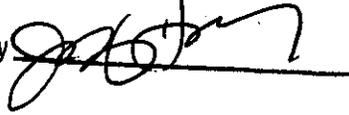


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**FILED**  
NOV 09 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	
)	NO. H-29793 LA
)	
R.W. SELBY & CO. INC., )	
and RICHARD WILLIAM SELBY, )	
individually and as )	
designated officer of )	
R.W. Selby & Co., Inc., )	
)	
Respondents )	
)	

ORDER SUSPENDING REAL ESTATE LICENSE

TO: NAME: RICHARD WILLIAM SELBY, individually and as  
designated officer of R.W. Selby & Co. Inc.

Effective March 1, 2004, a Decision and Order was  
issued by the Chief Deputy Commissioner, Department of Real  
Estate, to Respondent on the terms, conditions and  
restrictions set forth in the Department's Decision and Order  
of January 23, 2004, in case No. H-29793 LA. This Decision  
and Order suspended Respondent's license rights on terms and  
conditions including, the condition that the Respondent was

1 required to take and pass the Professional Responsibility  
2 Course Examination administered by the Department within six  
3 (6) months from the effective date of the Decision (March 1,  
4 2004). The Commissioner has determined that as of October 6,  
5 2004, Respondent has failed to satisfy this condition, and as  
6 such, is in violation of the terms of the Decision.

7 NOW, THEREFORE, IT IS ORDERED that Respondent's Real  
8 Estate Broker license and the exercise of any privileges  
9 thereunder is hereby suspended until such time as Respondent  
10 provides proof satisfactory to the Department of having passed  
11 the Professional Responsibility Course Examination, referred  
12 to above or pending final determination made after hearing  
13 (see "Hearing Rights" set forth below).

14 IT IS FURTHER ORDERED that all license certificates  
15 and identification cards issued by Department which are in the  
16 possession of respondent be immediately surrendered by  
17 personal delivery or by mailing in the enclosed, self-  
18 addressed envelope to:

19 Department of Real Estate  
20 Attn: Flag Section  
21 P. O. Box 187000  
22 Sacramento, CA 95818-7000

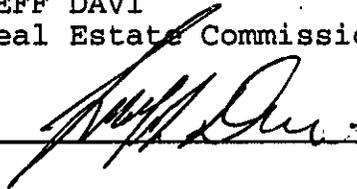
23 HEARING RIGHTS: Pursuant to the provisions of  
24 Section 10156.7 of the Business and Professions Code, you have  
25 the right to a hearing to contest the Commissioner's  
26 determination that you are in violation of Section 10177(k).  
27 If you desire a hearing, you must submit a written request.  
The request may be in any form, as long as it is in writing

1 and indicates that you want a hearing. Unless a written  
2 request for a hearing, signed by or on behalf of you, is  
3 delivered or mailed to the Department at 320 West Fourth  
4 Street, Suite 350, Los Angeles, California, within 20 days  
5 after the date that this Order was mailed to or served on you,  
6 the Department will not be obligated or required to provide  
7 you with a hearing.

8 This Order shall be effective immediately.

9 DATED: November 4, 2004, 2004

10 JEFF DAVI  
11 Real Estate Commissioner

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1 ELLIOTT MAC LENNAN, SBN 66674  
Department of Real Estate  
2 320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105  
3  
4 Telephone: (213) 576-6911 (direct)  
-or- (213) 576-6982 (office)

FILED  
JAN 29 2004  
DEPARTMENT OF REAL ESTATE

By *R. Medunsky*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H-29793 LA  
12 R. W. SELBY & CO. INC., )  
and RICHARD WILLIAM SELBY, ) STIPULATION  
13 individually and as designated ) AND  
officer of R. W. Selby & Co. Inc., ) AGREEMENT  
14 )  
15 Respondents. )  
16 )

17 It is hereby stipulated by and between R. W. SELBY &  
18 CO. INC., and RICHARD WILLIAM SELBY, individually and as  
19 designated officer of R. W. Selby & Co. Inc., (sometimes  
20 collectively referred to as "Respondents"), represented by the  
21 Law Offices of Robert Smylie & Associates, and the Complainant,  
22 acting by and through Elliott Mac Lennan, Counsel for the  
23 Department of Real Estate, as follows for the purpose of settling  
24 and disposing of the Accusation filed on November 21, 2002, in  
25 this matter:

