

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

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

FILED  
FEB 22 2007  
DEPARTMENT OF REAL ESTATE

By K. M. Seibold

8  
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 \* \* \*

12 In the Matter of the Accusation of ) No. H-33204 LA  
13 TROY WILLIE RICHARD, )  
14 Respondent, )  
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STIPULATION  
AND  
AGREEMENT

16 It is hereby stipulated by and between Respondent  
17 TROY WILLIE RICHARD, (sometimes referred to as "Respondent")  
18 represented by Pat Murphy, Esq., and the Complainant, acting by  
19 and through Elliott Mac Lennan, Counsel for the Department of  
20 Real Estate, as follows for the purpose of settling and disposing  
21 of the Accusation ("Accusation") filed on September 7, 2006, in  
22 this matter:

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

4 2. Respondent has received, read and understands the  
5 Statement to Respondent, the Discovery Provisions of the APA and  
6 the Accusation filed by the Department of Real Estate in this  
7 proceeding.

8 3. Respondent timely filed a Notice of Defense  
9 pursuant to Section 11506 of the Government Code for the purpose  
10 of requesting a hearing on the allegations in the Accusation.  
11 Respondent hereby freely and voluntarily withdraws said Notice of  
12 Defense. Respondent acknowledges that he understands that by  
13 withdrawing said Notice of Defense he thereby waives his right to  
14 require the Commissioner to prove the allegations in the  
15 Accusation at a contested hearing held in accordance with the  
16 provisions of the APA and that he will waive other rights  
17 afforded to him in connection with the hearing such as the right  
18 to present evidence in his defense the right to cross-examine  
19 witnesses.  
20

21 4. This Stipulation is based on the factual  
22 allegations contained in the Accusation. In the interest of  
23 expedience and economy, Respondent chooses not to contest these  
24 allegations, but to remain silent and understands that, as a  
25 result thereof, these factual allegations, without being admitted  
26 or denied, will serve as a prima facie basis for the disciplinary  
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1 action stipulated to herein. The Real Estate Commissioner shall  
2 not be required to provide further evidence to prove said factual  
3 allegations.

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

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

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

5 8. Respondent understands that by agreeing to this  
6 Stipulation, Respondent agrees to pay, pursuant to Business and  
7 Professions Code Section 10148, the cost of audit which led to  
8 this disciplinary action. The total amount of said cost is  
9 \$4,067.82.

10 9. Respondent has received, read, and understands the  
11 "Notice Concerning Costs of Subsequent Audit". Respondent  
12 further understands that by agreeing to this Stipulation, the  
13 findings set forth below in the Determination of Issues become  
14 final, and the Commissioner may charge Respondent for the cost of  
15 any subsequent audit conducted pursuant to Business and  
16 Professions Code Section 10148 to determine if the violations  
17 have been corrected. The maximum cost of the subsequent audit  
18 will not exceed \$4,067.82.

19  
20 DETERMINATION OF ISSUES

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

23 I.

24 The conduct of TROY WILLIE RICHARD as described in  
25 Paragraph 4, above, is in violation of Business and Professions  
26 Code Section 10137, 10145 and 10240 and Sections 2731, 2831,  
27

1 2832, 2834, 2840, 2950(d) and 2951 of Title 10, Chapter 6 of the  
2 California Code of Regulations and is a basis for the suspension  
3 or revocation of Respondent's license and license rights as  
4 violations of the Real Estate Law pursuant to Code Section  
5 10177(d).

6 ORDER

7 WHEREFORE, THE FOLLOWING ORDER is hereby made:

8 I. All licenses and licensing rights of Respondent  
9 TROY WILLIE RICHARD under the Real Estate Law suspended for a  
10 period of ninety (90) days from the effective date of this  
11 Decision.

12 A. Provided, however, that if Respondent requests, the  
13 initial thirty (30) days of said suspension (or a portion  
14 thereof) shall be stayed for two (2) years upon condition that:

15 1. Respondent pays a monetary penalty pursuant to  
16 Section 10175.2 of the Business and Professions Code at the rate  
17 of \$83.33 per day for each day of the suspension for a total  
18 monetary penalty of \$2,500.

19 2. Said payment shall be in the form of a cashier's  
20 check or certified check made payable to the Recovery Account of  
21 the Real Estate Fund. Said check must be received by the  
22 Department prior to the effective date of the Decision in this  
23 matter.  
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1                   3. No further cause for disciplinary action against  
2 the real estate license of Respondent occurs within two (2) years  
3 from the effective date of the Decision in this matter.

