall not
4 constitute an estoppel, merger or bar to any further
5 administrative or civil proceedings by the Department of Real
6 Estate with respect to any matters which were not specifically
7 alleged to be causes for Accusation in this proceeding but do
8 constitute a bar, estoppel and merger as to any allegations
9 actually contained in the Accusations against Respondent herein.

10 DETERMINATION OF ISSUES

11 By reason of the foregoing, it is stipulated and agreed
12 that the following determination of issues shall be made:

13 I.

14 The conduct of AUSTIN MCBRIDE CORPORATION, as described
15 in Paragraph 4, above, is in violation of Section 10177(g) of the
16 Business and Professions Code and is a basis for the suspension
17 or revocation of Respondent's license and license rights as a
18 violation said section.
19

20 II.

21 The conduct of LORENZO LAYTON LOMBARDELLI, as described
22 in Paragraph 4, above, is in violation of Section 10177(g) of the
23 Business and Professions Code and is a basis for the suspension
24 or revocation of Respondent's license and license rights as a
25 violation said section.

26 ///

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents AUSTIN
MCBRIDE CORPORATION and LORENZO LAYTON LOMBARDELLI under the Real
Estate Law suspended for a period of sixty (60) days from the
effective date of this Decision; provided, however, that

1. Sixty (60) day suspension (or a portion thereof)
shall be stayed for two (2) years upon condition that Respondents
petition and pay a monetary penalty pursuant to Section 10175.2
of the Business and Professions Code at the rate of \$166.66 per
day for each day of the suspension for a total monetary penalty
of \$10,000 each or \$20,000 total.

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

3. No further cause for disciplinary action against
the real estate license of Respondents occurs within two (2)
years from the effective date of the Decision in this matter.

4. If Respondents fail to pay the monetary penalty in
accordance with the terms of the Decision, the Commissioner may,
without a hearing, order the immediate execution of all or any
part of the stayed suspension, in which event the Respondents

1 shall not be entitled to any repayment nor credit, prorated or
2 otherwise, for money paid to the Department under the terms of
3 this Decision.

4 5. If Respondents pay the monetary penalty and if no
5 further cause for disciplinary action against the real estate
6 license of Respondents occurs within two (2) years from the
7 effective date of the Decision, the stay hereby granted shall
8 become permanent.

9 6. Respondents shall obey all laws, rules and
10 regulations governing the rights, duties and responsibilities of
11 real estate licensees in the State of California.

12
13 DATED: 12-06-67

ELL
14 ELLIOTT MAC LENNAN, Counsel for
15 the Department of Real Estate

16 * * *

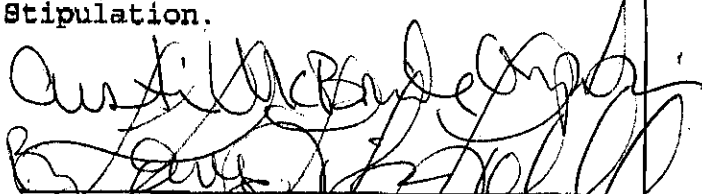
17 EXECUTION OF THE STIPULATION

18 We have read the Stipulation, and have discussed it
19 with our counsel. Its terms are understood by us and are
20 agreeable and acceptable to us. We understand that we are
21 waiving rights given to us by the California Administrative
22 Procedure Act (including but not limited to Sections 11506,
23 11508, 11509 and 11513 of the Government Code), and we willingly,
24 intelligently and voluntarily waive those rights, including the
25 right of requiring the Commissioner to prove the allegations in
26 the Accusation at a hearing at which we would have the right to
27

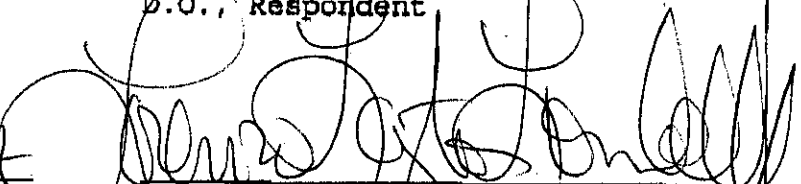
1 cross-examine witnesses against us and to present evidence in
2 defense and mitigation of the charges.

3 Respondents can signify acceptance and approval of the
4 terms and conditions of this Stipulation by faxing a copy of its
5 signature page, as actually signed by Respondents, to the
6 Department at the following telephone/fax number: Elliott Mac
7 Lennan at (213) 576-6917. Respondents agree, acknowledge and
8 understand that by electronically sending to the Department a fax
9 copy of Respondents' actual signature as they appear on the
10 Stipulation, that receipt of the faxed copy by the Department
11 shall be as binding on Respondents as if the Department had
12 received the original signed Stipulation.