26 ///

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

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

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

24 ///

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27

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

9           5. This Stipulation is based on Respondents decision  
10 not to contest the allegations set forth in the Accusation as a  
11 result of the agreement negotiated between the parties. This  
12 Stipulation is expressly limited to this proceeding and any  
13 further proceeding initiated by or brought before the Department  
14 of Real Estate based upon the facts and circumstances alleged in  
15 the Accusation, and is made for the sole purpose of reaching an  
16 agreed disposition of this proceeding without a hearing. The  
17 decision of Respondents not to contest the allegations is made  
18 solely for the purpose of effectuating this Stipulation. It is  
19 the intent and understanding of the parties that this Stipulation  
20 shall not be binding or admissible against Respondents in any  
21 actions against Respondents by third parties.

22           6. It is understood by the parties that the Real  
23 Estate Commissioner may adopt this Stipulation as his Decision  
24 in this matter thereby imposing the penalty and sanctions on  
25 Respondents real estate licenses and license rights as set forth  
26 in the "Order" herein below. In the event that the Commissioner,  
27

1 in his discretion, does not adopt the Stipulation, it shall be  
2 void and of no effect and Respondents shall retain the right to  
3 a hearing and proceeding on the Accusation under the provisions  
4 of the APA and shall not be bound by any stipulation or waiver  
5 made herein.

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

14           8. This Stipulation and the order made pursuant to  
15 this Stipulation shall have no collateral estoppel or res  
16 judicata effect in any proceeding(s) in which R. W. SELBY & CO.  
17 INC. and/or RICHARD WILLIAM SELBY and the Department are not  
18 parties. This Stipulation is made and accepted with the express  
19 understanding and agreement that it is for the purpose of  
20 settling these proceedings only, and is not intended as, nor  
21 shall be it be deemed, used, argued, or accepted as an  
22 acknowledgement or admission of fact in any other judicial,  
23 administrative, or other proceeding in which the Department is  
24 not a party.

25           9. Respondents understand that by agreeing to this  
26 Stipulation, Respondents agree to pay, pursuant to Business and  
27

1 Professions Code Section 10148, the cost of the audit (LA 000429)  
2 which led to this disciplinary action. The amount of said cost  
3 is \$6,309.12.

4 10. Respondents have received, read, and understand  
5 the "Notice Concerning Costs of Subsequent Audit". Respondents  
6 further understand that by agreeing to this Stipulation, the  
7 findings set forth below in the Determination of Issues become  
8 final, and the Commissioner may charge Respondents for the cost  
9 of any subsequent audits conducted pursuant to Business and  
10 Professions Code Section 10148 to determine if the violations  
11 have been corrected. The maximum cost of the subsequent audit  
12 will not exceed \$6,309.12.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, it is  
15 stipulated and agreed that the following determination of issues  
16 shall be made:  
17

18 1.

19 The conduct, acts or omissions of R. W. SELBY & CO.  
20 INC., as described in Paragraph 4 above, is in violation of  
21 Section 10145(d)(1) of the Business and Professions Code ("Code")  
22 and Regulation Sections 2832(a) and (b) of Title 10, Chapter 6 of  
23 the California Code of Regulations ("Regulations") and Code  
24 Section 10145(d) (4) and Regulation Sections 2830.1(a) and (d) and  
25 is a basis for the suspension or revocation of Respondent's  
26 license and license rights pursuant to Code Section 10177(d).  
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2.

The conduct, acts or omissions of RICHARD WILLIAM SELBY, as described in Paragraph 4, constitutes a failure to ensure that R. W. Selby & Co. Inc., was in compliance with the Real Estate Law during the time that he was the officer designated by a corporate broker licensee, in violation of Code Section 10159.2. This conduct is a basis for the suspension or revocation of Respondent's license and license rights pursuant to Code Section 10177(h).

ORDER

WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE WRITTEN STIPULATION OF THE PARTIES:

I.

