

1 Department of Real Estate
2 320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982

FILED
JUL 26 2005
DEPARTMENT OF REAL ESTATE

C. B. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-31619 LA
12 FUDOSAN, INC., a corporation) L-2005030190
13 and TIMOTHY RORY DELANEY,) STIPULATION
14 individually and as Designated) AND AGREEMENT
15 Officer of Fudosan, Inc.,)
16 Respondents.)

17 It is hereby stipulated by and FUDOSAN, INC., a
18 corporation ("Respondent FUDOSAN, INC.) and TIMOTHY RORY
19 DELANEY, individually and as Designated Officer of Fudosan,
20 Inc. ("Respondent DELANEY"), sometimes referred to as
21 Respondents, acting by and through Steven F. Spierer, Esq.
22 and the Complainant, acting by and through Darlene Averetta,
23 Counsel for the Department of Real Estate, as follows for the
24 purpose of settling and disposing of the Accusation filed on
25 January 14, 2005, in this matter:

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

12 3. On January 24, 2005, Respondents filed Notices of
13 Defense pursuant to Section 11506 of the Government Code for
14 the purpose of requesting a hearing on the allegations in the
15 Accusation and Respondents hereby freely and voluntarily
16 withdraw said Notices of Defense. Respondents acknowledge that
17 they understand that by withdrawing said Notice of Defense they
18 will thereby waive their right to require the Commissioner to
19 prove the allegations in the Accusation at a contested hearing
20 held in accordance with the provisions of the APA and that they
21 will waive other rights afforded to them in connection with the
22 hearing such as the right to present evidence in defense of the
23 allegations in the Accusation and the right to cross-examine
24 witnesses.
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1 4. This Stipulation is based on the factual
2 allegations contained in the Accusation filed in this
3 proceeding. In the interest of expedience and economy,
4 Respondents choose not to contest these factual allegations,
5 but to remain silent and understand that, as a result thereof,
6 these factual statements, will serve as a prima facie basis for
7 the disciplinary action stipulated to herein. The Real Estate
8 Commissioner shall not be required to provide further evidence
9 to prove such 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
13 to this proceeding and any other proceeding or case in which the
14 Department of Real Estate or another licensing agency of this
15 state, another state or the federal government is involved, and
16 otherwise shall not be admissible in any other criminal or civil
17 proceedings.
18

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

1 stipulation or waiver made herein.

2 7. The Order or any subsequent Order of the Real
3 Estate Commissioner made pursuant to this Stipulation shall
4 not 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 conduct which was not specifically
7 alleged to be causes for accusation in this proceeding.

8 DETERMINATION OF ISSUES

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

13 I

14 The conduct, acts and/or omissions of Respondent
15 TIMOTHY RORY DELANEY, as set forth in the Accusation, constitute
16 cause for the suspension or revocation of all the real estate
17 licenses and license rights of Respondent TIMOTHY RORY DELANEY
18 under the provisions of Section 10177(d) of the Business and
19 Professions Code ("Code") for violation of Code Sections 10145,
20 10159.2 and Section 2832.1, of Title 10, Chapter 6, California
21 Code of Regulations ("Regulations").

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2 The conduct, acts and/or omissions of Respondent
3 FUDOSAN, INC., as set forth in the Accusation, constitute cause
4 for the suspension or revocation of all the real estate licenses
5 and license rights of Respondent FUDOSAN, INC. under the
6 provisions of Code Section 10177(d) for violation of Code
7 Sections 10145 and Regulations 2832 and 2832.1.

8 ORDER

9 WHEREFORE, THE FOLLOWING ORDER is hereby made:

10 I. All licenses and licensing rights of Respondents,
11 FUDOSAN, INC. and TIMOTHY RORY DELANEY are suspended for a
12 period of sixty (60) days from the effective date of this
13 Decision; provided, however, that if Respondents petition,
14 the initial thirty (30) days of said suspension (or a portion
15 thereof) shall be stayed upon condition that:

16 1. Each Respondent pays a monetary penalty pursuant
17 to Section 10175.2 of the Business and Professions Code at the
18 rate of \$33.33 for each day of the suspension for a total
19 monetary penalty of \$1,000.

