

ORIGINAL

FILED
JAN 13 2004

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)	NO. H-1559 FR
12)	
13 FRISI INC., FRANK RAYMOND IMBERT)	<u>STIPULATION AND AGREEMENT</u>
14 AND RAY EARL LINDSEY, JR.,)	<u>IN SETTLEMENT AND ORDER</u>
15 Respondents.)	<u>AS TO</u>
	<u>RAY EARL LINDSEY, JR. ONLY</u>

16 It is hereby stipulated by and between RAY EARL
17 LINDSEY, JR. (hereinafter Respondent "LINDSEY") and his attorney
18 of record, Edgardo Gonzalez, and the Complainant, acting by and
19 through David B. Seals, Counsel for the Department of Real
20 Estate, as follows for the purpose of settling and disposing of
21 the Accusation filed on September 18, 2002, in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondent
24 LINDSEY at a formal hearing on the Accusation, which hearing was
25 to be held in accordance with the provisions of the
26 Administrative Procedure Act (APA), shall instead and in place

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1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

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

7 3. A Notice of Defense was filed on September 30, 2002
8 by Respondent LINDSEY, pursuant to Section 11505 of the
9 Government Code for the purpose of requesting a hearing on the
10 allegations in the Accusation. Respondent LINDSEY hereby freely
11 and voluntarily withdraws said Notice of Defense. Respondent
12 LINDSEY acknowledges that he understands that by withdrawing said
13 Notice of Defense he will thereby waive his right to require the
14 Commissioner to prove the allegations in the Accusation at a
15 contested hearing held in accordance with the provisions of the
16 APA and that he will waive other rights afforded to him in
17 connection with the hearing such as the right to present evidence
18 in defense of the allegations in the Accusation and the right to
19 cross-examine witnesses.

20 4. This Stipulation is based on the factual
21 allegations contained in the Accusation. In the interests of
22 expedience and economy, Respondent LINDSEY chooses not to contest
23 these allegations, but to remain silent and understands that, as
24 a result thereof, these factual allegations, without being
25 admitted or denied, will serve as a prima facie basis for the
26 disciplinary action stipulated to herein. The Real Estate

27 ///

1 revocation of the licenses and license rights of Respondent RAY
2 EARL LINDSEY, JR. under Section 10177(g) of the Code.

3 ORDER

4 I

5 All licenses and licensing rights of Respondent RAY
6 EARL LINDSEY, JR. under the Real Estate Law are suspended for a
7 period of thirty (30) days from the effective date of this Order;
8 provided, however, that:

9 1. Fifteen (15) days of said suspension shall be
10 stayed for one (1) year upon the following terms and conditions:

11 A. Respondent LINDSEY shall obey all laws,
12 rules and regulations governing the rights, duties and
13 responsibilities of a real estate licensee in the
14 State of California; and,

15 B. That no final subsequent determination be
16 made, after hearing or upon stipulation, that cause
17 for disciplinary action occurred within one (1) year
18 from the effective date of this Order. Should such a
19 determination be made, the Commissioner may, in her
20 discretion, vacate and set aside the stay order and
21 reimpose all or a portion of the stayed suspension.
22 Should no such determination be made, the stay imposed
23 herein shall become permanent.

24 2. The remaining fifteen (15) days of said 30-day
25 suspension shall be stayed upon the condition that Respondent
26 LINDSEY petition pursuant to Section 10175.2 of the Business and
27 Professions Code and pays a monetary penalty pursuant to Section

1 10175.2 of the Business and Professions Code at a rate of \$100
2 for each day of the suspension for a total monetary penalty of
3 \$1,500:

4 A. Said payment shall be in the form of a
5 cashier's check or certified check made payable to the
6 Recovery Account of the Real Estate Fund. Said check
7 must be delivered to the Department prior to the
8 effective date of the Order in this matter.

9 B. No further cause for disciplinary action
10 against the Real Estate licenses of said Respondent
11 occurs within one (1) year from the effective date of
12 the decision in this matter.