A. All licenses and licensing rights of Respondent R. W. SELBY & CO. INC. and RICHARD WILLIAM SELBY, under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

1. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California.

2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of

1 this Decision. Should such determination be made, the  
2 Commissioner may, in his discretion, vacate and set aside the  
3 stay order and reimpose all or a portion of the stayed  
4 suspension. Should no such determination be made, the stay  
5 imposed herein shall become permanent.

6 B. The initial thirty (30) day portion of said ninety  
7 (90) day suspension shall commence on the effective date of this  
8 Decision; provided, however, that if Respondents petition, said  
9 suspension shall be stayed upon condition that:

10 1. Pursuant to Section 10175.2 of the Business and  
11 Professions Code, Respondents each pay a monetary penalty of one  
12 hundred dollars (\$100.00) per day totaling Three Thousand Dollars  
13 (\$3,000) each for a total of Six Thousand Dollars (\$6,000).

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

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

22 4. If a Respondent fails to pay the monetary penalty  
23 in accordance with the terms and conditions of the Decision, the  
24 Commissioner may, without a hearing, order the immediate  
25 execution of all or any part of the stayed suspension in which  
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1 event that Respondent shall not be entitled to any repayment nor  
2 credit, prorated or otherwise, for money paid to the Department  
3 under the terms of this Decision.

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

9 C. Respondent RICHARD WILLIAM SELBY shall, within nine  
10 (9) months from the effective date of this Decision, present  
11 evidence satisfactory to the Real Estate Commissioner that  
12 Respondent has, since the most recent issuance of an original or  
13 renewal real estate license, taken and successfully completed the  
14 continuing education requirements of Article 2.5 of Chapter 3 of  
15 the Real Estate Law for renewal of a real estate license. If  
16 Respondent fails to satisfy this condition, the Commissioner may  
17 order the suspension of the Respondent's license until the  
18 Respondent presents such evidence. The Commissioner shall afford  
19 Respondent the opportunity for a hearing pursuant to the  
20 Administrative Procedure Act to present such evidence.

21 D. Respondent RICHARD WILLIAM SELBY shall within six  
22 (6) months from the effective date of the Decision, take and pass  
23 the Professional Responsibility Examination administered by the  
24 Department including the payment of the appropriate examination  
25 fee. If Respondent fails to satisfy this condition, the  
26

1 Commissioner may order suspension of the Respondent's license  
2 until Respondent passes the examination.

3 E. All licenses and licensing rights of Respondent  
4 RICHARD WILLIAM SELBY are indefinitely suspended unless or until  
5 Respondent provides proof satisfactory to the Commissioner, of  
6 having taken and successfully completed the continuing education  
7 course on trust fund accounting and handling specified in  
8 paragraph (3) of subdivision (a) of Section 10170.5 of the  
9 Business and Professions Code. Proof of satisfaction of this  
10 requirement includes evidence that Respondent has successfully  
11 completed the trust fund account and handling continuing  
12 education course within 120 days prior to the effective date of  
13 the Decision in this matter.

14 II.

15 Pursuant to Section 10148 of the Business and  
16 Professions Code, Respondents shall pay the Commissioner's  
17 reasonable cost for: (a) the audit (Audit Report LA 000429)  
18 which led to this disciplinary action and (b) a subsequent audit  
19 to determine if Respondent R. W. SELBY & CO. INC. is now in  
20 compliance with the Real Estate Law. The cost of the audit which  
21 led to this disciplinary action is \$6,309.12. In calculating the  
22 amount of the Commissioner's reasonable cost, the Commissioner  
23 may use the estimated average hourly salary for all persons  
24 performing audits of real estate brokers, and shall include an  
25 allocation for travel time to and from the auditor's place of  
26 allocation for travel time to and from the auditor's place of  
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1 work. Said amount for the prior and subsequent audit shall not  
2 exceed \$12,618.24.

3 Respondents shall pay such cost within 60 days of  
4 receiving an invoice from the Commissioner detailing the  
5 activities performed during the audit and the amount of time  
6 spent performing those activities.

