

1 Department of Real Estate
2 320 W. 4th St., Room 350
3 Los Angeles, California 90013

4 Telephone: (213) 576-6982

FILED
SEP 29 2009
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-35306 LA
12 SAUDER REAL ESTATE, INC.,) L-2008 100 923
13 and NANCI J. SAUDER-RUEST,) STIPULATION AND AGREEMENT
14 individually, and as)
15 designated officer of)
16 the corporation,)
17 Respondents.)

18 It is hereby stipulated by and between SAUDER REAL
19 ESTATE, INC. and NANCI J. SAUDER-RUEST (sometimes referred to as
20 Respondents), and their attorney Mary E. Work, and the
21 Complainant, acting by and through James R. Peel, Counsel for
22 the Department of Real Estate, as follows for the purpose of
23 settling and disposing of the Accusation filed on September 16,
24 2008, in this matter.

26 1. All issues which were to be contested and all
27 evidence which was to be presented by Complainant and

1 Respondents at a formal hearing on the Accusation, which hearing
2 was to be held in accordance with the provisions of the
3 Administrative Procedure Act ("APA"), shall instead and in place
4 thereof be submitted solely on the basis of the provisions of
5 this Stipulation and Agreement ("Stipulation").

6 2. Respondents have received, read and understand the
7 Statement to Respondent, the Discovery Provisions of the
8 Administrative Procedure Act ("APA") and the Accusation filed by
9 the Department of Real Estate in this proceeding.

10 3. On October 6, 2008, Respondents filed a Notice of
11 Defense pursuant to Section 11506 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondents hereby freely and voluntarily withdraw
14 said Notice of Defense. Respondents acknowledge that they
15 understand that by withdrawing said Notice of Defense they will
16 thereby waive their right to require the Commissioner to prove
17 the allegations in the Accusation at a contested hearing held in
18 accordance with the provisions of the APA and that they will
19 waive other rights afforded to them in connection with the
20 hearing, such as the right to present evidence in defense of the
21 allegations in the Accusation and the right to cross-examine
22 witnesses.

23 4. This Stipulation is based on the factual
24 allegations contained in the Accusation filed in this
25 proceeding. In the interest of expedience and economy,
26 Respondents choose not to contest these factual allegations, but
27

1 to remain silent and understand that, as a result thereof, these
2 factual statements, will serve as a prima facie basis for the
3 disciplinary action stipulated to herein. The Real Estate
4 Commissioner shall not be required to provide further evidence
5 to prove such allegations.

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

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

24 7. The Order or any subsequent Order of the Real
25 Estate Commissioner made pursuant to this Stipulation shall not
26 constitute an estoppel, merger or bar to any further
27 administrative or civil proceedings by the Department of Real

1 Estate with respect to any conduct which was not specifically
2 alleged to be causes for accusation in this proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations and waivers
5 and solely for the purpose of settlement of the pending
6 Accusation without a hearing, it is stipulated and agreed that
7 the following determination of issues shall be made:

8 The conduct, acts and/or omissions of Respondents
9 SAUDER REAL ESTATE, INC. and NANCI J. SAUDER-RUEST, as set forth
10 in the Accusation, constitute cause for the suspension or
11 revocation of all of the real estate licenses and license rights
12 of Respondents under the provisions of Section 10177(g) of the
13 Business and Professions Code ("Code").
14

15 ORDER

16 All licenses and licensing rights of Respondents
17 SAUDER REAL ESTATE, INC. and NANCI J. SAUDER-RUEST under the
18 Real Estate Law are suspended for a period of ninety (90) days
19 from the effective date of this Decision; provided, however,
20 that sixty (60) days of said suspension shall be stayed for two
21 (2) years upon the following terms and conditions:

22
23 1. Respondents shall obey all laws, rules and
24 regulations governing the rights, duties and responsibilities of
25 a real estate licensee in the State of California; and

26 2. That no final subsequent determination be made,
27 after hearing or upon stipulation that cause for disciplinary

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

7 3. Provided, however, that if Respondents petition,
8 the remaining thirty (30) days of said ninety (90) day
9 suspension shall be stayed upon condition that:

10 a. Respondents pay a monetary penalty pursuant to
11 Section 10175.2 of the Business and Professions Code at the rate
12 of \$100 for each day of the suspension for a total monetary
13 penalty of \$3,000 (\$6,000 for both Respondents).

