

FILED

JAN 25 2003

DEPARTMENT OF REAL ESTATE

By Laurie A. Gunn

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )  
MICHAEL LYN FREIBURGER, ) NO. H-27145 LA  
Respondent. )

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 16, 1997, a Decision was rendered herein revoking the real estate broker license of Respondent, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on January 29, 1998.

On January 22, 2002, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered the petition of Respondent and the evidence and arguments in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to

1 my satisfaction that Respondent meets the requirements of law for  
2 the issuance to Respondent of an unrestricted real estate broker  
3 license and that it would not be against the public interest to  
4 issue said license to Respondent.

5 NOW, THEREFORE, IT IS ORDERED that Respondent's  
6 petition for reinstatement is granted and that a real estate  
7 broker license be issued to Respondent, if Respondent satisfies  
8 the following conditions within nine months from the date of this  
9 Order:

10 1. Submittal of a completed application and payment of  
11 the fee for a real estate broker license.

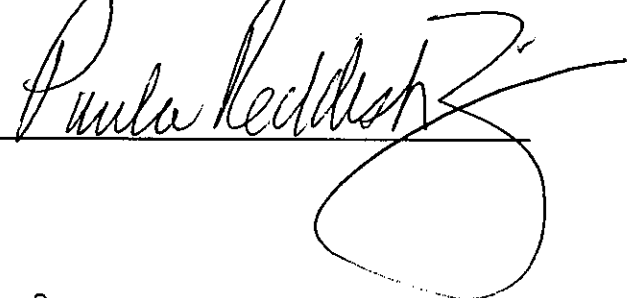
12 2. Submittal of evidence of having, since the most  
13 recent issuance of an original or renewal real estate license,  
14 taken and successfully completed the continuing education  
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
16 for renewal of a real estate license.

17 3. Submittal of proof satisfactory to the Commissioner  
18 of having taken and completed the trust fund accounting and  
19 handling course specified in paragraph (3), subdivision (a) of  
20 Section 10170.5 of the Business and Professions Code.

21 This Order shall be effective immediately.

22 DATED: January 22, 2003.

23 PAULA REDDISH ZINNEMANN  
24 Real Estate Commissioner

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SACTO

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DEPARTMENT OF REAL ESTATE

By [Signature]

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	
MICHAEL LYN FREIBURGER,	)	NO. H-27145 LA
dba Carlsbad Capital Group,	)	L-1997 050 133
Respondent.	)	

DETERMINATION ON PETITION FOR RECONSIDERATION

On October 16, 1997, a Decision was rendered by the Real Estate Commissioner. Said Decision became effective on December 15, 1997. As such, Respondent's Petition for Reconsideration was denied by operation of law. Irrespective of that fact, I have reviewed the Petition for Reconsideration filed by Respondent Freiburger on December 2, 1997, for the limited purpose of determining whether the disciplinary action imposed against Respondent Freiburger by said Decision should have been reduced. I have considered that petition, and it is my determination that the disciplinary action imposed against Respondent would have

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1 remained unchanged and unmodified from that provided for in the  
2 Decision of October 16, 1997.

3 DATED: December 22, 1997

4 JIM ANTT, JR.  
5 Real Estate Commissioner

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8 BY: John R. Liberator  
9 Chief Deputy Commissioner

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1 JAMES R. PEEL, Counsel  
2 Department of Real Estate  
3 107 South Broadway, Room 8107  
4 Los Angeles, California 90012

5 (213) 897-3937

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8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \*

11 In the Matter of the Accusation of ) NO. H-27145 LA  
12 )  
13 MICHAEL LYN FREIBURGER, )  
14 dba Carlsbad Capital Group, )  
15 ) COMPLAINANT'S ARGUMENT  
16 )  
17 Respondents. )  
18 )  
19 )  
20 )  
21 )  
22 )

23 Respondent is licensed as a broker and was the  
24 responsible broker for Carlsbad Capital Group. Respondent  
25 solicited borrowers and lenders and negotiated loans for others.  
26 The audit performed during the period January 17, 1997 to January  
27 28, 1997 examined the accounting and other records of respondent  
for the period January 1, 1996 to December 31, 1996.

Respondent has been a licensed agent and broker for 25  
years. Respondent has admitted to all the Department's enumerated  
violations. There has been no showing of fraud or deceit. Errors  
were made but they were remedied. Respondent expressed anger  
about being required to perform continuing education and pay for a



1 chargeable audit. Respondent is of the opinion that audit fees  
2 are excessive.