7 The Commissioner may suspend the license of a  
8 Respondent pending a hearing held in accordance with Section  
9 11500, et seq., of the Government Code, if payment is not timely  
10 made as provided for herein, or as provided for in a subsequent  
11 agreement between the Respondent and the Commissioner. The  
12 suspension shall remain in effect until payment is made in full  
13 or until a Respondent enters into an agreement satisfactory to  
14 the Commissioner to provide for payment, or until a decision  
15 providing otherwise is adopted following a hearing held pursuant  
16 to this condition.  
17  
18

19 DATED: 12-24-03

EL

20 ELLIOTT MAC LENNAN, Counsel for  
21 the Department of Real Estate

22 ///

23 ///

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1 \* \* \*

2 We have read the Stipulation and Agreement, and have  
3 discussed it with our counsel. Its terms are understood by us  
4 and are agreeable and acceptable to us. We understand that we  
5 are waiving rights given to us by the California Administrative  
6 Procedure Act (including but not limited to Sections 11506,  
7 11508, 11509 and 11513 of the Government Code), and we willingly,  
8 intelligently and voluntarily waive those rights, including the  
9 right of requiring the Commissioner to prove the allegations in  
10 the Accusation at a hearing at which we would have the right to  
11 cross-examine witnesses against us and to present evidence in  
12 defense and mitigation of the charges.  
13

14 FACSIMILE

15 Respondents can signify acceptance and approval of the  
16 terms and conditions of this Stipulation and Agreement by faxing  
17 a copy of its signature page, as actually signed by Respondents,  
18 to the Department at the following telephone/fax number: (213)  
19 576-6917, Attention: Elliott Mac Lennan. Respondents agree,  
20 acknowledge and understand that by electronically sending to the  
21 Department a fax copy of Respondents' actual signatures as they  
22 appear on the Stipulation and Agreement, that receipt of the  
23 faxed copy by the Department shall be as binding on Respondents  
24 as if the Department had received the original signed Stipulation  
25 and Agreement.  
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DATED: 12/31/03

*[Signature]*  
R. W. SELBY & CO. INC.  
BY: RICHARD WILLIAM SELBY D.O.,  
Respondent

DATED: 12/31/03

*[Signature]*  
RICHARD WILLIAM SELBY, individually  
and as designated officer of R. W.  
Selby & Co. Inc., Respondent

DATED: \_\_\_\_\_

\_\_\_\_\_  
LAW OFFICES OF ROBERT SMYLIE &  
ASSOCIATES,  
By: ROBERT SMYLIE, ESQ.  
Attorney for Respondents  
Approved as to form

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order and shall become effective at 12  
o'clock noon on \_\_\_\_\_

IT IS SO ORDERED \_\_\_\_\_

JOHN R. LIBERATOR  
Chief Deputy Commissioner

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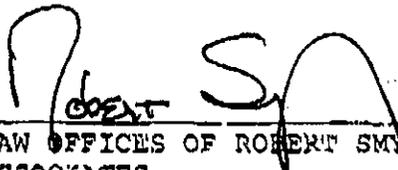
DATED: \_\_\_\_\_

R. W. SELBY & CO. INC.  
BY: RICHARD WILLIAM SELBY D.O.,  
Respondent

DATED: \_\_\_\_\_

RICHARD WILLIAM SELBY, individually  
and as designated officer of R. W.  
Selby & Co. Inc., Respondent

DATED: Dec 31, 2003

  
LAW OFFICES OF ROBERT SMYLIE &  
ASSOCIATES,  
By: ROBERT SMYLIE, ESQ.  
Attorney for Respondents  
Approved as to form

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order and shall become effective at 12  
o'clock noon on \_\_\_\_\_.

IT IS SO ORDERED \_\_\_\_\_

JOHN R. LIBERATOR  
Chief Deputy Commissioner

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DATED: \_\_\_\_\_

\_\_\_\_\_  
R. W. SELBY & CO. INC.  
BY: RICHARD WILLIAM SELBY D.O.,  
Respondent

DATED: \_\_\_\_\_

\_\_\_\_\_  
RICHARD WILLIAM SELBY, individually  
and as designated officer of R. W.  
Selby & Co. Inc., Respondent

DATED: \_\_\_\_\_

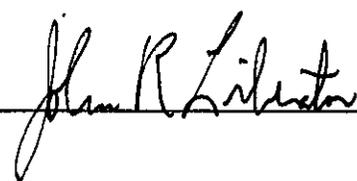
\_\_\_\_\_  
LAW OFFICES OF ROBERT SMYLIE &  
ASSOCIATES,  
By: ROBERT SMYLIE, ESQ.  
Attorney for Respondents  
Approved as to form

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order and shall become effective at 12  
o'clock noon on MAR - 1 2004.

