

Sachs

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

FILED

MAY 12 2008

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
RICHCO REAL ESTATE SERVICES,)
a California Corporation, doing)
business as Professional)
Property Management Services; and)
BOBY WARREN SMITH, individually)
and as designated officer of)
Richco Real Estate Services,)
Respondents,)

No. H-34108 LA

STIPULATION
AND
AGREEMENT

It is hereby stipulated by and between Respondents RICHCO REAL ESTATE SERVICES, a corporate real estate broker, and BOBY WARREN SMITH, individually and as designated officer of Richco Real Estate Services (sometimes collectively referred to as "Respondents"), represented by Edward M. Palmer, 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 ("Accusation") filed on July 12, 2007, in this matter:

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 timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of 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 the right to cross-examine
23 witnesses.
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25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of
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1 expedience and economy, Respondents choose not to contest these
2 allegations, but to remain silent and understand that, as a
3 result thereof, these factual allegations, without being admitted
4 or denied, will serve as a prima facie basis for the disciplinary
5 action stipulated to herein. The Real Estate Commissioner shall
6 not be required to provide further evidence to prove said factual
7 allegations.

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

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt this Stipulation as his Decision in
18 this matter thereby imposing the penalty and sanctions on
19 Respondents' real estate licenses and license rights as set forth
20 in the "Order" herein below. In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, it shall be
22 void and of no effect and Respondents shall retain the right to a
23 hearing and proceeding on the Accusation under the provisions of
24 the APA and shall not be bound by any stipulation or waiver made
25 herein.
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1. 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusations against Respondents herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of audit (LA040301)
12 which led to this disciplinary action. The amount of said cost
13 for the audit is \$4,110.94.

14 9. Respondents have received, read, and understand the
15 "Notice Concerning Costs of Subsequent Audit". Respondents
16 further understand that by agreeing to this Stipulation, the
17 findings set forth below in the Determination of Issues become
18 final, and the Commissioner may charge Respondents for the cost
19 of any subsequent audit conducted pursuant to Business and
20 Professions Code Section 10148 to determine if the violations
21 have been corrected. The maximum cost of the subsequent audit
22 will not exceed \$4,110.94.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:
3

I.

4 The conduct of RICHCO REAL ESTATE SERVICES., and BOBY
5 WARREN SMITH, as described in Paragraph 4, above, is in violation
6 of Section 10145 of the Business and Professions Code ("Code")
7 and Sections 2832.1 and 2831.2 of Title 10, Chapter 6 of the
8 California Code of Regulations ("Regulations") and is a basis for
9 the suspension or revocation of Respondents' license and license
10 rights as a violation of the Real Estate Law pursuant to Code
11 Section 10177(d).
12

II.

13 The conduct of BOBY WARREN SMITH, as described in
14 Paragraph 4, constitutes a failure to keep RICHCO REAL ESTATE
15 SERVICES in compliance with the Real Estate Law during the time
16 that he was the officer designated by a corporate broker
17 licensee. This conduct is a violation of Code Section 10177(h)
18 and is a basis for the suspension or revocation of Respondent's
19 license therein.
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents
RICHCO REAL ESTATE SERVICES , and BOBY WARREN SMITH under the
Real Estate Law are suspended for a period of sixty days from the
effective date of this Decision; provided, however, that if
Respondents request, the initial thirty days of said suspension
(or a portion thereof) shall be stayed upon condition that:

A 1. Respondents each pay a monetary penalty pursuant
to Section 10175.2 of the Business and Professions Code at the
rate of \$50.00 per day for each day of the suspension for a
monetary penalty of \$1,500 each or a total monetary penalty of
\$3,000.

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 licenses of Respondents occurs within two 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

1 part of the stayed suspension, in which event the Respondents
2 shall not be entitled to any repayment nor credit, prorated or
3 otherwise, for money paid to the Department under the terms of
4 this Decision.

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

10 B. The remaining thirty days of the sixty day
11 suspension shall be stayed for two years upon the following terms
12 and conditions:

13 (a) Respondents shall obey all laws, rules and
14 regulations governing the rights, duties and responsibilities of
15 a real estate licensee in the State of California; and

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

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II.