3 Respondent clearly breached his duties to the Department  
4 and to the public. The violations, taken together, constitute a  
5 material violation of the real estate law. Respondent did not  
6 perform his duties adequately, and is uninformed about many  
7 important regulations.

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10 DATED: DEC. 10, 1997

11  
12 Respectfully submitted

13 James R. Peel  
14 JAMES R. PEEL  
15 Counsel

16 JP:rd  
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**FILED**  
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DEPARTMENT OF REAL ESTATE

*Laura B. Orma*

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of ) NO. H-27145 LA  
MICHAEL LYN FREIBURGER, ) L-1997050133  
dba Carlsbad Capital Group, )  
Respondent. )

ORDER STAYING EFFECTIVE DATE

On October 16, 1997, a Decision was rendered in the above-entitled matter to become effective November 13, 1997.

IT IS HEREBY ORDERED that the effective date of the Decision of October 16, 1997 is stayed for a period of 30 days.

The Decision of October 16, 1997, shall become effective at 12 o'clock noon on December 15, 1997.

DATED: 13 Nov 97

JIM ANTT, JR.  
Real Estate Commissioner

BY: *Randolph Brendia*  
RANDOLPH BRENDIA  
Regional Manager

lbo

*5/21/76  
(2)*

**FILED**  
OCT 24 1997

DEPARTMENT OF REAL ESTATE

By *[Signature]*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of )

MICHAEL LYN FREIBURGER, )  
dba Carlsbad Capital Group, )

Respondent(s). )

No. H-27145 LA

L-1997050133

DECISION

The Proposed Decision dated September 11, 1997,  
of the Administrative Law Judge of the Office of  
Administrative Hearings, is hereby adopted as the Decision  
of the Real Estate Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock  
noon on Thursday November 13, 1997.

IT IS SO ORDERED 10/16/97

JIM ANTT, JR.  
Real Estate Commissioner

*[Signature]*



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the ) Case No. H-27145 LA  
Accusation Against: )  
 ) OAH No. L-1997050133  
MICHAEL LYN FREIBURGER, )  
dba Carlsbad Capital Group, )  
 )  
Respondent. )  
\_\_\_\_\_ )

PROPOSED DECISION

On August 14, 1997, in San Diego, California, Myrna Bryn Pascual, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

James R. Peel, Staff Counsel, represented complainant. Michael Lyn Freiburger, respondent, represented himself. Evidence was received, all arguments were heard, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

On April 9, 1997, Thomas McCrady, acting in his official capacity as Deputy Real Estate Commissioner (complainant), filed Accusation No. H-27145 LA against respondent, Michael Lyn Freiburger. Respondent filed a timely Notice of Defense and this hearing ensued.

II

Respondent is individually licensed by the Department of Real Estate (hereinafter "Department") as a broker under license #00457585 that was issued February 27, 1997 and which expires on February 26, 2001. The previous license expired February 26, 1997. As of February 27, 1997, respondent's main office address and mailing address was 2945 Harding Street, Suite #202, Carlsbad, CA

92008. Respondent indicated to the Department that he was doing business as Carlsbad Capital Group (hereinafter "CCG"). The branch office at 9784 Shriner Circle, Fountain Valley, CA 92708 was canceled on February 27, 1997.

### III

Respondent was the responsible broker for the business of CCG which conducted its activities at 2446 State Street, Suite G, in Carlsbad, CA. CCG is in the business of soliciting borrowers and lenders in connection with loans which are secured by liens on real property. In 1996, CCG processed loans totaling over eight million dollars.

CCG is owned and operated by Christian Haney, with James Haney, his father, as its manager. It conducts its activities at respondent's branch office at 2945 Harding Street, Suite 202, in Carlsbad, CA. Respondent uses the business name "Freiburger Realty & Investment Co."

Respondent solicited borrowers and lenders and negotiated loans for others. As of January 28, 1997, respondent maintained the following trust account for CCG's activities: Checking account #004-107306, with Capital Bank of North County at 300 Carlsbad Village Drive, Suite 107, Carlsbad, CA 92006, in the name of Christian Haney DBA Carlsbad Capital Group Trust Account, with Christian Haney and James E. Haney as signatories. Only one signature was required for withdrawals.