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

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

4 4. If Respondents fail to pay the monetary penalty in
5 accordance with the terms and conditions of the Decision, the
6 Commissioner may without a hearing order the immediate execution
7 of all or any part of the stayed suspension in which event
8 Respondents shall not be entitled to any repayment nor credit,
9 prorated or otherwise, for money paid
10 to the Department under the terms of this Decision.

11 5. If Respondents pay the monetary penalty and if no
12 further cause for disciplinary action against the real estate
13 licenses of Respondents occur within two (2) years from the
14 effective date of the Decision, the stay hereby granted shall
15 become permanent.

16 II. The remaining thirty (30) days of the sixty (60)
17 day suspension shall be stayed for two (2) years on the
18 following terms and conditions:

19 1. Respondents shall obey all laws, rules and
20 regulations governing the rights, duties and responsibilities
21 of a real estate licensee in the State of California; and
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1 2. That no final subsequent determination be made,
2 after hearing or upon stipulation, that cause for disciplinary
3 action occurred within two (2) years of the effective date of
4 this Decision. Should such a determination be made, the
5 Commissioner may, in his discretion, vacate and set aside the
6 stay order and reimpose all or a portion of the stayed
7 suspension. Should no such determination be made, the stay
8 imposed herein shall become permanent.

9 III. Respondent DELANEY shall submit proof
10 satisfactory to the Commissioner of having taken and
11 successfully completed the continuing education course on trust
12 fund accounting and handling specified in subdivision (a) of
13 Section 10170.5 of the Business and Professions Code. Proof
14 of satisfaction of this requirement includes evidence that
15 Respondent has successfully completed the trust fund account and
16 handling continuing education course within one hundred and
17 twenty (120) days prior to the effective date of the Decision in
18 this matter.

19
20 If Respondent fails to satisfy this condition, the
21 Commissioner may order the suspension of Respondent's license
22 until Respondent passes the examination.

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IV. Pursuant to Section 10148 of the Business and

1 Professions Code, Respondents shall pay the Commissioner's
2 reasonable costs for (a) the audit which led to this
3 disciplinary action and, (b) a subsequent audit to determine
4 if Respondents are in compliance with the Real Estate Law.

5
6 In calculating the amount of the Commissioner's reasonable cost,
7 the Commissioner may use the estimated average hourly salary for
8 all persons performing audits of real estate brokers and shall
9 include an allocation for travel costs, including mileage, time
10 to and from the auditor's place of work and per diem. The cost
11 of the audits which led to this disciplinary action are
12 \$11,653.74. The Commissioner's reasonable costs for a
13 subsequent audit shall in no event exceed \$11,653.74.

14 Respondents shall pay such costs within sixty (60)
15 days of receiving an invoice from the Commissioner detailing the
16 activities performed during the audit and the amount of time
17 spent performing those activities. The Commissioner may, in his
18 discretion, vacate and set aside the stay order, if payment is
19 not timely made as provided for herein, or as provided for in a
20 subsequent agreement between Respondents and Commissioner. The
21 vacation and the set aside of the stay shall remain in effect
22 until payment is made in full or until Respondents enter into an
23 agreement satisfactory to the Commissioner to provide for such
24 payment. Should no order vacating the stay be issued, either in
25 accordance with this condition or the above conditions, the stay
26 imposed herein shall become permanent.
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DATED:

July 7, 2005



DARLENE AVERETTA, Counsel
Department of Real Estate

* * *


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

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at the following fax number: (213) 576-6917.

Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of their actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

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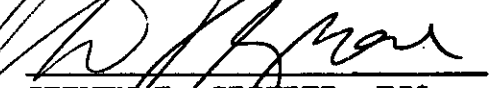
DATED: 06/15/05


FUDOSAN, INC., Respondent
Timothy Rory Delaney
designated officer of
Fudosan, Inc.