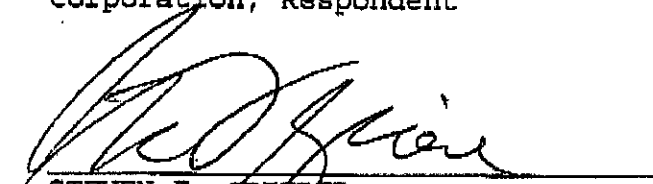
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14
15 DATED: 12-17-07


AUSTIN MCBRIDE CORPORATION, a
corporate real estate broker,
BY: LORENZO LAYTON LOMBARDELLI,
D.O., Respondent

16
17
18
19 DATED: 12-17-07


LORENZO LAYTON LOMBARDELLI
individually and as designated
officer of Austin McBride
Corporation, Respondent

20
21
22
23 DATED: 12/13/07


STEVEN F. SPIERER
Attorney for Respondents
Approved as to form

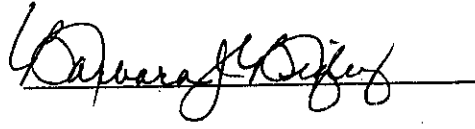
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents AUSTIN MCBRIDE
CORPORATION and LORENZO LAYTON LOMBARDELLI, individually and as
designated officer of Austin McBride Corporation, and shall
become effective at 12 o'clock noon on September 18, 2008

IT IS SO ORDERED 8/17/08

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

1 ELLIOTT MAC LENNAN, Counsel (SBN 66674)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013

5 (213) 576-6982 (office)
6 (213) 576-6911 (direct)

FILED

DEC - 6 2007

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H- 34563 LA

12 AUSTIN MCBRIDE CORPORATION,)
13 a real estate corporation,)
14 doing business as Re/Max Real)
15 Estate Consultant, Re/Max of the)
16 Desert, Re/Max of Coronado and)
17 First-Com Mortgage Inc.;)
18 LORENZO LAYTON LOMBARDELLI,)
19 individually and as designated)
officer of Austin McBride)
Corporation,)

A C C U S A T I O N

Respondents.)

20 The Complainant, Robin Trujillo, a Deputy Real Estate
21 Commissioner of the State of California, for cause of Accusation
22 against AUSTIN MCBRIDE CORPORATION dba Re/Max Real Estate
23 Consultant, Re/Max of the Desert, Re/Max of Coronado and First-
24 Com Mortgage, Inc.; LORENZO LAYTON LOMBARDELLI, individually and
25 as designated officer of Austin McBride Corporation, alleges as
26 follows:
27

1.

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

2.

5 All references to the "Code" are to the California
6 Business and Professions Code and all references to "Regulations"
7 are to Title 10, Chapter 6, California Code of Regulations.
8

3.

9
10 LICENSE HISTORY

11 A. At all times mentioned, AUSTIN MCBRIDE CORPORATION
12 ("AMC") was licensed or had license rights issued by the
13 Department of Real Estate ("Department") as a real estate broker.
14 On November 30, 1994, AMC was originally licensed as a real
15 estate broker.
16

17 B. At all times mentioned, LORENZO LAYTON LOMBARDELLI
18 ("LOMBARDELLI") was licensed or had license rights issued by the
19 Department as a real estate broker. On August 15, 1972,
20 LOMBARDELLI was originally licensed as a real estate broker; and,

21 C. At all times material herein, AMC was licensed by
22 the Department as a corporate real estate broker by and through
23 LOMBARDELLI, as the designated officer and broker responsible,
24 pursuant to Code Section 10159.2 of the Business and Professions
25 Code for supervising the activities requiring a real estate
26
27

1 license conducted on behalf AMC of by AMC's officers, agents and
2 employees, including LOMBARDELLI.

3 4.

4 LICENSED ACTIVITIES

5 At all times mentioned, in the City of Palm Desert,
6 County of San Bernardino, AMC and LOMBARDELLI acted as real
7 estate brokers and conducted licensed activities within the
8 meaning of:

9 A. Code Section 10131(a). AMC operated a residential
10 resale brokerage dba Re/Max Real Estate Consultant.

11 B. Code Section 10131(b). AMC operated a property
12 management brokerage dba Re/Max of the Desert and Re/Max of
13 Coronado; and

14 C. In addition, AMC conducted broker-controlled
15 escrows through its escrow division, under the exemption set
16 forth in California Financial Code Section 17006(a)(4) for real
17 estate brokers performing escrows incidental to a real estate
18 transaction where the broker is a party and where the broker is
19 performing acts for which a real estate license is required.
20

21 5.