The Department performed an audit of the activity of the trust account described above. The audit reviewed bank statements, canceled checks, control record, and bank signature card for the trust account. It also reviewed loan files, loan log, license certificates and broker-salesperson agreements. The audit, conducted during the period January 17, 1997 to January 28, 1997, examined the accounting and other records of respondent for the period January 1, 1996 to December 31, 1996.

The trust account was opened on April 1, 1996 for handling of credit report fees and appraisal fees. Since its opening, only two to three trust fund transactions occurred in the trust account. Broker's funds, such as commissions, were deposited in the trust account as well.

IV

The Department performed a bank reconciliation on the trust account using the date of December 31, 1996. A comparison of the adjusted bank balance was made with the corresponding trust fund liability.

The trust account showed a shortage of \$109.41, caused mainly by a \$100 check written from the account to Sheila Aninipok. James Haney testified at the hearing that the \$100, intended to pay for appraisal fees, was originally placed into CCG's general account because there was no trust account at the time. There was no corresponding deposit into the trust account, after the trust account was created. The other \$9.41 were bank charges that were charged to the account because no separate funds were used to start the account.

Complainant has proven that respondent violated section 10145(a) of the California Business and Professions Code and Regulation 2832.1. Respondent held funds belonging to others and did not accurately maintain trust account #004107306. On December 31, 1996, there was a shortage in the amount of \$109.14.

V

The Department's audit also showed that as of December 31, 1996, the trust account was maintained by respondent as the responsible broker, but respondent was not named in the account as trustee. The trust account was named, "Christian Haney DBA Carlsbad Capital Group Trust Account." The trust account should simply name Freiburger as Trustee.

Complainant has proven that on December 31, 1996, respondent violated California Code of Regulations 2832 by failing to name properly the trust funds he maintained. The trust account must be properly named to avoid misleading customers and the public.

Respondent explained that he closed the trust account in January 1997. He said that his business did not usually require up front fees or costs from customers so it was not needed. In the future, if respondent maintains a trust account, respondent must comply with each of the provisions of Section 10145(d) of the California Business and Professions Code, including specifying the

name of the responsible broker as trustee of the account's beneficiaries.

## VI

Respondent's documentation and record keeping with regard to its trust account, for the period January 1, 1996 to December 31, 1996, were deficient. The columnar record for the trust accounts did not contain dates when funds were received. Separate records for each beneficiary or transaction were not maintained. Monthly reconciliations were not performed, and thus, respondent's liability to each beneficiary was not reconciled with the record of trust funds received and disbursed from the trust account.

Complainant has proven that respondent violated California Code of Regulations sections 2831, 2831.1 and 2831.2 by respondent's failure to keep documentation and records of activities of his trust fund account.

## VII

In March 1996, respondent accepted \$100 in appraisal fees from a borrower, Sheila Aninipok. The funds were not deposited into the trust account. Respondent explained that they rarely accepted any funds for costs from customers and that, in the case of Aninipok, the trust account had not yet been created. However, when Aninipok was refunded her \$100, the \$100 came from the trust account. There were no separate records for the Aninipok funds.

From the above, complainant has proven that respondent failed to deposit appraisal fees of a borrower into the trust account and violated Business and Professions Code Section 10145(a) requiring a broker to deposit funds belonging to others into a trust fund account.

## VIII

Respondent maintained only one trust account, #004107306, as described above. It was opened on April 1, 1996, and it has only two signatories, Christian Haney and James Haney. There was no written document signed by respondent authorizing them to be signatories on the account. Respondent explained he did not do so because he did not know of this requirement. Even James Haney

stated that he thought the trust account was his own trust account and that when he signed on the checks respondent was not, at times, available. This explained why respondent was not a signatory and why other monies were commingled into the trust account.

Complainant has proven that respondent violated California Code of Regulation Section 2834 in that the trust account signatories were not specifically authorized in writing by respondent to sign for the trust account withdrawals.

#### IX

On or about October 1996, respondent, through CCG, was involved in offering real estate loan refinancing for owners of La Costa Hills, a development of approximately 175 condominiums north of San Diego. CCG sent a letter, dated October 21, 1996, to the condominium owners offering them refinancing plans and asking \$400 in advance to proceed with the refinancing. A "Client Authorization and Consent Form" was attached to the solicitation letter, as well as an "Authorization to Disclose Credit Information" form. The nonrefundable \$400 included a \$100 application fee, with the remaining \$300 as costs for a credit report and appraisal. The letter was mailed out in October 1996, but respondent and the Haney's claim that CCG never received monies and responses directly from the owners.