IT IS SO ORDERED January 23, 2004.

JOHN R. LIBERATOR  
Chief Deputy Commissioner

  
\_\_\_\_\_

*Sacto*

**BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

**FILED**  
SEP - 9 2003  
DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

By *K. Wiederholz*

R. W. SELBY & CO., INC., et al.,

}  
}

Case No. H-29793 LA

OAH No. L-2002120626

*Respondent*

**CONTINUED  
NOTICE OF HEARING ON ACCUSATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **JANUARY 5 & 6, 2004**, at the hour of **9:00 a.m.**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense: You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: September 9, 2003

By *E. M. L.*  
**ELLIOTT MAC LENNAN, Counsel**

cc: R. W. Selby & Co. Inc./Richard William Selby  
Robert O. Smylie, Esq.  
Sacto/OAH/RJ

Sacto  
JRF

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JAN 29 2003  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By K. Melesky

R. W. SELBY & CO. INC., et al.

}

Case No. H-29793 LA

OAH No. L-2002120626

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, CA on June 23, 2003, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: January 29, 2003

By Elliott MacLennan  
ELLIOTT MAC LENNAN, Counsel

cc: R. W. Selby & Co. Inc./Robert William Selby  
Robert Smylie, Esq.  
Sacto/OAH/RJ

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ELLIOTT MAC LENNAN, SBN 66674  
Department of Real Estate  
320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)  
-or- (213) 576-6982 (office)

**FILED**  
NOV 21 2002

DEPARTMENT OF REAL ESTATE

By *K. Kudakht*

R'

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	NO. H- 29793 LA
R. W. SELBY & CO. INC. )	<u>A C C U S A T I O N</u>
and RICHARD WILLIAM SELBY, )	
individually and as designated )	
officer of R. W. Selby & Co. Inc., )	
Respondents. )	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against R. W. SELBY & CO. INC. and RICHARD WILLIAM SELBY, individually and as designated officer of R. W. Selby & Co. Inc., alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against R. W. SELBY & CO. INC. ("RWSCI") and RICHARD WILLIAM SELBY, individually and as designated officer of R. W. Selby & Co. Inc., ("SELBY").

2.

1 All references to the "Code" are to the California  
2 Business and Professions Code and all references to "Regulations"  
3 are to Title 10, Chapter 6, California Code of Regulations.  
4

3.

5  
6 RWSCI and SELBY (sometimes hereinafter referred to as  
7 Respondents) are presently licensed or have license rights under  
8 the Real Estate Law (Part 1 of Division 4 of the Business and  
9 Professions Code, hereinafter "Code").  
10

4.

11 At all time herein mentioned, SELBY was licensed by the  
12 Department as the designated officer of RWSCI to qualify RWSCI  
13 and to act for RWSCI as a real estate broker and, as provided by  
14 Code Section 10159.2, was responsible for the supervision and  
15 control of the activities conducted on behalf of RWSCI by its  
16 officers, managers and employees as necessary to secure full  
17 compliance with the provisions of the Real Estate Law including  
18 the supervision of the salespersons licensed to the corporation  
19 in the performance of acts for which a real estate license is  
20 required.  
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2 5.

3 LICENSE HISTORY

4 A. RWSCI'S corporate real estate broker license was  
5 originally issued on April 23, 1976.

6 B. Since its inception, SELBY has been the designated  
7 officer of RWSCI.

8 C. SELBY was originally licensed as a real estate  
9 broker on April 23, 1976.

10 6.

11 Whenever reference is made in an allegation in the  
12 Accusation to an act or omission of RWSCI, such allegation shall  
13 be deemed to mean that the officers, directors, managers,  
14 employees, agents and real estate licensees employed by or  
15 associated with RWSCI, including SELBY, committed such act or  
16 omission while engaged in the furtherance of its business or  
17 operation and while acting within the course and scope of its  
18 corporate authority, agency and employment.  
19

20 7.

