

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
JAN 24 2000

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE  
9 DEPARTMENT OF REAL ESTATE  
10 STATE OF CALIFORNIA

11 \* \* \*  
12 In the Matter of the Accusation of )  
13 HANFORD-FREUND & CO, and ) NO. H-7717 SF  
14 JOHN TIMOTHY FALVEY, ) STIPULATION AND AGREEMENT  
15 Respondents. )

16 It is hereby stipulated by and between HANFORD-FREUND &  
17 CO, and JOHN TIMOTHY FALVEY ("Respondents"), acting by and  
18 through their attorney, Richard N. Rapoport; and the Complainant,  
19 acting by and through Thomas C. Lasken, Counsel for the  
20 Department of Real Estate, as follows, for the purpose of  
21 settling and disposing of the Accusation filed on June 29, 1999,  
22 in this matter:

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

1 Section 11500, et seq.), shall instead and in place thereof be  
2 submitted solely on the basis of the provisions of this  
3 Stipulation and Agreement.

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

8 3. On July 7, 1999, Respondents filed their Notice of  
9 Defense pursuant to Section 11505 of the Government Code for the  
10 purpose of requesting a hearing on the allegations in the  
11 Accusation. Respondents hereby freely and voluntarily withdraw  
12 their Notice of Defense to the Accusation. Respondents  
13 acknowledge that by withdrawing said Notice of Defense they will  
14 thereby waive their rights to require the Commissioner to prove  
15 the 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 choose not to contest these  
24 allegations, but to remain silent and understand 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  
27 action stipulated to herein. The Real Estate Commissioner shall

1 not be required to provide further evidence to prove said factual  
2 allegations.

3           5. No additional documentary, testimonial, or other  
4 evidence, except that which is necessary to establish  
5 Complainant's jurisdiction, shall be required to be presented by  
6 Complainant at any hearing in this proceeding in order to prove  
7 the Accusation as above stipulated.

8           6. It is understood by the parties that the Real  
9 Estate Commissioner may adopt the Stipulation and Agreement as  
10 her decision in this matter, thereby finding the violations as  
11 to Respondents' real estate licenses and license rights as set  
12 forth in the below "Determination of Issues". In the event  
13 that the Commissioner in her discretion does not adopt the  
14 Stipulation and Agreement, it shall be void and of no effect,  
15 and Respondents shall retain the right to a hearing and  
16 proceeding on the Accusation under all the provisions of the  
17 APA and shall not be bound by any admission or waiver made  
18 herein.

19           7. Respondents have received, read, and understand the  
20 "Notice Concerning Costs of Subsequent Audits". Respondents  
21 understand that by agreeing to this Stipulation and Agreement,  
22 the findings set forth below in the DETERMINATION OF ISSUES  
23 become final, and that the Commissioner may charge Respondents  
24 for the cost of any audit conducted pursuant to Section 10148 of  
25 the Business and Professions Code to determine if the violations  
26 have been corrected. The maximum costs of said audit will not  
27 exceed \$3,278.77.

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DETERMINATION OF ISSUES

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

I

The conduct of Respondent HANFORD-FREUND & CO, as described in the Accusation, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent HANFORD-FREUND & CO, under the provisions of Section 10177(d) of the California Business and Professions Code ("Code").

II

The conduct of Respondent JOHN TIMOTHY FALVEY, as described in the Accusation, constitutes cause for the suspension or revocation of the real estate license and license rights of Respondent JOHN TIMOTHY FALVEY under the provisions of Section 10177(h) of the Code.

ORDER

I

A. The real estate broker licenses and license rights of Respondent HANFORD-FREUND & CO, under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order; provided, however, that:

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

1           (a) Respondent shall obey all laws, rules and  
2                           regulations governing the rights, duties, and  
3                           responsibilities of a real estate licensee in the  
4                           State of California;

5           (b) No final subsequent determination be made, after  
6                           ~~hearing or~~ upon stipulation, that cause for  
7                           disciplinary action occurred within one (1) year  
8                           from the effective date of this Order. Should  
9                           such a determination be made, the Commissioner  
10                          may, in her discretion, vacate and set aside the  
11                          stay order and reimpose all or a portion of the  
12                          stayed suspension. Should no such determination  
13                          be made, the stay imposed herein shall become  
14                          permanent.