Complainant has proven that respondent violated California Code of Regulation Section 2970. Respondent utilized a written advance fee form to solicit advance fees without first obtaining approval of the form and review of the solicitation material from the Department. Respondent should have obtained such prior approval so that the public can be given accurate information and adequate protection from improper fees.

#### X

The Department examined the customer loan files of CCG during the period January 1, 1996 to December 31, 1996. Required mortgage loan disclosure statements were not in various loan files of borrowers. Respondent failed to give borrowers, namely, Iseman, Covell, Frisenda, Gray, Mullen, and Barnes, with the required disclosure statement. Respondent explained that the loan disclosure was not signed by the borrowers within three days of

authorization to proceed with their loans because the form was computer generated and mailed to them. Some of the borrowers never returned the form. The Department found, in particular, an unsigned disclosure statement in the loan files of "Allan." Respondent only explained that "from now on" he would get signed mortgage loan disclosure statements from borrowers.

Complainant has proven that respondent violated California Business and Professions Code Section 10240. Respondent failed to furnish certain borrowers with the required disclosure statement.

#### XI

Respondent did business as and used the name "Freiburger Realty & Investment, Co." However, he did not file a fictitious business name statement stating that he did business as Freiburger Realty & Investment Company. That name is not licensed as a fictitious business name with the Department.

Complainant has proven that respondent violated California Code of Regulations Section 2731 by using an unlicensed fictitious business name.

#### XII

Respondent testified that in July 1996, he closed the office branch located at 9784 Shriner Circle, Fountain Valley, CA. However, he did not inform the Department until February 1997.

Complainant has proven that respondent violated California Code of Regulations Section 2715 by failing to inform the Department of his correct office locations.

#### XIII

In May 1993, an individual named Roxann Ellison became involved in real estate sales activity under respondent's broker license. Ellison was a salesperson licensee, #01006912, but not a licensed employee for respondent according to the Department's licensing records. Respondent explained that Ellison did work with him on a sales transaction, but the transaction never closed. He did not see her on a daily basis. He said he did not inform the Department because he was unable to contact her and because

Ellison's license expired January 1997, making the task now unnecessary.

Complainant has proven that respondent violated California Business and Professions Code Section 10161.8 by failure to notify the Department of employment of salesperson Roxann Ellison in May 1993.

#### XIV

At the hearing, respondent explained that he has been a licensed agent and broker with the Department for 25 years. He holds no other vocational or professional license. The only other work in which he was involved was ownership of a restaurant. He did that for only four years, approximately twenty years ago. Although respondent admitted to all of the Department's enumerated violations, respondent claimed there was no fraud or deceit. He said errors were made, but they were remedied. He claimed the problems have been resolved. He urged the Department to "find the real bad guys." He said Freiburger Realty and CCG have computers now in place and have "cleaned up their act."

Initially, he appeared to be conciliatory, able to take corrective activity, and willing to cooperate with the Department. However, when the Department mentioned continuing education and payment of audit costs, respondent became dramatically loud and upset. He said he is not the bad guy. He even questioned how he became audited. He said he sees "no benefit in the schooling requirement." He also remarked that audit fees are terribly excessive.

Respondent clearly breached his duties to the Department and to the public. Even more important, he breached fiduciary duties relating to trust accounts. Even though he has closed the trust account, he had no knowledge as to its use, proper application and maintenance. The violations of the regulations, viewed separately, may seem minor, but their import is significant. The regulations send out the message that when you deal with the real estate dealing public you must be accurate and adhere to specific rules. Monies in trust accounts must be dealt with carefully. Respondent did not heed his duties, and he blissfully ignored the Department's rules. He demonstrated the attitude that if rules were broken, all he had to do was to correct them after he is told

of the violation. He evidenced conduct which necessitates correction and review. As a broker in the business of soliciting borrowers and lenders for loans, he has shown that he did not know his obligations and, without continuing education of his duties, cannot be entrusted with funds from the public. Even though respondent's conduct was not fraudulent nor deceitful, the real estate dealing public requires full protection and requires the Order outlined below.