DATED: 06/15/05


TIMOTHY RORY DELANEY,
Respondent

DATED: JUN 01 2005


STEVEN F SPIERER, ESQ.
Attorney for Respondents
approved as to form

* * *


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

IT IS SO ORDERED _____.


JEFF DAVI
Real Estate Commissioner

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1 DATED: 06/15/05


FUDOSAN, INC., Respondent
Timothy Rory Delaney
designated officer of
Fudosan, Inc.

2
3
4 DATED: 06/15/05


TIMOTHY RORY DELANEY,
Respondent

5
6
7 DATED: _____

STEVEN F. SPIERER, ESQ.
Attorney for Respondents
approved as to form

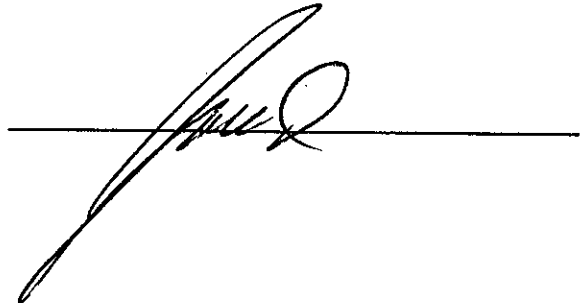
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9 * * *

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11 The foregoing Stipulation and Agreement is hereby
12 adopted as my Decision in this matter, and shall become
13 effective at 12 o'clock noon on August 25, 2005.

14 IT IS SO ORDERED

7-20-05

15 JEFF DAVI
16 Real Estate Commissioner

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1 CHRIS LEONG, Counsel (SBN 141079)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, CA 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6910 (Direct)
7

FILED
JAN 14 2005
DEPARTMENT OF REAL ESTATE

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)
12 FUDOSAN, INC., a corporation) No. H-31619 LA
13 and TIMOTHY RORY DELANEY,) A C C U S A T I O N
14 individually and as designated)
15 officer of Fudosan, Inc.,)
Respondents.)

16 The Complainant, Janice Waddell, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against FUDOSAN, INC., a corporation (hereafter "FUDOSAN") and
19 TIMOTHY RORY DELANEY, individually and as designated officer of
20 FUDOSAN (hereafter "DELANEY") (hereafter sometimes both referred
21 to as "Respondents"), is informed and alleges in her official
22 capacity as follows:

23 1.

24 Respondents are presently licensed and/or have license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 California Business and Professions Code (hereafter "Code").
27

2.

1 At all times material herein, Respondent FUDOSAN was
2 and still is licensed by the Department of Real Estate of the
3 State of California (hereafter "Department") as a corporate real
4 estate broker.
5

3.

6 At all times material herein, DELANEY was and still is
7 licensed by the Department as a real estate broker, individually
8 and as designated officer of FUDOSAN. As the designated officer
9 of FUDOSAN, DELANEY was responsible pursuant to Code Section
10 10159 for supervision.
11

4.

12 At all times material herein, Respondents engaged in
13 the business of, acted in the capacity of, advertised or assumed
14 to act as real estate brokers for others in the State of
15 California, within the meaning of Code Section 10131(a)
16 including the operation and conduct of a real estate sales
17 business with the public wherein Respondents sold and purchased
18 real property on behalf of owners of real property in
19 expectation of compensation. In addition, Respondents conducted
20 escrows within the exemption set forth in Financial Code Section
21 17006(a)(4).
22

5.

23 All further references to "Respondents", unless
24 otherwise specified, include the parties identified in Paragraphs
25 2 and 3 above, and also include the employees, agents and real
26 estate licensees employed by or associated with said parties, who
27

1 at all times herein mentioned were engaged in the furtherance of
2 the business or operations of said parties and who were acting
3 within the course and scope of their authority and employment.

4 Audit Findings

5 6.