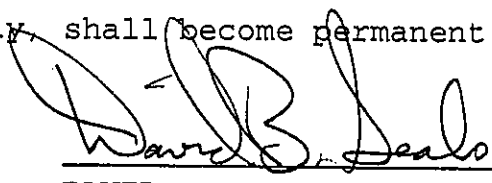
13 C. If Respondent LINDSEY fails to pay the
14 monetary penalty as provided above prior to the
15 effective date of this Order, the stay of the
16 suspension shall be vacated as to Respondent LINDSEY
17 and the order of suspension shall be immediately
18 executed, under this Paragraph 2 of this Order, in
19 which event Respondent LINDSEY shall not be entitled to
20 any repayment nor credit, prorated or otherwise, for
21 the money paid to the Department under the terms of
22 this Order.

23 D. If Respondent LINDSEY pays the monetary
24 penalty and any other moneys due under this Stipulation
25 and Agreement and if no further cause for disciplinary
26 action against the real estate licenses of Respondent
27 LINDSEY occurs within one (1) year from the effective

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date of this Order, the entire stay hereby granted
under Paragraphs 1 and 2 of this Order, as to
Respondent LINDSEY only, shall become permanent.

DATED: 11/5/2003

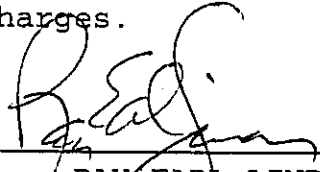


DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, have
discussed it with my counsel, and 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.

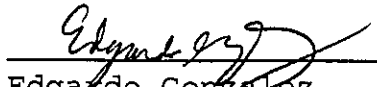
DATED: Sept. 26, 2003



RAY EARL LINDSEY, JR.
Respondent

I have reviewed the Stipulation and Agreement as to
form and content and have advised my client accordingly.

DATED: 9-26-03



Edgardo Gonzalez
Attorney for Respondent

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The foregoing Stipulation and Agreement in Settlement
is hereby adopted by the Real Estate Commissioner as her Decision
and Order and shall become effective at 12 o'clock noon on

FEBRUARY 5, 2004.

IT IS SO ORDERED November 18, 2003.



PAULA REDDISH ZINNEMANN
Real Estate Commissioner

1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

3 2. Respondents FRISI and IMBERT have received, read
4 and understand the Statement to Respondent, the Discovery
5 Provisions of the APA and the Accusation filed by the Department
6 of Real Estate in this proceeding.

7 3. A Notice of Defense was filed on September 30, 2002
8 by Respondents FRISI and IMBERT, pursuant to Section 11505 of the
9 Government Code for the purpose of requesting a hearing on the
10 allegations in the Accusation. Respondents FRISI and IMBERT
11 hereby freely and voluntarily withdraw said Notice of Defense.
12 Respondents FRISI and IMBERT acknowledge that they understand
13 that by withdrawing said Notice of Defense they will thereby
14 waive their right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that they will
17 waive other rights afforded to them in connection with the
18 hearing such as the right to present evidence in defense of the
19 allegations in the Accusation and the right to cross-examine
20 witnesses.

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interests of
23 expedience and economy, Respondents FRISI and IMBERT choose not
24 to contest these allegations, but to remain silent and understand
25 that, as a result thereof, these factual allegations, without
26 being admitted or denied, will serve as a prima facie basis for
27 the disciplinary action stipulated to herein. The Real Estate

1 RAYMOND IMBERT under Section 10177(h) of the Code and, as to
2 Respondent FRISI INC. under Section 10177(g) of the Code.

3 ORDER

4 I

5 All licenses and licensing rights of Respondents FRISI
6 and IMBERT under the Real Estate Law are suspended for a period
7 of thirty (30) days from the effective date of this Order;
8 provided, however, that:

9 1. Fifteen (15) days of said suspension shall be
10 stayed for one (1) year upon the following terms and conditions:

11 A. Respondents FRISI and IMBERT shall obey
12 all laws, rules and regulations governing the rights,
13 duties and responsibilities of a real estate licensee
14 in the State of California; and,

15 B. That no final subsequent determination be
16 made, after hearing or upon stipulation, that cause
17 for disciplinary action occurred within one (1) year
18 from the effective date of this Order. Should such a
19 determination be made, the Commissioner may, in her
20 discretion, vacate and set aside the stay order and
21 reimpose all or a portion of the stayed suspension.
22 Should no such determination be made, the stay imposed
23 herein shall become permanent.