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

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

16                   6. The remaining sixty (60) days of the ninety (90)  
17 day suspension shall be stayed for two (2) years upon the  
18 following terms and conditions:

19                   (a) Respondent shall obey all laws, rules and  
20 regulations governing the rights, duties and responsibilities of  
21 a real estate licensee in the State of California; and

22                   (b) That no final subsequent determination be made  
23 after hearing or upon stipulation, that cause for disciplinary  
24 action occurred within two (2) years of the effective date of  
25 this Decision. Should such a determination be made, the  
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1 Commissioner may, in his discretion, vacate and set aside the  
2 stay order and reimpose all or a portion of the stayed  
3 suspension. Should no such determination be made, the stay  
4 imposed herein shall become permanent.

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

16 III. Pursuant to Section 10148 of the Business and  
17 Professions Code, Respondent TROY WILLIE RICHARD shall pay the  
18 Commissioner's reasonable cost for (a) the audit which led to  
19 this disciplinary action (b) a subsequent audit to determine if  
20 Respondents are now in compliance with the Real Estate Law. The  
21 cost of the audit which led to this disciplinary action is  
22 \$4,067.82. In calculating the amount of the Commissioner's  
23 reasonable cost, the Commissioner may use the estimated average  
24 hourly salary for all persons performing audits of real estate  
25 brokers, and shall include an allocation for travel time to and  
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1 from the auditor's place of work. Said amount for the prior and  
2 subsequent audits shall not exceed \$8,135.64.

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

17 IV. Respondent shall within six months from the  
18 effective date of the Decision, take and pass the Professional  
19 Responsibility Examination administered by the Department  
20 including the payment of the appropriate examination fee. If  
21 respondent fails to satisfy this condition, the Commissioner may  
22 order suspension of the restricted license until respondent  
23 passes the examination.  
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25  
26 DATED: 1-8-07

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



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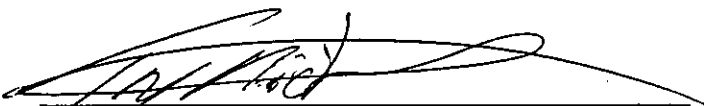
EXECUTION OF THE STIPULATION

I have read the Stipulation and discussed with my counsel. Its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I 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 I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.


Respondent (1) shall mail the original signed signature page of the stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondent shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan. A facsimile constitutes acceptance and approval of the terms and conditions of this stipulation. Respondent agrees, acknowledges and understands that by electronically sending to the Department a facsimile copy of Respondent's actual signature as it appears on the stipulation, that receipt of the facsimile copy by the

1 Department shall be as binding on Respondent as if the Department  
2 had received the original signed stipulation.

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5 DATED: 1/18/07

  
TROY WILLIE RICHARD, Respondent

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8 DATED: 1/18/07

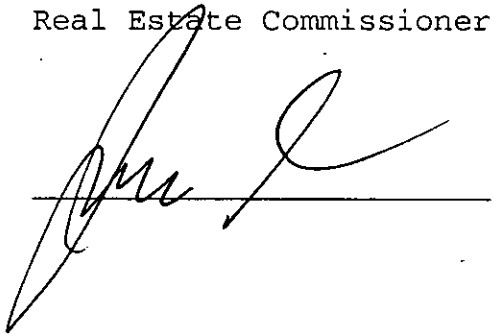
  
PAT MURPHY,  
Attorney for Respondent  
Approved as to form

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13 \* \* \*

14 The foregoing Stipulation and Agreement is hereby  
15 adopted as my Decision as to Respondent TROY WILLIE RICHARD and  
16 shall become effective at 12 o'clock noon on  
17 MAR 26  
18 , 2007.

19 IT IS SO ORDERED 2/13/, 2007.

20  
21 JEFF DAVI  
22 Real Estate Commissioner

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*Handwritten notes:*  
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**FILED**  
SEP - 7 2006  
DEPARTMENT OF REAL ESTATE

By *Kneel*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of  
TROY WILLIE RICHARD,  
Respondent.

No. H-33204 LA

A C C U S A T I O N

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for cause of Accusation against TROY WILLIE RICHARD dba Pacesetter Real Estate Services & Associates and Richwealth Capital, is informed and alleges as follows:

1.

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

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LICENSE HISTORY

2.

At all times mentioned, TROY WILLIE RICHARD ("RICHARD"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On September 18, 1998, RICHARD was originally licensed as a real estate salesperson. On July 29, 2002, RICHARD was originally licensed as a real estate broker.

BROKERAGE

3.