6 On April 30, 2004, the Department concluded its
7 examination of Respondents FUDOSAN and DELANEY's books and
8 records pertaining to Respondents' activities as real estate
9 brokers in Audit No. LA030199 and LA030282, including escrow
10 activities covering a period from approximately January 1, 2002
11 to December 31, 2003. The examination revealed violations of
12 the Code and of Title 10, Chapter 4, California Code of
13 Regulations (hereafter "Regulations"), as set forth below, and
14 as more specifically set forth in Audit No. LA030199 and
15 LA030282 and the Exhibits attached to said Audit Reports.

16 7.

17 At all times herein, in connection with the broker
18 escrow, real estate sales activity described in Paragraph 4
19 above, Respondents FUDOSAN and DELANEY accepted or received
20 funds, including funds in trust (hereafter "trust funds") from
21 or on behalf of actual and prospective parties to transactions
22 handled by Respondents FUDOSAN and DELANEY. These funds were
23 maintained in three accounts. The first account was at Foothill
24 Independent Bank, 27576 Ynez Road, Temecula, CA 92591, in the
25 name of Fudosan, Inc., dba Vineyard Escrow, Account No.
26 453100332 (hereafter "T/A#1"). The second account was at
27 Comerica Bank, 9920 S. La Cienega Blvd., 11th Floor, Inglewood,

1 CA 90301-4537, in the name of Fudosan, Inc., dba Vineyard
2 Escrow, Account No. 189-2059773 (hereafter "T/A#2"). The third
3 account was at Comerica Bank, 9920 S. La Cienega Blvd., 11th
4 Floor, Inglewood, CA 90301-4537, in the name of Vineyard Escrow
5 Trust Account, Account No. 189-2059732 (hereafter "T/A#3").

6 8.

7 Respondents FUDOSAN and DELANEY acted in violation of
8 the Code and the Regulations in that:

9 (a) there was a combined shortage of \$19,995.80 in
10 TA#1 and TA#2 as of December 31, 2003, in violation of Code
11 Section 10145 and Regulations 2832.1 and 2951.

12 (b) the control records failed to indicate the date
13 that funds were deposited and some of the disbursements were not
14 posted properly, in violation of Code Section 10145 and
15 Regulations 2831 and 2950(d).

16 (c) the separate records did not indicate the date of
17 deposit and some of the disbursements were not properly posted,
18 in violation of Code Section 10145 and Regulations 2831.1 and
19 2950(d).

20 (d) the monthly reconciliation of the control records
21 to the separate records were not maintained. The top sheet
22 items were not reconciled on a monthly basis, in violation of
23 Code Section 10145 and Regulations 2831.2 and 2951.

24 (e) failed to set up TA#1 and TA#2 as trust accounts,
25 in violation of Code Section 10145 and Regulations 2832 and
26 2951.

27 (f) escrow funds received were not deposited into

1 T/A#1 within one business day, in violation of Code Section
2 10145 and Regulations 2832 and 2950(f).

3 (g) trust funds received and disbursed were not
4 always placed or disbursed from the proper accounts T/A#1 and
5 T/A#2; and funds belonging to the Department of Corporations
6 escrow account were mixed with TA#2, in violation of Code
7 Section 10145 and Regulation 2951.

8 (h) earnest money deposits received from potential
9 buyers were not forwarded to escrow within three (3) business
10 days following receipt of the funds by FUDOSAN, in violation of
11 Code Section 10145 and Regulation 2832.

12 (i) a record of all trust funds received not placed
13 in broker's trust account was not maintained for 2002, in
14 violation of Code Section 10145 and Regulation 2831.

15 9.

16 The conduct, acts and omissions of Respondents FUDOSAN
17 and DELANEY, as described in Paragraph 8, violated the Code as
18 set forth above and constitutes cause for the suspension or
19 revocation of all real estate licenses and license rights of
20 Respondents under the provisions of Code Sections 10177(d)
21 and/or 10177(g).

22 10.

23 The conduct, acts and omissions of Respondent DELANEY,
24 as described in Paragraph 8, violated the Code Section 10159.2,
25 and constitutes cause for the suspension or revocation of all
26 real estate licenses and license rights of Respondent DELANEY
27 under the provisions of Code Sections 10177(d), 10177(g) and/or

10177(h).

IN AGGRAVATION

11.

