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Chapter 7 Trustee

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7
8 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA
9 **LOS ANGELES DIVISION**

10
11 In re
12 COMMBROKER, INC., a California
corporation, dba RE/MAX
13 COMMERCIAL BROKERAGE,
14 Debtor.

Case No. 2:09-bk-11325-ER

Chapter 7

15 EDWARD M. WOLKOWITZ, Chapter 7
Trustee,

Adv. No. 2:09-ap-01784-ER

16 Plaintiff,

**TRUSTEE'S ANSWER TO COUNTER-
CLAIM FOR DECLARATORY RELIEF**

17 v.

18 6767 SUNSET PLAZA, LLC; FIRST
AMERICAN TITLE INSURANCE
19 COMPANY; STAFFORD COMMERCIAL
REAL ESTATE, INC. A California
20 Corporation; REEVE BENARON;
LINDA KAYE; ELIOTT KAHN; and
21 STEPHEN SALTZMAN,

22 Defendants.

23 6767 SUNSET PLAZA, LLC;
STAFFORD COMMERCIAL REAL
24 ESTATE, INC., a California
Corporation; REEVE BENARON; and
25 LINDA KAYE,

26 Counter-Claimants,

27 v.

28 EDWARD M. WOLKOWITZ, ELLIOTT
KAHN; and STEPHEN SALTZMAN,

Counter-Defendants.

1 COMES NOW Edward M. Wolkowitz, the duly appointed and
2 acting chapter 7 trustee ("Trustee") and plaintiff and counter-
3 defendant herein, for himself alone, and answers the counter-claim
4 for declaratory relief as follows:
5

6 **RESPONSE TO JURISDICTION ALLEGATIONS**

7 1. The Trustee admits the allegations set forth in
8 Paragraph 1 of the counter-claim.

9 2. The Trustee admits the allegations set forth in
10 Paragraph 2 of the counter-claim.

11 3. The Trustee admits the allegations set forth in
12 Paragraph 3 of the counter-claim.
13

14 **RESPONSE TO IDENTIFICATION OF PARTIES**

15 4. The Trustee admits the allegations set forth in
16 Paragraph 4 of the counter-claim.

17 5. The Trustee admits the allegations set forth in
18 Paragraph 5 of the counter-claim.

19 6. The Trustee admits the allegations set forth in
20 Paragraph 6 of the counter-claim.

21 7. The Trustee admits the allegations set forth in
22 Paragraph 7 of the counter-claim.

23 8. The Trustee admits the allegations set forth in
24 Paragraph 8 of the counter-claim.

25 9. The Trustee admits the allegations set forth in
26 Paragraph 9 of the counter-claim.

27 10. The Trustee admits the allegations set forth in
28 Paragraph 10 of the counter-claim.

1 11. The Trustee admits the allegations set forth in
2 Paragraph 11 of the counter-claim.

3
4 **RESPONSE TO GENERAL ALLEGATIONS**

5 12. The Trustee admits the allegations set forth in
6 Paragraph 12 of the counter-claim.

7 13. In answer to Paragraph 13, the Trustee admits that
8 Kaye was an independent contractor at certain relevant times, and
9 that the terms and conditions for her employment as an independent
10 contractor were governed by the terms of the agreement attached by
11 the Trustee in his opposition to the motion to dismiss. The
12 Trustee further admits that in or around May 2008, Debtor
13 terminated Kaye. The Trustee is without sufficient information or
14 belief to admit or deny whether Kaye subsequently worked under the
15 umbrella of another broker, was responsible for and entitled to
16 "the commissions," and whether such broker will be joined as a
17 party to this action, and, therefore, based upon such lack of
18 information or belief, denies, both generally and specifically, the
19 remaining allegations in Paragraph 13.

20 14. In answer to Paragraph 14, the Trustee is without
21 sufficient information or belief to admit or deny whether Stafford
22 and Benaron, on the one hand, and 6767 Sunset Plaza, on the other
23 hand, entered into a written commission agreement whereby Stafford
24 and Benaron were entitled to payment of \$200,000 in commission,
25 and, therefore, based upon such lack of information or belief,
26 denies, both generally and specifically, this allegation in
27 Paragraph 14 of the counter-claim. The Trustee admits that to the
28 extent such an agreement exists, it speaks for itself as to its

1 terms and conditions. Without knowing the terms and conditions of
2 such agreement, the Trustee is without sufficient information or
3 belief to admit or deny whether commissions thereunder are property
4 of the estate, and, therefore, based upon such lack of information
5 or belief, denies, both generally and specifically, the remaining
6 allegations in Paragraph 14.