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

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

23 d. If Respondents fail to pay the monetary
24 penalty in accordance with the terms and conditions of the
25 Decision, the Commissioner may, without a hearing, order the
26 immediate execution of all or any part of the stayed suspension
27

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

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

9 4. Respondent NANCI J. SAUDER-RUEST shall, within
10 six months from the effective date of this Decision, take and
11 pass the Professional Responsibility Examination administered by
12 the Department including the payment of the appropriate
13 examination fee. If Respondent fails to satisfy this condition,
14 the Commissioner may order suspension of Respondent's licenses
15 until Respondent passes the examination.

16 5. Pursuant to Section 10148 of the Business and
17 Professions Code, Respondents SAUDER REAL ESTATE, INC. and NANCI
18 J. SAUDER-RUEST shall pay the Commissioner's reasonable cost for
19 the audit which led to this disciplinary action and Respondent
20 SAUDER REAL ESTATE, INC. shall pay the Commissioner's reasonable
21 cost for a subsequent audit to determine if Respondent SAUDER
22 REAL ESTATE, INC. has corrected the violations found in the
23 Determination of Issues. In calculating the amount of the
24 Commissioner's reasonable cost, the Commissioner may use the
25 estimated average hourly salary for all persons performing
26 audits of real estate brokers, and shall include an allocation
27

1 for travel costs, including mileage, time to and from the
2 auditor's place of work and per diem. Respondents shall pay
3 such cost within 45 days of receiving an invoice from the
4 Commissioner detailing the activities performed during the audit
5 and the amount of time spent performing those activities. The
6 Commissioner may, in his discretion, vacate and set aside the
7 stay order, if payment is not timely made as provided for
8 herein, or as provided for in a subsequent agreement between the
9 Respondents and the Commissioner. The vacation and the set
10 aside of the stay shall remain in effect until payment is made
11 in full, or until Respondents enter into an agreement
12 satisfactory to the Commissioner to provide for payment. Should
13 no order vacating the stay be issued, either in accordance with
14 this condition or condition "2", the stay imposed herein shall
15 become permanent.

16
17
18 DATED:

Sept. 1, 2009

James R. Peel
JAMES R. PEEL, Counsel for the
Department of Real Estate

* * *

19
20
21 We have read the Stipulation and Agreement, have
22 discussed it with our counsel, and its terms are understood by
23 us and are agreeable and acceptable to us. We understand that
24 we are waiving rights given to us by the California
25 Administrative Procedure Act (including but not limited to
26 Sections 11506, 11508, 11509 and 11513 of the Government Code),
27

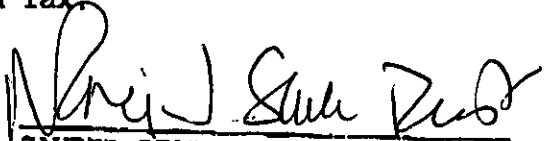
1 and we willingly, intelligently and voluntarily waive those
 2 rights, including the right of requiring the Commissioner to
 3 prove the allegations in the Accusation at a hearing at which we
 4 would have the right to cross-examine witnesses against us and
 5 to present evidence in defense and mitigation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

6 Respondents can signify acceptance and approval of the
 7 terms and conditions of this Stipulation and Agreement by faxing
 8 a copy of the signature page, as actually signed by Respondents,
 9 to the Department at the following telephone/fax number:


10 (213) 576-6917. Respondents agree, acknowledge and understand
 11 that by electronically sending to the Department a fax copy of
 12 his or her actual signature as it appears on the Stipulation and
 13 Agreement, 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 and Agreement.

16 Further, if the Respondents are represented, the
 17 Respondents' counsel can signify his or her agreement to the
 18 terms and conditions of the Stipulation and Agreement by
 19 submitting that signature via fax.

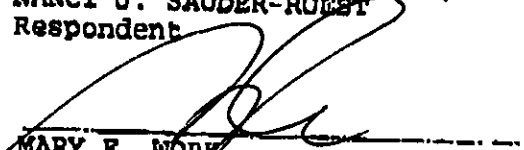
20
 21 DATED: 8/13/09


 SAUDER REAL ESTATE, INC.
 Respondent

22
 23
 24 DATED: 8/13/09


 NANCY J. SAUDER-RUEST
 Respondent

25
 26 DATED: 8/18/09


 MARY F. WORTH
 Counsel for Respondents

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

6 Respondents can signify acceptance and approval of the
7 terms and conditions of this Stipulation and Agreement by faxing
8 a copy of the signature page, as actually signed by Respondents,
9 to the Department at the following telephone/fax number:

10 (213) 576-6917. Respondents agree, acknowledge and understand
11 that by electronically sending to the Department a fax copy of
12 his or her actual signature as it appears on the Stipulation and
13 Agreement, 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 and Agreement.