24 2. The remaining fifteen (15) days of said 30-day
25 suspension shall be stayed, as to each Respondent individually,
26 upon the condition that each Respondent petition pursuant to
27 Section 10175.2 of the Business and Professions Code and each

1 pays a monetary penalty pursuant to Section 10175.2 of the
2 Business and Professions Code at a rate of \$100 for each day of
3 the suspension for a total monetary penalty of \$1,500 for each
4 Respondent:

5 A. Said payment shall be in the form of a
6 cashier's check or certified check made payable to the
7 Recovery Account of the Real Estate Fund. Said check
8 must be delivered to the Department prior to the
9 effective date of the Order in this matter.

10 B. No further cause for disciplinary action
11 against the Real Estate licenses of said Respondent
12 occurs within one (1) year from the effective date of
13 the decision in this matter.

14 C. If any Respondent fails to pay the
15 monetary penalty as provided above prior to the
16 effective date of this Order, the stay of the
17 suspension shall be vacated as to that Respondent and
18 the order of suspension shall be immediately executed,
19 under this Paragraph 2 of this Order, in which event
20 the said Respondent shall not be entitled to any
21 repayment nor credit, prorated or otherwise, for the
22 money paid to the Department under the terms of this
23 Order.

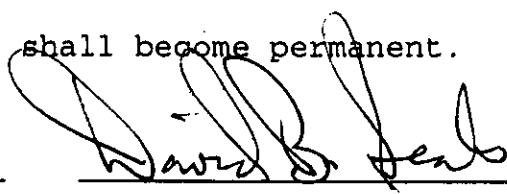
24 D. If said Respondents pay the monetary
25 penalty and any other moneys due under this Stipulation
26 and Agreement and if no further cause for disciplinary
27 action against the real estate licenses of said

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Respondents occurs within one (1) year from the effective date of this Order, the entire stay hereby granted under Paragraphs 1 and 2 of this Order, as to said Respondent only, shall become permanent.

DATED:

11/12/2003



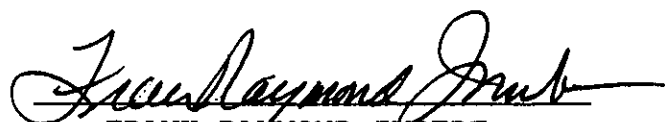
DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, and 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.

DATED:

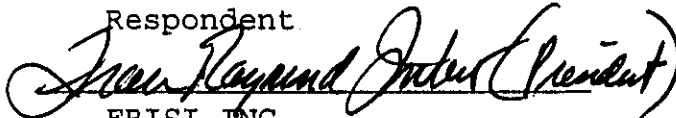
10-31-03



FRANK RAYMOND IMBERT
Respondent

DATED:

10-31-03



FRISI INC.
Respondent

by Frank Raymond Imbert

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I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

DATED: October 24, 2003 Thomas C. Lasken
Thomas C. Lasken
Attorney for Respondents

* * *

The foregoing Stipulation and Agreement in Settlement
is hereby adopted by the Real Estate Commissioner as her Decision
and Order and shall become effective at 12 o'clock noon on
FEBRUARY 5, 2004.

IT IS SO ORDERED November 24, 2003.
Paula Reddish Zinnemann
PAULA REDDISH ZINNEMANN
Real Estate Commissioner

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
JUL 23 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

FRISI INC., FRANK RAYMOND IMBERT and
RAY EARL LINDSEY, JR.,

Shelley Ely
} Case No. H-1559 FR
} OAH No. N2003060848

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CALIFORNIA 95814** on **THURSDAY--OCTOBER 2, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: JULY 23, 2003

DEPARTMENT OF REAL ESTATE
By *David B. Seals*

DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

4 Telephone: (916) 227-0789
5 -or- (916) 227-0792 (Direct)

FILED

SEP 18 2002

DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 FRISI INC., FRANK RAYMOND IMBERT) No. H-1559 FR
13 AND RAY EARL LINDSEY, JR.,) ACCUSATION
14 Respondents.)