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2 Pursuant to Section 10148 of the Business and
3 Professions Code, Respondents RICHCO REAL ESTATE SERVICES and
4 BOBY WARREN SMITH shall pay the Commissioner's reasonable cost
5 for (a) the audit which led to this disciplinary action (b) a
6 subsequent audit to determine if Respondents are now in
7 compliance with the Real Estate Law. The cost of the audit which
8 led to this disciplinary action is \$4,110.94. In calculating the
9 amount of the Commissioner's reasonable cost, the Commissioner
10 may use the estimated average hourly salary for all persons
11 performing audits of real estate brokers, and shall include an
12 allocation for travel time to and from the auditor's place of
13 work. Said amount for the prior and subsequent audits shall not
14 exceed \$8,221.88

15
16 Respondents shall pay such cost within 60 days of
17 receiving an invoice from the Commissioner detailing the
18 activities performed during the audit and the amount of time
19 spent performing those activities.

20 The Commissioner may suspend the license of Respondents
21 pending a hearing held in accordance with Section 11500, et seq.,
22 of the Government Code, if payment is not timely made as provided
23 for herein, or as provided for in a subsequent agreement between
24 the Respondent and the Commissioner. The suspension shall remain
25 in effect until payment is made in full or until Respondents
26 enter into an agreement satisfactory to the Commissioner to
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1 provide for payment, or until a decision providing otherwise is
2 adopted following a hearing held pursuant to this condition.

3 III.

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

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17 DATED: 3-5-08

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

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19 * * *

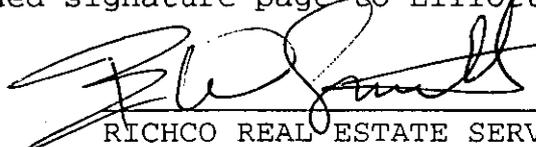
20 EXECUTION OF THE STIPULATION

21 We have read the Stipulation and discussed it with our
22 counsel. Its terms are understood by us and are agreeable and
23 acceptable to us. We understand that we are waiving rights given
24 to us by the California Administrative Procedure Act (including
25 but not limited to Sections 11506, 11508, 11509 and 11513 of the
26 Government Code), and we willingly, intelligently and voluntarily
27

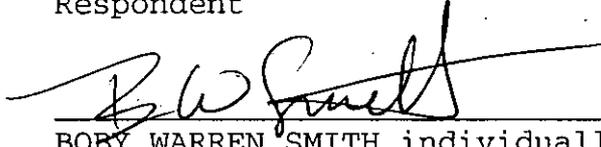
1 waive those rights, including the right of requiring the
2 Commissioner to prove the allegations in the Accusation at a
3 hearing at which we would have the right to cross-examine
4 witnesses against us and to present evidence in defense and
5 mitigation of the charges.

6 Respondents can signify acceptance and approval of the
7 terms and conditions of this Stipulation by faxing a copy of its
8 signature page, as actually signed by Respondents, to the
9 Department at the following telephone/fax number: Elliott Mac
10 Lennan at (213) 576-6917. Respondents agree, acknowledge and
11 understand that by electronically sending to the Department a fax
12 copy of Respondents' actual signature as they appear on the
13 Stipulation, that receipt of the faxed copy by the Department
14 shall be as binding on Respondents as if the Department had
15 received the original signed Stipulation. Respondents shall
16 forward the original signed signature page to Elliott Mac Lennan.
17