7 15. In answer to Paragraph 15, the Trustee is without
8 sufficient information or belief to admit or deny that the
9 commission agreement was entered into between 6767 Sunset Plaza, on
10 the one hand, and Stafford, Benaron, Kaye and the Debtor, on the
11 other hand, and, therefore, based upon such lack of information or
12 belief, denies, both generally and specifically, such allegation in
13 Paragraph 15. To the extent such a commission agreement exists,
14 the Trustee admits that it speaks for itself as to its terms and
15 conditions.

16 16. In answer to Paragraph 16, the Trustee admits that
17 counter-claimants raised a dispute, and that counter-claimants can
18 articulate the nature of their dispute.

19 17. The Trustee admits the allegations set forth in
20 Paragraph 17 of the counter-claim.

21 18. The Trustee admits the allegations set forth in
22 Paragraph 18 of the counter-claim.

23 19. In answer to Paragraph 19, the Trustee admits Panco
24 commenced certain litigation in the Los Angeles Superior Court
25 identified as Case No. BC 380397, and that the complaint in that
26 case speaks for itself as to the issues asserted therein.

27 20. In answer to Paragraph 20, the Trustee admits that
28 in or around September 2008, Panco and 6767 Sunset Plaza reached a

1 settlement of the state court litigation, and further admits the
2 settlement speaks for itself as to its terms and conditions.

3 21. In answer to Paragraph 21, the Trustee admits that
4 Panco obtained loan approval and that the sale of the Sunset
5 Property closed escrow on or about February 26, 2009. Other than
6 so admitting, the Trustee is without sufficient information or
7 belief to admit or deny the remaining allegations of Paragraph 21,
8 and, therefore, based upon such lack of information or belief,
9 denies, both generally and specifically, the remaining allegations
10 within that Paragraph 21.

11 22. In answer to Paragraph 22, the Trustee is without
12 sufficient information or belief to admit or deny the specifics of
13 the conduct of the brokers and agents involved in the transaction,
14 and, therefore, based upon such lack of information or belief,
15 denies, both generally and specifically, the allegations in
16 Paragraph 22.

17 23. In answer to Paragraph 23, the Trustee admits that
18 the Settlement Agreement, if such an agreement exists, speaks for
19 itself as to its terms and conditions.

20 24. The Trustee admits the allegations set forth in
21 Paragraph 24 of the counter-claim.

22
23 **RESPONSE TO FIRST COUNTER-CLAIM FOR RELIEF**

24 25. The Trustee realleges and incorporates herein by
25 reference his responses to the allegations set forth in Paragraphs
26 1 through 22 as though set forth fully herein.

27 26. The Trustee admits the allegations set forth in
28 Paragraph 26 of the counter-claim.

1 27. The Trustee admits the allegations set forth in
2 Paragraph 27 of the counter-claim.

3

4 **RESPONSE TO SECOND COUNTER-CLAIM FOR RELIEF**

5 28. The Trustee realleges and incorporates herein by
6 reference his responses to the allegations set forth in Paragraphs
7 1 through 22 as though set forth fully herein.

8 29. The Trustee admits the allegations set forth in
9 Paragraph 29 of the counter-claim.

10 30. The Trustee admits the allegations set forth in
11 Paragraph 30 of the counter-claim.

12

13 **RESPONSE TO THIRD COUNTER-CLAIM FOR RELIEF**

14 31. The Trustee realleges and incorporates herein by
15 reference his responses to the allegations set forth in Paragraphs
16 1 through 22 as though set forth fully herein.

17 32. The Trustee admits that he contends that the Escrow
18 Funds are property of the estate, and that the Counter-Claimants
19 claim that some or all of the \$200,000 portion of the Escrow Funds
20 are not property of the estate. The Trustee further admits that
21 the Independent Contractor Agreement speaks for itself as to its
22 terms and conditions, including termination and procedures.

23 33. The Trustee admits the allegations set forth in
24 Paragraph 33 of the counter-claim.

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26 ///

27 ///

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1 **RESPONSE TO FOURTH COUNTER-CLAIM FOR RELIEF**

2 34. The Trustee realleges and incorporates herein by
3 reference his responses to the allegations set forth in Paragraphs
4 1 through 22 as though set forth fully herein.

5 35. The Trustee admits the allegations set forth in
6 Paragraph 35 of the counter-claim.