#### DETERMINATION OF ISSUES

##### I

Cause was established, as set forth in Findings III, IV, VI, and VII, to discipline respondent's license pursuant to California Business and Professions Code Sections 10177(d) and 10177(g) for violation of California Business and Professions Code Section 10145(a) and for violation of Title 10, California Code of Regulations, Section 2832.1 by maintaining a shortage in trust account #004107306, as of December 31, 1996, in the amount of \$109.14.

##### II

Cause was established, as set forth in Findings III, IV, VI, and VII, to discipline respondent's license pursuant to Business and Professions Code Sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2831 by failure of the columnar records to include the dates when trust funds were received.

##### III

Cause was established, as set forth in Findings III, IV, VI and VII, to discipline respondent's license pursuant to California Business and Professions Code sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2831.1 by not maintaining trust account #004107306 properly in failing to have a record for each beneficiary or transaction.

##### IV

Cause was established, as set forth in Findings III, IV, VI



and VII, to discipline respondent's license pursuant to California Business and Professions Code sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2831.2 by failing to maintain monthly reconciliations of trust account #004107306 and by failing to reconcile separate records with the columnar record.

V

Cause was established, as set forth in Findings III and V, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2832 by not using the broker's name as trustee for trust account #004107306.

VI

Cause was established, as set forth in Findings III and VII, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of California Business and Professions Code Section 10145(a) by failing to deposit appraisal fees of borrower Aninipok into a trust account.

VII

Cause was established, as set forth in Findings III and VIII, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2834, by failing to have written authorization of respondent to trust account #004107306 bank signatories to sign for trust account withdrawals.

VIII

Cause was established, as set forth in Findings III and IX, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2970, by utilizing a written advance fee form to solicit advance fees which did not have prior approval from the California Department of Real Estate.

IX

Cause was established, as set forth in Findings III and X, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of California Business and Professions Code Section 10240, by failing to furnish borrowers, namely, Iseman, Rovell, Frisenda, Gray, Mullen, and Barnes, with the required disclosure statement.

X

Cause was established, as set forth in Findings II and XI, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of Title, California Code of Regulations, Section 2731, by using the unlicensed fictitious business name "Freiburger Realty & Investment, Co.," in respondent's real estate brokerage business.

XI

Cause was established, as set forth in Findings II and XII, to discipline respondent's license pursuant to Business and Professions Code sections 10177(d) and 10177(g) for violation of Title 10, California Code of Regulations, Section 2715 by failing to notify the California Department of Real Estate when respondent closed its branch office located at 9784 Shriner Circle, Fountain Valley, CA, in July 1996.

XII

Cause was established, as set forth in Finding XIII, to discipline respondent's license pursuant to Business and Professions Code Section 10177(d) and 10177(g) for violation of California Business and Professions Code Section 10161.8 by failing to notify the California Department of Real Estate when respondent employed salesperson Roxann Ellison in May 1993.

XIII

In determining the nature of the discipline to impose, consideration is given to the importance of the responsibilities of a licensed broker, especially those relating to obtaining advance fees from clients and accurately maintaining and

accounting for client trust funds.

ORDER

All licenses and licensing rights of respondent MICHAEL LYN FREIBURGER under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued respondent pursuant to Section 10156.5 of the Business and Profession Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for sixty (60) days from the date of issuance of said restricted license.
2. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.
3. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
4. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

5. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

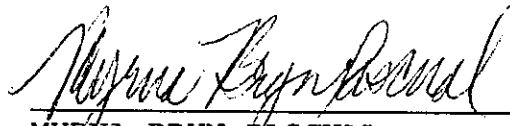
6. Respondent shall, within nine (9) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to the protect the public interest. Such reports may include, but shall not be limited to periodic independent accounting of trust funds in the custody and control of respondent and periodic summaries of salient information concerning each real estate transaction or property management activity in which the respondent engaged during the period covered by the report.