21 At all times herein mentioned, RWSCI, on behalf of  
22 others in expectation of compensation, engaged in the business,  
23 acted in the capacity of, advertised or assumed to act as a real  
24 estate broker within the meaning of Code Section 10131(b) wherein  
25 RWSCI operated a property management brokerage with the public  
26 wherein, for or in expectation of compensation, for another or  
27

1 others, RWSCI leased or rented or offered to lease or rent, or  
2 placed for rent, or solicited listings of places for rent, or  
3 solicited for prospective tenants, or collected rents from real  
4 property, or improvements thereon. RWSCI managed 2800 units for  
5 thirty owners in thirty partnerships.

6 8.

7  
8 On November 14, 2001, the Department completed an audit  
9 examination of the books and records of RWSCI pertaining to its  
10 property management activities requiring a real estate license as  
11 described in Paragraph 7. The audit examination covered a period  
12 of time beginning on August 1, 1998 to August 31, 2001. The  
13 audit examination revealed violations of the Code and the  
14 Regulations as set forth below and as more fully discussed in  
15 Audit Report LA 000429 and the exhibits and workpapers attached  
16 to said audit report.

17 9.

18 FIRST CAUSE OF ACTION  
19 (Audit violations)

20 At all times mentioned, in connection with the  
21 activities described in Paragraph 7, above, RWSCI accepted or  
22 received funds in trust (trust funds) from or on behalf of  
23 landlords and tenants and thereafter made disposition of such  
24 funds. RWSCI maintained sixty (60) trust accounts, two for each  
25 of the thirty properties managed during the audit period of which  
26 the below five (5) trust accounts were reviewed and reconciled  
27 for this audit and into which trust accounts were deposited

- 1 certain of these funds at the Tokai Bank, 300 S. Grand Ave., 6<sup>th</sup>  
2 Floor, Los Angeles, California:
- 3 "1241 Granville Investors  
4 Account No. 01-527916"  
5 (Rent Depository and Property Expense Disbursements) (B/A #1)
- 6 "525 Magnolia Investors II  
7 Account No. 01-527932"  
8 (Rent Depository and Property Expense Disbursements) (B/A #2)
- 9 "521 E. Palm  
10 Account No. 01-527819"  
11 (Rent Depository and Property Expense Disbursements) (B/A #3)
- 12 "Palmcrest Apartments  
13 Account No. 01-527959"  
14 (Rent Depository and Property Expense Disbursements) (B/A #4)
- 15 "Darlington Investors  
16 Account No. 01-527886"  
17 (Rent Depository and Property Expense Disbursements) (B/A #5)

18 10.

19 With respect to the trust funds referred to in  
20 Paragraph 9, it is alleged that RWSCI:

21 (a) (1) received undisclosed compensation by means of  
22 marked-up third party service provider invoices for property  
23 repairs and maintenance. Apartment Maintenance Service, an  
24 affiliate of RWSCI's owned by SELBY, Steven K. Fowlkes, President  
25 of RWSCI and Jeffrey Mazzarella, was paid the mark-up amounts  
26 from twenty (20) respective property owning partnerships set  
27 forth below. The mark-up was not disclosed by RWSCI or SELBY to  
partnerships in RWSCI's property management agreements.

1 (a) (2) failed to disclose to the twenty (20) property  
2 owner partnerships in RWSCI's property management agreements that  
3 RWSCI's management fees were paid based on a formula that  
4 included interest income. Unbeknownst to the partnerships a  
5 portion of the interest earned by the interest-bearing trust  
6 accounts was paid to RWSCI as management fees, instead of inuring  
7 to the partnerships.

8 (a) (3) failed to disclose to the twenty (20) property  
9 owner partnerships in RWSCI's property management agreements that  
10 RWSCI was purchasing computer equipment for its own use in  
11 RWSCI's property management business and was in turn expensing  
12 the purchased equipment to the respective properties under  
13 management.