15    2. The remaining fifteen (15) days of said 30-day  
16                          suspension shall be stayed upon the condition that  
17                          Respondent petition pursuant to Section 10175.2 of the  
18                          Business and Professions Code and pay a monetary  
19                          penalty pursuant to Section 10175.2 of the Business and  
20                          Professions Code at a rate of \$100.00 for each day of  
21                          the suspension for a total monetary penalty of  
22                          \$1,500.00:

23           (a) Said payment shall be in the form of a cashier's  
24                           check or certified check made payable to the  
25                           Recovery Account of the Real Estate Fund. Said  
26                           check must be delivered to the Department prior to  
27                           the effective date of the Order in this matter.

1           **(b)** No further cause for disciplinary action against the  
2           real estate license of Respondent occurs within one  
3           (1) year from the effective date of the order in  
4           this matter.

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

13          **(d)** If Respondent pays the monetary penalty and if no  
14          further cause for disciplinary action against the  
15          real estate license of Respondent occurs within one  
16          (1) year from the effective date of the order, the  
17          stay hereby granted shall become permanent.

18          **3.** Respondent shall pay, pursuant to Section 10148 of the  
19          Business and Professions Code, the Commissioner's  
20          reasonable cost for an audit to determine if Respondent  
21          has corrected the violations as set forth in the  
22          Determination of Issues above. In calculating the amount  
23          of the Commissioner's reasonable costs, the Commissioner  
24          may use the estimated average hourly salary for all  
25          persons performing audits of real estate brokers, and  
26          shall include an allocation for travel costs, including  
27          mileage, time to and from the auditor's place of work,

1 and per diem. The Commissioner's reasonable costs shall  
2 in no event exceed \$3,278.77.

3 (a) Respondent shall pay such cost within 60 days of  
4 receipt of an invoice from the Commissioner  
5 detailing the activities performed during the audit  
6 and the amount of time spent performing those  
7 activities;

8 (b) If Respondent fails to pay, within 60 days from  
9 receipt of the invoice specified above, the  
10 Commissioner's reasonable costs for an audit to  
11 determine if Respondent has corrected the violations  
12 found as set forth in the Determination of Issues  
13 above, the Commissioner may order the indefinite  
14 suspension of Respondent's real estate licenses and  
15 license rights. The suspension shall remain in  
16 effect until payment is made in full, or until  
17 Respondent enters into an agreement satisfactory to  
18 the Commissioner to provide for such payment. The  
19 Commissioner may impose further reasonable  
20 disciplinary terms and conditions upon Respondent's  
21 real estate license and license rights as part of  
22 any such agreement.

23  
24 II

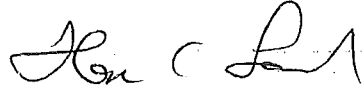
25 A. No public interest would be served by imposing disciplinary  
26 action against Respondent JOHN TIMOTHY FALVEY at this time.  
27 Accordingly, the within proceedings as to Respondent

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JOHN TIMOTHY FALVEY are hereby terminated without imposition  
of discipline.

Nov 6, 1999

DATED



THOMAS C. LASKEN, Counsel  
DEPARTMENT OF REAL ESTATE

\* \* \*

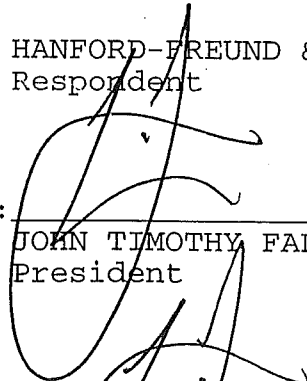
I have read the Stipulation and Agreement, have  
discussed it with my counsel, and its terms are understood by  
me and are agreeable and acceptable to me. I understand that I  
am waiving rights given to me by the California Administrative  
Procedure Act (including but not limited to Sections 11506,  
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.

HANFORD-FREUND & CO  
Respondent

11/23/99

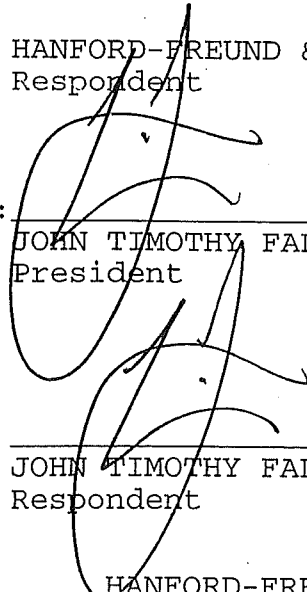
DATED

By:

  
JOHN TIMOTHY FALVEY  
President

11/23/99

DATED

  
JOHN TIMOTHY FALVEY  
Respondent



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

11/23/99

DATED

*Richard N. Rapoport*

RICHARD N. RAPOPORT  
Attorney for Respondents

\* \* \*

The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as her Decision and Order and shall become effective at 12 o'clock noon on February 14, 2000

