

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

4 Telephone: (916) 227-0789

FILED
DEC 05 2003

DEPARTMENT OF REAL ESTATE

Shelly [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-8345 SF
12)
12 FREED/MAN, INC., ERIBERTO)
13 FERNANDEZ, and RUTH) STIPULATION AND AGREEMENT
13 RODRIGUEZ-GARCIA,)
14) IN SETTLEMENT AND ORDER
14 Respondents.)
15)

16 It is hereby stipulated by and between FREED/MAN, INC.,
17 ERIBERTO FERNANDEZ, and RUTH RODRIGUEZ-GARCIA (Respondents) and
18 their attorney of record, Samuel A. Chuck of Rossi, Hamerslough,
19 Reischl and Chuck, and the Complainant, acting by and through
20 David B. Seals, Counsel for the Department of Real Estate, as
21 follows for the purpose of settling and disposing of the
22 Accusation filed on March 8, 2003, in this matter:

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

H-8345 SF

- 1 -

FREED/MAN, INC.,
ERIBERTO FERNANDEZ, and
RUTH RODRIGUEZ-GARCIA

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

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

7 3. A Notice of Defense was filed on March 24, 2003 by
8 Respondents, pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that they
12 understand that by withdrawing said Notice of Defense they will
13 thereby waive their right to require the Commissioner to prove
14 the allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that they will
16 waive other rights afforded to them in connection with the
17 hearing such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

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

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27 ///

1 herein. The Real Estate Commissioner shall not be required to
2 provide further evidence to prove said factual allegations.

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

14 6. The Order or any subsequent Order of the Real
15 Estate Commissioner made pursuant to this Stipulation and
16 Agreement in Settlement shall not constitute an estoppel, merger
17 or bar to any further administrative or civil proceedings by the
18 Department of Real Estate with respect to any matters which were
19 not specifically alleged to be causes for accusation in this
20 proceeding.

21 DETERMINATION OF ISSUES

22 I

23 By reason of the foregoing stipulations, admissions
24 and waivers and solely for the purpose of settlement of the
25 pending Accusation without a hearing, it is stipulated and agreed
26 that the facts alleged above are grounds for the suspension or
27 revocation of the licenses and license rights of Respondent

1 FREED/MAN under Section 10145(a) of the Code in conjunction with
2 Section 10177(d) of the Code, Respondent FERNANDEZ under Section
3 10177(h) of the Code and Respondent RODRIGUEZ-GARCIA under
4 Section 10145(c) of the Code in conjunction with Section 10177(d)
5 of the Code.

6 ORDER

7 I

8 All licenses and licensing rights of Respondents
9 FREED/MAN, INC., ERIBERTO FERNANDEZ, and RUTH RODRIGUEZ-GARCIA
10 under the Real Estate Law are suspended for a period of sixty
11 (60) days from the effective date of this Order; provided,
12 however, that:

13 1. Thirty (30) days of said suspension shall be stayed
14 for one (1) year upon the following terms and conditions:

15 A. Respondents shall obey all laws, rules and
16 regulations governing the rights, duties and
17 responsibilities of a real estate licensee in the
18 State of California; and,

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

1 2. The remaining thirty (30) days of said 60-day
2 suspension shall be stayed, as to each Respondent individually,
3 upon the condition that each Respondent petition pursuant to
4 Section 10175.2 of the Business and Professions Code and each
5 pays a monetary penalty pursuant to Section 10175.2 of the
6 Business and Professions Code at a rate of \$100 for each day of
7 the suspension for a total monetary penalty of \$3,000 for each
8 Respondent:

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

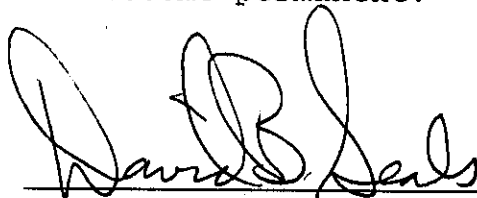
14 B. No further cause for disciplinary action
15 against the Real Estate licenses of said Respondent
16 occurs within one (1) year from the effective date of
17 the decision in this matter.

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

1 D. If said Respondents pay the monetary
2 penalty and any other moneys due under this Stipulation
3 and Agreement and if no further cause for disciplinary
4 action against the real estate licenses of said
5 Respondents occurs within one (1) year from the
6 effective date of this Order, the entire stay hereby
7 granted under Paragraphs 1 and 2 of this Order, as to
8 said Respondents only, shall become permanent.

9
10
11 DATED:

Sept. 19, 2003



DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

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14
15 * * *

16 I have read the Stipulation and Agreement, have
17 discussed it with my counsel, and its terms are understood by me
18 and are agreeable and acceptable to me. I understand that I am
19 waiving rights given to me by the California Administrative
20 Procedure Act (including but not limited to Sections 11506,
21 11508, 11509, and 11513 of the Government Code), and I willingly,
22 intelligently, and voluntarily waive those rights, including the
23 right of requiring the Commissioner to prove the allegations in
24 the Accusation at a hearing at which I would have the right to
25 cross-examine witnesses against me and to present evidence in
26 defense and mitigation of the charges.