16 Further, if the Respondents are represented, the
17 Respondents' counsel can signify his or her agreement to the
18 terms and conditions of the Stipulation and Agreement by
19 submitting that signature via fax.

20
21 DATED: _____

SAUDER REAL ESTATE, INC.
Respondent

22
23
24 DATED: _____

NANCI J. SAUDER-RUEST
Respondent

25
26 DATED: _____

MARY E. WORK
Counsel for Respondents


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision and Order in this matter, and shall
become effective at 12 o'clock noon on October 19, 2009.

IT IS SO ORDERED 9-15-09

JEFF DAVI
Real Estate Commissioner



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

I

The Complainant, Robin L. Trujillo, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against SAUDER REAL ESTATE, INC., and NANCI J. SAUDER-RUEST.

II

SAUDER REAL ESTATE, INC., and NANCI J. SAUDER-RUEST (hereinafter referred to as "Respondents"), are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter Code).

III

At all times herein mentioned, Respondent SAUDER REAL ESTATE, INC., was licensed as a real estate broker with Respondent NANCI J. SAUDER-RUEST as its designated officer. Respondents previously had their broker license suspended for 180 days-stayed for two years on terms and conditions as a result of the Decision in case No. H-32072 LA effective June 26, 2006.

IV

At all times material herein, Respondents engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Section 10131(a) of the Code, and broker escrow activity under the exception set forth in Financial Code Section 17004(a)(4).

///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

V

On or about March 10, 2008, the Department completed an examination of Respondent SAUDER REAL ESTATE, INC.'s books and records, pertaining to the activities described in Paragraph IV above, covering a period from June 26, 2006, through October 31, 2007, which examination revealed violations of the Code and of Title 10, Chapter 6, California Code of Regulations (hereinafter Regulations) as set forth below.

VI

The examination described in Paragraph V, above, determined that, in connection with the activities described in Paragraph IV above, Respondent SAUDER REAL ESTATE, INC. accepted or received funds, including funds in trust (hereinafter "trust funds") from or on behalf of principals, and thereafter made deposit or disbursement of such funds.

VII

In the course of activities described in Paragraphs IV through VI and during the examination period described in Paragraph V, Respondents SAUDER REAL ESTATE, INC., and NANJI J. SAUDER-RUEST acted in violation of the Code and the Regulations as follows, and as more specifically set forth in Audit Report No. LA 070099 and related exhibits:

1. Violated Section 10145(a) of the Code and Regulation 2832.1 in that as of October 31, 2007, the escrow trust account contained a shortage of \$17,939.56. As of September 30, 2007, the shortage was \$44,347.17.

1 2. Violated Section 10176(e) of the Code by
2 commingling with their own money or property the money or
3 property of others which was received and held by them.

4 3. Violated Section 10176(i) of the Code by
5 misappropriating trust funds held by them without the knowledge
6 or permission of the owners of the funds.

7 4. Violated Regulation 2831 by not maintaining a
8 columnar record of all trust funds received and disbursed in
9 connection with its escrow activity.

10 5. Violated Regulation 2831.1 in that the separate
11 records were inaccurate and incomplete.

12 6. Violated Regulation 2831.2 by not performing a
13 monthly reconciliation of the trust fund records.

14 7. Violated Regulation 2950(h) by failing to advise
15 all parties in writing of the broker's interest in the escrow
16 division.

17 8. Violated Regulation 2731 by using unlicensed
18 fictitious names West Foothill Escrow and West Foothill Escrow, A
19 Division of Sauders R.E. in its brokerage business.

20 9. Violated Regulation 2725 by failing to establish
21 policies, rules, procedures and systems to review, oversee,
22 inspect and manage its brokerage operation.

23 ///

24 ///

25 ///


26 ///

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents SAUDER REAL ESTATE, INC.; and NANCI J. SAUDER-RUEST, individually, and as designated officer of Sauder Real Estate, Inc., under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 27 day of August, 2008.


ROBIN L. TRUJILLO
Deputy Real Estate Commissioner

cc: Sauder Real Estate, Inc.
Nanci J. Sauder-Ruest
Robin L. Trujillo
Audit Section
Sacto.