15 The Complainant, John Sweeney, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against FRISI INC. (hereinafter Respondent "FRISI"), FRANK
18 RAYMOND IMBERT (hereinafter Respondent "IMBERT") and RAY EARL
19 LINDSEY, JR. (hereinafter Respondent "LINDSEY"), is informed and
20 alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

23 The Complainant, John Sweeney, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation in
25 his official capacity.

26 ///

27 ///

1 II

2 Respondents are licensed and/or have license rights
3 under the Real Estate Law, Part 1 of Division 4 of the California
4 Business and Professions Code (hereinafter "Code") as follows:

5 (a) Respondent FRISI as a corporate real estate broker
6 dba Premier Real Estate Services.

7 (b) Respondent IMBERT as a real estate broker and the
8 designated officer of Respondent FRISI.

9 (c) Respondent LINDSEY as a real estate salesperson.

10 III

11 On or about March 13, 2000, Respondent LINDSEY, on
12 behalf of Jane Barnell (hereinafter the "Seller"), received a
13 RESIDENTIAL PURCHASE AGREEMENT (AND RECEIPT FOR DEPOSIT)
14 (hereinafter the "Agreement") dated March 13, 2000 from Curtis
15 and Erin Rager (hereinafter the "Buyers"), relating to the real
16 property located at 617 Brighton, Modesto (hereinafter the
17 "Property").

18 IV

19 On or about March 13, 2000 the Sellers signed the
20 Agreement accepting the offer on the Property. Respondent LINDSEY
21 also signed the Agreement confirming his representation of the
22 Sellers on March 13, 2000.

23 V

24 The Agreement provided, in pertinent part, that the
25 Buyer had given a deposit to the agent \$100 to be held uncashed
26 until acceptance and then deposited within 3 business days after
27 acceptance with the escrow holder. However, neither Respondent

1 LINDSEY, nor Respondents FRISI or IMBERT had received a deposit
2 from the Buyer in any amount at the time the Agreement was
3 presented or accepted.

4 VI

5 Respondents FRISI and IMBERT also failed to place the
6 \$100 deposit with the escrow holder within three (3) business
7 days of acceptance of the offer in favor of the Sellers.

8 VII

9 The acts and/or omissions of Respondents LINDSEY, FRISI
10 and IMBERT described above are grounds for the revocation or
11 suspension of Respondents' licenses under the following sections
12 of the Business and Professions Code and the Regulations:

13 (a) As to Respondents LINDSEY, FRISI and IMBERT, and each of
14 them under Sections 10176(a) and/or 10177(g) of the Code;
15 and

16 (b) As to Respondents FRISI and IMBERT only, under Section
17 10177(d) of the Code in conjunction with Section 2831(a)(6)
18 of the Regulations.

19 SECOND CAUSE OF ACCUSATION

20 VIII

21 There is hereby incorporated in this Second, separate
22 and distinct, Cause of Accusation all of the allegations
23 contained in the First Cause of Accusation with the same force
24 and effect as if herein fully set forth.

25 IX

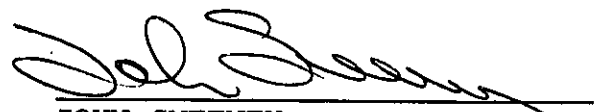
26 At all times mentioned herein, Respondent IMBERT failed
27 to exercise reasonable supervision over the activities of

1 Respondents FRISI and LINDSEY, and permitted, ratified and/or
2 caused the conduct described above. Respondent IMBERT failed to
3 reasonably or adequately review, oversee, inspect and manage the
4 personnel and activities of Respondents FRISI and LINDSEY, and/or
5 to establish reasonable policies, rules, procedures and systems
6 for such review, oversight, inspection and management.

7 X

8 The acts and/or omissions of Respondent IMBERT
9 described above are grounds for the revocation or suspension of
10 all Respondents' licenses under Section 10177(g) and/or (h) of
11 the Code and Section 2725 of the Regulations in conjunction with
12 Section 10177(d) of the Code.

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all licenses and license rights of Respondents,
17 under the Real Estate Law (Part 1 of Division 4 of the Business
18 and Professions Code) and for such other and further relief as
19 may be proper under other provisions of law.

20
21
22 
23 JOHN SWEENEY
Deputy Real Estate Commissioner

24 Dated at Fresno, California,
25 this 13th day of September, 2002.