14 The conduct of taking a secret profit undisclosed to  
15 property owner partnerships in the form of an invoice mark-up  
16 through an affiliate, in the form of improper interest inured to  
17 RWSCI, and in the form of expensing the cost of computer  
18 equipment used by RWSCI to the properties under its management,  
19 is cause for discipline pursuant to Code Sections 10176(g) and  
20 10176(i):  
21

22 PROPERTY PARTNERSHIP AGREEMENTS

23  
24 Cambridge Investors, LP  
25 11685 Darlington, LTD  
26 1241 Granville Investors  
27 430 Kelton Investors, LP  
Mar Vista Investors, LLC  
521 E. Palm Investors, LP  
Westwood Apartments, LLC

1 ST Apartments, LLC  
2 Tiverton Development, LP  
3 7400 Sepulveda Investors, Ltd.  
4 4701 Clair Del Associates  
5 4901 Clair Del Associates  
6 Centinela Investors, LLC  
7 525 Magnolia Investors II  
8 Midvale Apartments, LLC  
9 Palmcrest Apartments, Ltd.  
10 Rose Avenue Investors, LP  
11 1022 Tiverton Investors, LP  
12 SFTC Associates, LLC]  
13 Westridge Investors, LP

14 (b) Failed to place funds accepted on behalf of  
15 renters, tenants and property owners into a trust fund account in  
16 the name of the broker as trustee, in violation of Code Section  
17 10145 and Regulation 2832. All five trust accounts, B/A#1 - B/A  
18 #5 set forth in Paragraph 9, were in the name of the partnerships  
19 owning the respective properties and not the broker.

20 (c) (1) Benefited from interest inured on the trust  
21 accounts that RWSCI failed to designate as interest bearing  
22 accounts, in violation of Code Section 10145(d) (5) and Regulation  
23 2830.1(a) and (e).

24 (c) (2) Deposited trust funds into interest-bearing  
25 accounts without written authorization, in violation of Code  
26 Section 10145(d) (4) and Regulation 2830.1(a) and (d).

27 (d) Permitted an unlicensed and unbonded person,  
28 Jeffrey Mazarella, to be an authorized signatory on B/A #2, in  
29 violation of Code Section 10145 and Regulation 2834.

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11.

The conduct of Respondent RWSCI, described in Paragraph 10, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10(a) (1) (2) &(3)	Code Sections 10176(g) and 10176(i)
10(b)	Code Section 10145 and Regulation 2832
10(c) (1)	Code Section 10145(d) (5) and Regulation 2830.1(a) and (e)
10(c) (2)	Code Section 10145(d) (4) and Regulation 2830.1(a) and (d)
10(d)	Code Section 10145 and Regulation 2834

Each of the foregoing violations separately constitutes cause for the suspension or revocation of the real estate license and license rights of RWSCI under the provisions of Code Sections 10176(g), 10176(i), 10177(d) and/or 10177(g).

SECOND CAUSE OF ACTION  
(Failure to supervise)

12.

The overall conduct of Respondent SELBY constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over

1 the licensed activities of RONALD L. SELBY & ASSOCIATES INC. as  
2 required by Code Section 10159.2, and to keep it in compliance  
3 with the Real Estate Law, and is cause for the suspension or  
4 revocation of the real estate license and license rights of SELBY  
5 pursuant to the provisions of Code Sections 10177(g) and/or  
6 10177(h).

7 WHEREFORE, complainant prays that a hearing be  
8 conducted on the allegations of this Accusation and, that upon  
9 proof thereof, a decision be rendered imposing disciplinary  
10 action against all licenses and licensing rights of Respondents  
11 R. W. SELBY & CO. INC., and RICHARD WILLIAM SELBY, individually  
12 and as designated officer of R. W. SELBY & Co. Inc., under the  
13 Real Estate Law (Part 1 of Division 4 of the Business and  
14 Professions Code) and for such other and further relief as may be  
15 proper under other applicable provisions of law.  
16

17 Dated at Los Angeles, California

18 this *15<sup>th</sup> day of November 2002.*

19  
20   
21 Deputy Real Estate Commissioner

22 cc: R. W. Selby & Co. Inc.  
23 c/o Richard William Selby  
24 Sacto  
25 Maria Suarez  
26 Eric Goff  
27 RJ