7 36. The Trustee admits the allegations set forth in
8 Paragraph 36 of the counter-claim.

9

10 **RESPONSE TO FIFTH COUNTER-CLAIM FOR RELIEF**

11 37. The Trustee realleges and incorporates herein by
12 reference the responses to the allegations set forth in Paragraphs
13 1 through 22 as though set forth fully herein.

14 38. In answer to Paragraph 38, the Trustee admits that
15 he contends the Escrow Funds are property of the estate. The
16 Trustee further admits that Counter-Claimants are aware of the
17 nature of their controversy with Saltzman and Kahn.

18 39. The Trustee admits the allegations set forth in
19 Paragraph 39 of the counter-claim.

20 WHEREFORE, the Trustee prays for judgment as follows:

21 1. For an order finding that all of the Escrow Funds
22 are commissions due to the Debtor and are thus property of the
23 estate;

24 2. For an order directing turnover of the Escrow Funds
25 to the Trustee in connection with the estate.

26 3. For an order finding that the broker commission from
27 the sale of the Sunset Property was \$400,000, and that Sunset Plaza
28 is not entitled to any credit from such commission or any portion

1 of the Escrow Funds;

2 4. For an order finding that Stafford and Benaron's
3 commissions are limited to \$100,000 in the event that the total
4 amount of brokerage commission from the sale of the Sunset Property
5 is \$400,000, and is limited to \$87,500 in the event that the total
6 amount of brokerage commission for the sale of the Sunset Property
7 is \$350,000;

8 5. In the event that the total amount of the brokerage
9 commission from the sale of the Sunset Property is found to be only
10 \$350,000, for an order directing turnover of the \$12,500 to the
11 Trustee for the benefit of the estate;

12 6. To the extent that any interest of the Debtor in the
13 Escrow Funds was transferred by the Debtor to any of the Counter-
14 Claimants, for an order avoiding such transfers for the benefit of
15 the Estate;

16 7. For an order finding the Counter-Claimants are not
17 entitled to any of the Escrow Funds, and are limited to asserting
18 unsecured creditor claims against the estate for any commissions or
19 debt owed to them as a result of the sale of the Sunset Property;

20 8. For costs of suit incurred herein;

21 9. For such other relief as the Court may deem just and
22 proper.

23 DATED: December 18, 2009

ROBINSON, DIAMANT & WOLKOWITZ
A Professional Corporation

24
25
26 By: _____

ERV M. GROSS

Attorneys for Counter-Defendant
Edward M. Wolkowitz
Chapter 7 Trustee

In re: COMMBROKER, INC., a California corporation, dba RE/MAX COMMERCIAL
BROKERAGE,

Debtor(s).

CHAPTER 7

CASE NUMBER 2:09-bk-11325-BR

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 1888 Century Park East, Suite 1500, Los Angeles, California 90067.

A true and correct copy of the foregoing document described **TRUSTEE'S ANSWER TO COUNTER-CLAIM FOR DECLARATORY RELIEF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On December 18, 2009, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):

On December 18, 2009, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Attorneys for Defendants

Barry E Cohen
Barry E Cohen a Professional Corp
10866 Wilshire Blvd Ste 890
Los Angeles, CA 90024
(by U.S. mail)

Honorable Ernest Robles
United States Bankruptcy Judge
U.S. Bankruptcy Court
255 East Temple Street, #1560
Los Angeles, CA 90012 (by overnight delivery)

Service information continued on attached page

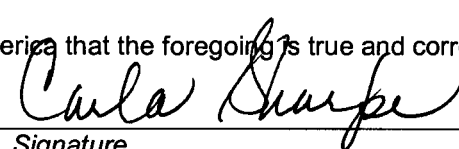
III. **SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on December 18, 2009 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

December 18, 2009
Date

Carla Sharpe
Type Name


Signature

{IMG/00206773.DOC/POS/18611.000} This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: COMMBROKER, INC., a California corporation, dba RE/MAX COMMERCIAL BROKERAGE, Debtor(s).	CHAPTER 7 CASE NUMBER 2:09-bk-11325-BR
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Additional Service by mail:

6767 Sunset Plaza, LLC
Agent for Service of Process
Jack Kassamanian
21115 Devonshire Street, #402
Chatsworth, CA 91311

Linda Kaye
The Kaye Organization
18431 Kingsport Drive
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Stafford Commercial Real Estate, Inc.
Agent for Service of Process
Edward G. Stafford
356 N. Robertson Blvd.,
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