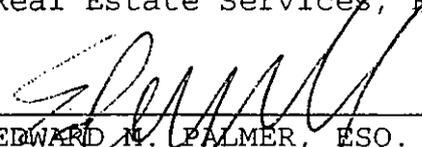
18 DATED: 1/22/08


19 RICHCO REAL ESTATE SERVICES, a
20 corporate real estate broker,
21 BY: BOBY WARREN SMITH, D.O.,
22 Respondent

23 DATED: 1/11/2008


24 BOBY WARREN SMITH individually and
25 as designated officer of Richco
26 Real Estate Services, Respondent

27 DATED: 1-10-08


EDWARD N. PALMER, ESQ.
Attorney for Respondents
Approved as to form

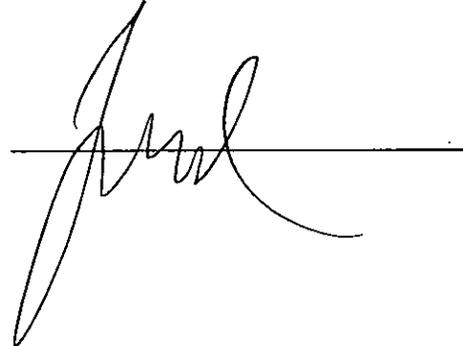
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondents RICHCO REAL ESTATE
SERVICES and BOBY WARREN SMITH, individually and as designated
officer of Richco Real Estate Services and shall become effective
at 12 o'clock noon on June 11, 2008.

IT IS SO ORDERED 5-6, 2008.

JEFF DAVI
Real Estate Commissioner

A handwritten signature in cursive script, appearing to read 'Jeff Davi', is written over a horizontal line.

1.

1 The Complainant, Janice Waddell, 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 RICHCO REAL ESTATE SERVICES, (hereinafter "RICHCO") and
10 BOBY WARREN SMITH, individually and as designated officer of
11 Richco Real Estate Services, (hereinafter "SMITH") and (sometimes
12 hereinafter collectively referred to as "Respondents") are
13 presently licensed or have license rights under the Real Estate
14 Law (Part 1 of Division 4 of the Business and Professions Code,
15 hereinafter "Code").
16
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18 LICENSE HISTORY

4.

19 A. RICHCO REAL ESTATE SERVICES. At all times
20 material herein, RICHCO was licensed by the Department of Real
21 Estate of the State of California (hereinafter "Department") as a
22 real estate broker, by and through SMITH, as the designated
23 officer and broker responsible, pursuant to Code Section 10159.2
24 of the Business and Professions Code for supervising the
25 activities requiring a real estate license conducted on behalf of
26
27

1 RICHCO by RICHCO's officers, agents and employees. RICHCO was
2 originally licensed on January 2, 1990.

3 B. BOBY WARREN SMITH. SMITH is presently licensed as
4 a real estate broker. SMITH was originally licensed as a real
5 estate broker on October 19, 1984. SMITH has been the designated
6 officer of RICHCO from its inception. On October 27, 1987, in
7 Case No. H-22890 LA, SMITH's license was suspended with a stay of
8 suspension effective on said date, as more fully set forth below
9 in Paragraph 11.

10 5.

11 All further references to "Respondents", unless
12 otherwise specified, includes the parties identified in
13 Paragraphs 3 and 4, above, and also includes the officers,
14 directors, managers, employees, agents and/or real estate
15 licensees employed by or associated with said parties, who at all
16 times material herein were engaged in the furtherance of the
17 business or operations of said parties and who were acting within
18 the course and scope of their authority, agency, or employment.

19
20 PROPERTY MANAGEMENT BROKERAGE

21 6.

22 At all times material herein, RICHCO engaged in the
23 business as a real estate broker pursuant to Code Section
24 10131(b) of the Code. RICHCO operates a property management
25 brokerage dba Professional Property Management.

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FIRST CAUSE OF ACTION

AUDIT EXAMINATION

7.

On July 15, 2005, the Department completed an audit examination of the books and records of RICHCO pertaining to its property management activities, requiring a real estate license as described in Paragraph 6. The audit examination covered a period of time beginning July 1, 2004 and ending April 29, 2005. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Report LA 040301 and the exhibits and workpapers attached to said audit report.

TRUST ACCOUNTS

8.

At all times mentioned, in connection with the activities described in Paragraph 6, above, RICHCO accepted or received funds in trust (trust funds) from or on behalf of tenants, renters and property owners, and thereafter made disposition of such funds. RICHCO maintained the following trust accounts during the audit period into which were deposited certain of these funds at the Network Bank, Ontario, California:

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1 "Richco Real Estate Services dba Professional Property
Management
2 Client Trust Account
Account No. 001-033867" (rental income) ("T/A #1")
3

4 "Richco Real Estate Services dba Professional Property
Management
5 Client Trust Account
Account No. 001-021869" (security deposits) ("T/A #2")
6

7 AUDIT VIOLATIONS

8 9.