At all times mentioned, in the City of Palmdale, County of San Bernardino, RICHARD acted as real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(a). RICHARD operated a residential resale brokerage dba Pacesetter Real Estate Services & Associates.

B. Code Section 10131(d). RICHARD operated a mortgage and loan brokerage dba Richwealth Capital; and

C. Conducted broker-controlled escrows through his Richwealth Capital escrow division, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

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AUDIT VIOLATIONS

4.

On September 12, 2005, the Department completed an audit examination of the books and records of RICHARD, pertaining to the residential resales, mortgage loan and broker-controlled escrow activities described in Paragraph 3, that require a real estate license. The audit examination covered a period of time beginning on June 1, 2004 through June 30, 2005. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 040328, LA 050029 and LA 050030 and the exhibits and workpapers attached to said audit report.

5.

At all times mentioned, in connection with the activities described in Paragraph 4, RICHARD accepted or received funds in trust (trust funds) from or on behalf of buyers, sellers and borrowers. Thereafter RICHARD made disposition of such funds. RICHARD maintained the following trust account into which he deposited certain of these funds:

"Richwealth Capital Escrow Division ("escrow trust account")  
Account No. 13432864"  
City National Bank  
City of Commerce, California

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2 With respect to the licensed activities referred to in  
3 Paragraphs 3 and 5, and the audit examination including the  
4 exhibits and workpapers referred to in Paragraph 4, it is alleged  
5 that RICHARD:

6 (a) Failed to maintain an adequate control record in  
7 the form of a columnar record in chronological order of trust  
8 funds received and disbursed from the escrow trust account  
9 including Earnest Money Deposits, as required by Code Section  
10 10145 and Regulation 2831, 2950(d), 2950(g) and 2951.

11 (b) Failed to place funds accepted on behalf of buyers  
12 and sellers in the form of Earnest Money Deposits, into the hands  
13 of the owner of the funds, into a neutral escrow depository or  
14 into a trust fund account in the name of the broker as trustee at  
15 a bank or other financial institution not later than three  
16 business days following receipt of the funds, in violation of  
17 Code Section 10145 of the Code and Regulation 2832, 2950(d) and  
18 2950(f).

19 (c) Permitted unlicensed and unbonded persons Willie  
20 Richard Jr., and Terrence Richard, to be an authorized  
21 signatories on the escrow trust account, in violation of Code  
22 Section 10145 and Regulation 2834.

23 (d) Failed to provide, maintain or retain a true and  
24 correct copy of a Department of Real Estate approved Mortgage  
25 Loan Disclosure Statement signed by the broker for borrowers  
26  
27

1 Smith, Rubio Jr., and Jackson, in violation of Code Section 10240  
2 and Regulation 2840.

3 (e) Employed or compensated Denise Ziemann, who was not  
4 licensed by the Department for performing acts for which a real  
5 estate license is required. Said acts included executing the  
6 Uniform Residential Loan Application as Interviewer for the Rubio  
7 Jr. residential purchase transaction, in violation of Code  
8 Section 10137; and

9 (f) Used the fictitious names of "Pacesetter Real  
10 Estate Services", to conduct licensed activities including  
11 residential resales and escrow instructions without holding a  
12 license bearing said fictitious business names, in violation of  
13 Regulation 2731.

14 7.

15 The conduct of Respondent RICHARD, described in  
16 Paragraph 6, above, violated the Code and the Regulations as set  
17 forth:  
18

19 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
20 6(a)	Code Section 10145 and Regulations 2831, 21 2950(d), 2950(g) and 2951,
22	
23 6(b)	Code Section 10145 and Regulation 2832, 24 2950(d) and 2950(f)
25	
26 6(c)	Code Section 10145 and Regulation 2834
27	

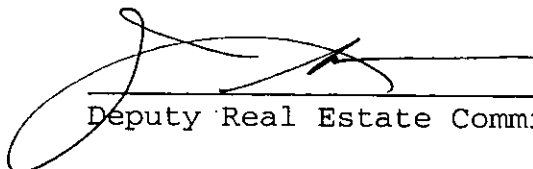




1 WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against the license and license rights of Respondent TROY  
5 WILLIE RICHARD, under the Real Estate Law (Part 1 of Division 4  
6 of the Business and Professions Code) and for such other and  
7 further relief as may be proper under other applicable provisions  
8 of law.

9  
10 Dated at Los Angeles, California

11 this *24 July 2006*

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15 Deputy Real Estate Commissioner  
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25 cc: Troy Willie Richard  
26 Janice Waddell  
27 Sacto  
Audits - Rolly Acuna/Vaughn Weaver