8. Pursuant to Section 10148 of the California Business and Professions Code, respondent shall pay the Commissioner's reasonable cost for an audit to determine if respondent has corrected the violations found in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII of the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all Department of Real Estate Audit Personnel, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such cost within 45 days of receiving an invoice from the

Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, suspend the restricted license issued to respondent pending a hearing, for a period in addition to the sixty (60) days mentioned in paragraph 1 above, held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until respondent enters into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

Dated: September 11, 1997



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MYRNA BRYN PASCUAL

Administrative Law Judge

Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
MAY 29 1997  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of  
MICHAEL LYNN FREIBURGER

}

By *K. Mederichs*

Case No. H-27145 LA

OAH No. L-1997050133

Respondent

**NOTICE OF HEARING ON ACCUSATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at \_\_\_\_\_  
Office of Administrative Hearings, 1350 Front Street, Room 6022  
San Diego, CA 92101

on August 14, 1997, at the hour of 9:00 a.m.,  
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: May 29, 1997

By *James R. Peel*  
Counsel

cc: Michael Lynn Freiburger  
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JAMES R. PEEL, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
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**FILED**  
APR - 9 1997  
DEPARTMENT OF REAL ESTATE  
  
By *K. Krieger*

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of ) No. H-27145 LA  
)  
MICHAEL LYN FREIBURGER, ) A C C U S A T I O N  
dba Carlsbad Capital Group, )  
)  
Respondent. )  
\_\_\_\_\_ )

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against MICHAEL LYN FREIBURGER, alleges as follows:

I

The Complainant, Thomas McCrady, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against MICHAEL LYN FREIBURGER.

II

MICHAEL LYN FREIBURGER (hereinafter referred to as respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code").

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III

At all times herein mentioned, respondent was licensed by the Department of Real Estate (hereinafter Department) as a real estate broker.

IV

At all times herein mentioned, respondent on behalf of others in expectation of compensation, engaged in the business, 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(d) of the Code, including soliciting borrowers and lenders and negotiating loans secured directly by liens on real property.

V

During 1996, in connection with the aforesaid real estate brokerage activities, respondent accepted or received funds from borrowers and lenders and thereafter made disbursements of such funds. During this time, respondent maintained trust account No. 004107306 at Capital Bank of North County, which was used for the receipt and disbursement of trust funds.

VI

In connection with respondent's activities as a real estate broker as described above, respondent acted in violation of the Real Estate Law, Business and Professions Code (hereinafter Code), and California Code of Regulations (hereinafter Regulations), Title 10, Chapter 6, as follows:



1  
2 1. Violated Section 10145(a) of the Code and Regulation  
3 2832.1 by maintaining a shortage in trust account No. 004107306 as  
4 of December 31, 1996, in the amount of \$109.14.

5 2. Violated Regulation 2831 in that the columnar record  
6 did not include the dates the trust funds were received.

7 3. Violated Regulation 2831.1 in that a record for each  
8 beneficiary or transaction was not maintained for the trust  
9 account.

10 4. Violated Regulation 2831.2 in that respondent failed  
11 to maintain monthly reconciliations. The separate records were  
12 not reconciled with the columnar record.

13 5. Violated Regulation 2832 in that the trust account  
14 was not in the broker's name as trustee.

15 6. Violated Section 10145(a) of the Code by failing to  
16 deposit appraisal fees of borrower Aninipok into a trust account.

17 7. Violated Regulation 2834 in that trust account  
18 signatories were not specifically authorized in writing by  
19 respondent to sign on the trust account.

20 8. Violated Regulation 2970 by using a written advance  
21 fee form to solicit advance fees which did not have prior approval  
22 from the Department of Real Estate.

23 9. Violated Section 10240 of the Code by failing to  
24 furnish borrowers Iseman, Rovell, Frisenda, Gray, Mullen, and  
25 Barnes with the required disclosure statement.

26 10. Violated Regulation 2731 by using the unlicensed  
27 fictitious business name "Freiburger Realty & Investment, Co." in  
respondent's real estate brokerage business.

1  
2 11. Violated Regulation 2715 by failing to notify the  
3 Department of Real Estate upon closing the branch office at 9784  
4 Shriner Circle, Fountain Valley, in July, 1996.

5 12. Violated Section 10161.8 of the Code by failing to  
6 notify the Department of Real Estate upon employment of  
7 salesperson Roxann Ellison in May 1993.

8 VII

9 The conduct of respondent, as alleged above, subjects  
10 respondent's real estate licenses and license rights to suspension  
11 or revocation pursuant to Sections 10177(d) and 10177(g) of the  
12 Code.

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

20 Dated at Los Angeles, California  
21 this 9th day of April, 1997.

22  
23 THOMAS MC CRADY

24 Deputy Real Estate Commissioner

25  
26  
27 cc: Michael Lyn Freiburger  
Sacto  
PI