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H-8345 SF

- 6 -

FREED/MAN, INC.,
ERIBERTO FERNANDEZ, and
RUTH RODRIGUEZ-GARCIA

1 DATED: 9-6-03

Rihl Freed

FREED/MAN, INC.
Respondent

2
3 DATED: 9-9-03

[Signature]

ERIBERTO FERNANDEZ
Respondent

4
5 DATED: 9/9/03

[Signature]

RUTH RODRIGUEZ-GARCIA
Respondent

6
7
8 I have reviewed the Stipulation and Agreement as to
9 form and content and have advised my client accordingly

10
11 DATED: 9/4/03

[Signature]

Samuel A. Chuck
Attorney for Respondents

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13
14 * * *

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

December 26, 2003.

18
19 IT IS SO ORDERED September 24, 2003.

[Signature]

20
21
22 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

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

FILE
JUL 02 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

FREED/MAN, INC. ERIBERTO FERNANDEZ,
and RUTH RODRIGUEZ-GARCIA,

Case No. H-8345 SF

OAH No. N2003040359

Respondents

**FIRST CONTINUED
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, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **TUESDAY -- AUGUST 28, 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 2, 2003

By

DEPARTMENT OF REAL ESTATE

David B. Seals
DAVID B. SEALS, Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

JUN 04 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By Shelly Elzy

FREED/MAN, INC., ERIBERTO FERNANDEZ,
and RUTH RODRIGUEZ-GARCIA,

Case No. H-8345 SF

OAH No. N-2003040359

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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **MONDAY--JUNE 30, 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.

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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: JUNE 4, 2003

DEPARTMENT OF REAL ESTATE
By David B. Seals
DAVID B. SEALS,, Counsel

flax

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

FILED
MAR 03 2003

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

DEPARTMENT OF REAL ESTATE

By Jean Dumond

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 FREED/MAN, INC., ERIBERTO) No. H-8345 SF
13 FERNANDEZ, and RUTH) ACCUSATION
14 RODRIGUEZ-GARCIA,)
15 Respondents.)

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California for cause of
18 Accusation against FREED/MAN, INC. (hereinafter "Respondent
19 FREED/MAN"), ERIBERTO FERNANDEZ (hereinafter "Respondent
20 FERNANDEZ"), and RUTH RODRIGUEZ-GARCIA (hereinafter "Respondent
21 RODRIGUEZ-GARCIA"), is informed and alleges as follows:

22 I

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

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II

Respondent FREED/MAN is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereinafter "Code") as a corporate real estate broker dba Century 21 South Valley Properties.

III

Respondent FERNANDEZ is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate broker and at all times relevant herein was the designated officer of Respondent FREED/MAN.

IV

Respondent RODRIGUEZ-GARCIA is licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as a real estate salesperson.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent FREED/MAN, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent FREED/MAN committed such act or omissions while engaged in furtherance of the business or operation of Respondent FREED/MAN and while acting within the course and scope of their corporate authority and employment.

VI

On or about March 13, 2002, Respondent RODRIGUEZ-GARCIA obtained a check for \$6,500 from Armando Beas (hereinafter

1 "Buyer") made payable to "title" and attached a copy of said
2 check to an offer to purchase the real property located at 10340
3 New Ave., Gilroy 95020.

4 VII

5 The offer to purchase agreement provided, in pertinent
6 part, that "... BUYER HAS GIVEN A DEPOSIT TO THE AGENT SUBMITTING
7 THE OFFER ... \$6,500.00 ... which shall be held uncashed until
8 Acceptance and then deposited within 3 business days after
9 Acceptance or ... with Escrow Holder." The offer was accepted on or
10 about March 17, 2002.

11 VIII

12 Seller's check for \$6,500.00 was not deposited within 3
13 business days of acceptance nor was it ever received by the
14 escrow holder.

15 IX

16 Respondent RODRIGUEZ-GARCIA failed to deliver the check
17 to her broker, or to the custody of the broker's principal, or to
18 a neutral escrow depository or into the broker's trust fund
19 account in violation of Section 10145(c) of the Code.

20 X

21 At all times mentioned herein, Respondent FERNANDEZ
22 failed to exercise reasonable supervision over the activities of
23 Respondents FREED/MAN and RODRIGUEZ-GARCIA, and permitted,
24 ratified and/or caused the conduct described above. Respondent
25 FERNANDEZ failed to reasonably or adequately review, oversee,
26 inspect and manage the personnel and activities of Respondents
27 FREED/MAN and RODRIGUEZ-GARCIA, and/or to establish reasonable

1 policies, rules, procedures and systems for such review,
2 oversight, inspection and management.

3 XI

4 The acts and/or omissions of Respondents RODRIGUEZ-
5 GARCIA, FREED/MAN and FERNANDEZ described above are grounds for
6 the revocation or suspension of the license of Respondent
7 RODRIGUEZ-GARCIA under Sections 10177(g) and 10145(c) in
8 conjunction with Section 10177(d) of the Code and are grounds for
9 the revocation or suspension of the licenses of Respondent
10 FERNANDEZ under Section 10177(h) of the Code and Section 10145(a)
11 and 2725 of the Regulations in conjunction with Section 10177(d)
12 of the Code and are grounds for the revocation or suspension of
13 the licenses of Respondent FREED/MAN under Section 10145(a) in
14 conjunction with Section 10177(d) of the Code.

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

22
23 
24 LES R. BETTENCOURT
Deputy Real Estate Commissioner

25 Dated at Oakland, California,
26 this 25th day of February, 2003.