On May 25, 2004, the Department concluded its examination of Respondent DELANEY's books and records pertaining to Respondent's activities as a real estate broker in Audit No. LA030283 and LA030315, including escrow activities covering a period from approximately April 1, 2001 to December 31, 2001. The examination revealed violations of the Code and Regulations, as set forth below, and as more specifically set forth in Audit No. LA030283 and LA030315 and the Exhibits attached to said Audit Reports.

12.

At all times herein, in connection with the broker escrow, real estate sales activity described in Paragraph 4 above, Respondent DELANEY accepted or received funds, including trust funds from or on behalf of actual and prospective parties to transactions handled by Respondent DELANEY. These funds were maintained in one account ("T/A#1").

13.

Respondent DELANEY acted in violation of the Code and the Regulations in that:

(a) there was a shortage of \$64,711.30 in TA#1 as of December 31, 2001, in violation of Code Section 10145 and Regulations 2832.1 and 2951. As of January 11, 2002, \$49,348.39 of the shortage appeared to be cured.

(b) the control records failed to indicate the date

1 that funds were deposited and some of the disbursements were not
2 posted properly, in violation of Code Section 10145 and
3 Regulations 2831 and 2950(d).

4 (c) the separate records did not indicate the date of
5 deposit and funds received were not properly posted in a timely
6 manner, in violation of Code Section 10145 and Regulations
7 2831.1 and 2950(d).

8 (d) the monthly reconciliation of the control records
9 to the separate records were not maintained. The top sheet
10 items were not reconciled on a monthly basis, in violation of
11 Code Section 10145 and Regulations 2831.2 and 2951.

12 (e) TA#1 was not set up in the broker's name as
13 trustee and it was not designated as a trust account, in
14 violation of Code Section 10145 and Regulations 2832 and 2951.

15 (f) escrow funds received were not deposited into
16 T/A#1 within one business day, in violation of Code Section
17 10145 and Regulations 2832 and 2950(f).

18 (g) funds not belonging to DELANEY's escrow
19 transaction were wired into his escrow account erroneously, and
20 funds belonging to his escrow transaction were wired to another
21 broker's bank account, in violation of Code Section 10145 and
22 Regulation 2951.

23 (h) earnest money deposits received from potential
24 buyers were not forwarded to escrow within three (3) business
25 days following receipt of the funds by DELANEY, in violation of
26 Code Section 10145 and Regulation 2832.

27 (i) a record of all trust funds received not placed

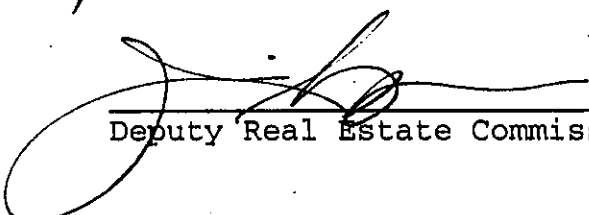
1 in broker's trust account was not maintained, in violation of
2 Code Section 10145 and Regulation 2831.

3 (j) DELANEY used an unlicensed dba (Fudosan, Inc.)
4 when he was not the holder of a license bearing the fictitious
5 business name, in violation of Regulation 2731.

6 WHEREFORE, Complainant prays that a hearing be
7 conducted on the allegations of this Accusation and that upon
8 proof thereof, a decision be rendered imposing disciplinary
9 action against all licenses and/or license rights of
10 Respondents, FUDOSAN, INC., a corporation and TIMOTHY RORY
11 DELANEY, individually and as designated officer of Fudosan, Inc.
12 under the Real Estate Law (Part 1 of Division 4 of the Business
13 and Professions Code), and for such other and further relief as
14 may be proper under other applicable provisions of law.

15 Dated at Los Angeles, California

16 this 13 day of January, 2005:

17
18 
19 Deputy Real Estate Commissioner

20
21 cc: Fudosan, Inc.
22 Timothy Rory Delaney
23 Sacto.
24 LA Audit/Cheng
25 ST
26 Janice Waddell
27