22 GENERAL ALLEGATIONS

23 (a) Between in or about July 2003 through in or about
24 February 2005, First-Com, a non-licensee real estate related
25 sister corporation of AMC, owned and operated by LOMBARDELLI, in
26 connection with AMC's residential sales and mortgage loan
27

1 brokerage activities set forth in Paragraph 4 above, entered into
2 a Reinsurance Participation Agreement with LandAmerica
3 Reinsurance Services, Inc. (hereafter LandAmerica), whereby
4 First-Com would receive twenty percent of a net title reinsurance
5 insurance premium, based on customer referrals to title insurance
6 companies or underwritten title companies including but not
7 limited to LandAmerica Company.

8 6.

9 On or about August 21, 2003, LandAmerica entered into a
10 Participation Agreement with First-Com through Respondents AUSTIN
11 MCBRIDE and LOMBARDELLI dba Re/Max Real Estate Consultants.
12 Under this Participation Agreement, Respondents deposited with
13 LandAmerica Reinsurance Services Inc. a check numbered 041000 in
14 the amount of \$10,000 and a letter of credit in the amount of
15 \$25,000 along with the agreement to assume twenty percent
16 liability for title insurance losses, if any, from sales
17 transactions generated by Respondents. In exchange, First-Com
18 would receive twenty percent of the ceded "Net Reinsurable
19 Premium."

20 7.

21 On or about August 21, 2003, LandAmerica entered into a
22 Reinsurance Agreement with title insurance companies, including
23 but not limited to Transnation Title Insurance Company,
24 Commonwealth Land Title Company, their subsidiaries including but
25 not limited to LandAmerica Company, whereby the title insurance
26 companies would cede liability and part of the premium, less \$300
27

1 processing fee, to LandAmerica. LandAmerica would then cede
2 twenty percent of the premium to First-Com.

3 8.

4 The total amount of the title insurance premium
5 included the premium for the title policy paid for by seller for
6 the benefit of the buyer and for the policy insuring the lender,
7 paid for by the buyer. It was based on this total premium that
8 the twenty percent of the net ceded premium was calculated and
9 paid to First-Com.

10 9.

11 The California Department of Insurance (DOI) has
12 indicated that the typical loss ratio as to title insurance is
13 three to five percent, meaning there is little or no risk
14 transferred to the reinsurer in exchange for the portion of
15 premium they are collecting, and in California, the normal
16 practice is not to have a reinsurer in connection with title
17 business. DOI determined that the reinsurance agreements were
18 not legitimate reinsurance agreements, but were a scheme under
19 which title insurers were paying real estate brokers illegal
20 rebates - in the form of "premiums" on fictitious reinsurance
21 paid to captive reinsurers - in exchange for the brokers
22 channeling business to the title companies.

23 10.

24 Between in or about July 2003 through in or about
25 February 24, 2005, First-Com received compensation of
26 approximately \$11,174.25 for referrals of its sellers and buyers
27 to LandAmerica as a result of residential sales negotiated by

1 AMC, wherein residential sellers purchased title insurance from
2 LandAmerica through escrow for the benefit of buyers.

3 11.

4 NON DISCLOSURE

5 (a) Respondents did not disclose to the residential
6 sellers, their principals, any affiliation with LandAmerica.
7 Respondents did not disclose to their principals, who purchased
8 the title insurance policies, at the time of listing, or at any
9 time, or to the buyers at any time, that First-Com would receive
10 compensation from the aforesaid title insurance companies if
11 sellers and buyers used those title insurance companies. Nor did
12 Respondents disclose to sellers or buyers the amount of the
13 compensation fee or consideration, to wit, the ceded premium
14 rebate, which First-Com received.

15 (b) In none of the transactions examined by the
16 Department was there such an "Affiliated Business Disclosure
17 Statement" signed by the sellers.

18 12.

19 TRANSACTIONS

20 The General Allegations, referral of customers to the
21 title companies, the receipt of compensation from the title
22 insurance companies for referral of customers, non disclosures as
23 above alleged occurred while AMC solicited and negotiated for
24 sales of real property, all of which were escrowed through AMC's
25 escrow division.

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27 ///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 AUSTIN MCBRIDE CORPORATION, a corporate real estate broker, and
6 LORENZO LAYTON LOMBARDELLI, as designated officer of Austin
7 McBride Corporation, under the Real Estate Law and for such other
8 and further relief as may be proper under applicable provisions
9 of law.

10 Dated at Los Angeles, California
11 this 6th day of December, 2007.

12
13
14 
15 Robin Trujillo,
16 Deputy Real Estate Commissioner
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22
23

24 cc: Austin McBride Corporation
25 c/o Lorenzo Layton Lombardelli
26 Robin Trujillo
27 Sacto.