IT IS SO ORDERED

*January 12, 2000.*

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish Zinnemann*

1 THOMAS C. LASKEN, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

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JUN 29 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 HANFORD-FREUND & CO, and )  
13 JOHN TIMOTHY FALVEY, )  
14 Respondents. )

NO. H-7717 SF

ACCUSATION

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Accusation against HANFORD-FREUND & CO; and, against JOHN TIMOTHY  
18 FALVEY, individually and as Designated Officer of HANFORD-FREUND &  
19 CO; is informed and alleges as follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real  
22 Estate Commissioner of the State of California, makes this  
23 Accusation in his official capacity.

24 II

25 At all times herein mentioned, Respondent HANFORD-FREUND  
26 & CO (hereinafter "Respondent HFC") was licensed and/or had  
27 license rights under the Real Estate Law, Part 1 of Division 4 of

1 the Business and Professions Code (hereinafter "Code") as a real  
2 estate brokerage corporation by and through Respondent JOHN  
3 TIMOTHY FALVEY (hereinafter "Respondent FALVEY") as its  
4 Designated Officer.

5 III

6 At all times herein mentioned, Respondent FALVEY was  
7 licensed, and/or has license rights under the Code, individually  
8 and as Designated Officer of Respondent HFC.

9 IV

10 At all times mentioned herein, Respondent HFC engaged  
11 in the business of, acted in the capacity of, advertised or  
12 assumed to act as real estate broker within the State of  
13 California, within the meaning of Section 10131(b) of the Code,  
14 including the operation and conduct of a real estate property  
15 management business with the public, wherein Respondent HFC,  
16 for or in expectation of a compensation, leased or rented or  
17 offered to lease or rent, or solicited listings of, places for  
18 rent; solicited prospective tenants for, negotiated rental  
19 agreements for, and collected rents from, real properties owned  
20 by another or others; and otherwise managed real properties in  
21 California.

22 V

23 During the course of the real property management  
24 activities described in Paragraph IV above, Respondent HFC  
25 received and disbursed funds held in trust on behalf of another or  
26 others.

27 ///

1 VI

2 Within the three-year period immediately preceding the  
3 filing of this Accusation, Respondent HFC maintained the following  
4 trust accounts for its property management business:

5 Wells Fargo Bank  
6 One Montgomery Street  
7 San Francisco, CA 94108

8 Account No. 4075-

9 Title: Hanford-Freund & Co., Trust Account General  
(Trust #1).

10 Wells Fargo Bank  
11 One Montgomery Street  
12 San Francisco, CA 94108

13 Account No. 0295-

14 Title: Hanford-Freund & Co., Escrow Account  
(Trust #2).

15 VII

16 Commencing on September 1, 1998, and continuing  
17 through October 15, 1998, an investigative audit was made by  
18 the Department of Real Estate (hereinafter "Department") of  
19 Respondent HFC's records for the period of October 1, 1995,  
20 through August 31, 1998 ("the audit period"), as those records  
21 relate to Respondent HFC's licensed activities in its real estate  
22 property management business.

23 VIII

24 In connection with the collection and disbursement of  
25 trust funds, as of July 31, 1998, Respondent HFC failed to deposit  
26 and maintain \$2,106,000.00 of trust funds in Trust #1 in  
27 accordance with the requirements of Section 10145 of the Code.

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IX

During the audit period, in connection with the receipt and disbursement of trust funds, Trust #2 was not in the name of Respondent HFC as trustee at a bank or other financial institution, in violation of Section 2832 of the Regulations.

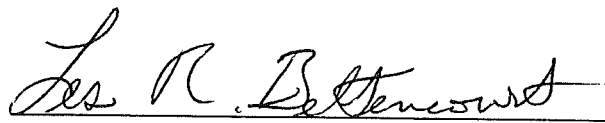
X

Respondent HFC's acts and omissions alleged above in Paragraphs VIII and IX constitute cause for discipline under the provisions of Section 10177(d) of the Code.

XI

During the audit period, Respondent FALVEY, as designated broker-officer for Respondent HFC, failed to exercise reasonable supervision and control over the licensed activities of Respondent HFC as required by Section 10159.2 of the Code. Such failure is cause for the suspension or revocation of Respondent FALVEY's licenses and/or license rights under Section 10177(h) of the Code.

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, 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 the provisions of law.

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California,  
this 16th day of June, 1999.