9 In the course of activities described in Paragraphs 6
10 and 8, above, and during the examination period described in
11 Paragraph 7, RICHCO and SMITH acted in violation of the Code and
12 the Regulations in that they:

13 (a) Permitted, allowed or caused the disbursement of
14 trust funds from the trust account where the disbursement of
15 funds reduced the total of aggregate funds in the trust account,
16 to an amount which, on April 29, 2005, was
17

18 (1) T/A #1 - \$ 2,228.61 (Cured June 30, 2005)

19 (2) T/A #2 - \$ 2,032.00 (Cured June 30, 2005)
20

21 less than the existing aggregate trust fund liability of RICHCO
22 and SMITH to every principal who was an owner of said funds,
23 without first obtaining the prior written consent of the owners
24 of said funds, as required by Code Section 10145 and Regulation
25 2832.1.
26
27

1 (b) Failed to perform a monthly reconciliation of the
2 balance of all separate beneficiary or transaction records
3 maintained pursuant to Regulation 2831.1 with the record of all
4 trust funds received and disbursed by the trust accounts, as
5 required by Code Section 10145 and Regulation 2831.2.

6 10.

7 The conduct, acts and omissions of Respondents
8 RICHCO and SMITH as described in Paragraph 9, above, violated the
9 Code and the Regulations as set forth below:

10 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
11 9(a)	12 Code Section 10145 and 13 Regulation 2832.1
14 9(b)	15 Code Section 10145 and 16 Regulation 2831.2

17 The foregoing violations constitute cause for the suspension or
18 revocation of the real estate license and license rights of
19 RICHCO and SMITH pursuant to Code Section 10177(d) and/or
20 10177(g).

21 PRIOR DEPARTMENTAL ACTION

22 11.

23 On July 27, 1987, in Case No. H-22890 LA, an Accusation
24 were filed against Respondent BOBY WARREN SMITH, that resulted in
25 discipline by a suspension stayed, for violations of Sections
26 10137 and 10177(d), 10177(g) and 10177(h) of the California
27

1 Business and Professions Code and Section 2834 of Title 10,
2 Chapter 6, California Code of Regulations, effective October 27,
3 1987.

4 SECOND CAUSE OF ACTION

5 (Negligence)

6 12.

7 The overall conduct of Respondents RICHCO and SMITH, as
8 described above, constitutes negligence or incompetence.

9 This conduct and violation are cause for the suspension or
10 revocation of the real estate license and license rights of said
11 Respondents pursuant to Code Section 10177(g).

12 THIRD CAUSE OF ACTION

13 (Failure to supervise)

14 13.

15 The conduct, acts and/or omissions of Respondent SMITH,
16 in causing, allowing, or permitting RICHCO to violate the Real
17 Estate Law, as described, herein above, constitutes failure on
18 the part of SMITH, as the officer designated by a corporate
19 broker licensee, to exercise reasonable supervision and control
20 over the licensed activities of RICHCO, as required by Code
21 Section 10159.2. Said conduct is cause to suspend or revoke the
22 real estate licenses and license rights of SMITH pursuant to the
23 provisions of Code Sections 10177(d), 10177(g) and/or 10177(h).

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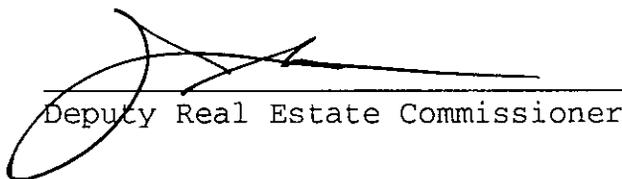
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations made by the Accusation and, that
3 upon proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 RICHCO REAL ESTATE SERVICES, a California corporation, and BOBY
6 WARREN SMITH, individually and as designated officer of Richco
7 Real Estate Services, under the Real Estate Law (Part 1 of
8 Division 4 of the Business and Professions Code) and for such
9 other and further relief as may be proper under other applicable
10 provisions of law.

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12 Dated at Los Angeles, California

13 *29 June 2007*

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16 Deputy Real Estate Commissioner

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24 cc: Richco Real Estate Services
25 c/o Bobby Warren Smith
26 Sacto.
27 Janice Waddell
LA Audit Section - Rolly Acuna (Kitlin Chan)