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Department of Real Estate
State Bar No. 66674
107 South Broadway, Room 8107
Los Angeles, California 90012

(213) 897-3937

FILED
FEB 23 1999
DEPARTMENT OF REAL ESTATE

By *K. Niederhold*

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	DRE NO. H-27799 LA
LINCOLN RESIDENTIAL SERVICES, INC.)	
and LAWRENCE ALAN SCOTT,)	
individually and as)	<u>STIPULATION AND AGREEMENT</u>
designated officer of,)	
Lincoln Residential Services, Inc.,)	
)	
)	
Respondents.)	

It is hereby stipulated by and between LINCOLN RESIDENTIAL SERVICES, INC. and LAWRENCE ALAN SCOTT, individually and as designated officer of Lincoln Residential Services, Inc., (sometimes collectively referred to as Respondents), and the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on August 20, 1998, in this matter:

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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act (APA), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement (Stipulation).

8 2. Respondents have received, read and understand the
9 Statement to Respondent, the Discovery Provisions of the APA and
10 the Accusation filed by the Department of Real Estate in this
11 proceeding.

12 3. Respondents filed a Notice of Defense pursuant to
13 Section 11506 of the Government Code for the purpose of requesting
14 a hearing on the allegations in the Accusation. Respondents
15 hereby freely and voluntarily withdraw said Notice of Defense.
16 Respondents acknowledge that they understand that by withdrawing
17 said Notice of Defense they thereby waive their right to require
18 the Commissioner to prove the allegations in the Accusation at a
19 contested hearing held in accordance with the provisions of the
20 APA and that they will waive other rights afforded to them in
21 connection with the hearing such as the right to present evidence
22 in their defense the right to cross-examine witnesses.

23 4. This Stipulation is based on the factual allegations
24 contained in the Accusation. In the interest of expedience and
25 economy, Respondents choose not to contest these allegations, but
26 to remain silent and understand that, as a result thereof, these
27 factual allegations, without being admitted or denied, will serve



1 as a prima facie basis for the disciplinary action stipulated to
2 herein. The Real Estate Commissioner shall not be required to
3 provide further evidence to prove said factual allegations.

4 5. This Stipulation is based on Respondents' decision
5 not to contest the allegations set forth in the Accusation as a
6 result of the agreement negotiated between the parties. This
7 Stipulation is expressly limited to this proceeding and any
8 further proceeding initiated by or brought before the Department
9 of Real Estate based upon the facts and circumstances alleged in
10 the Accusation for the sole purpose of reaching an agreed
11 disposition of this proceeding without a hearing. The decision of
12 Respondents not to contest the allegations is made solely for the
13 purpose of effectuating this Stipulation. It is the intent and
14 understanding of the parties that this Stipulation shall not be
15 binding or admissible against Respondents in any actions against
16 Respondents by third parties.

17 6. It is understood by the parties that the Real Estate
18 Commissioner may adopt this Stipulation as his Decision in this
19 matter thereby imposing the penalty and sanctions on Respondents'
20 real estate licenses and license rights as set forth in the
21 "Order" herein below. In the event that the Commissioner in his
22 discretion does not adopt the Stipulation, it shall be void and of
23 no effect and Respondents shall retain the right to a hearing and
24 proceeding on the Accusation under the provisions of the APA and
25 shall not be bound by any stipulation or waiver made herein.

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1 and 10177(h) of the Code..The following Order shall be applicable to the
2 Laurel Springs development in Lompoc, Ca only.

3 ORDER

4 WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT TO THE
5 WRITTEN STIPULATION OF THE PARTIES:

6 I

7 All licenses and licensing rights of Respondents LINCOLN
8 RESIDENTIAL SERVICES, INC. and LAWRENCE ALAN SCOTT under the Real
9 Estate Law are suspended for a period of sixty (60) days from the
10 effective date of this Decision; provided, however, that all sixty
11 (60) days of said suspensions shall be stayed for two (2) years
12 upon the following terms and conditions:

- 13 1. Respondents shall obey all laws, rules and
14 regulations governing the rights, duties and
15 responsibilities of a real estate licensee in the State
16 of California; and
- 17 2. That no final subsequent determination be made,
18 after hearing or upon stipulation, that cause for
19 disciplinary action occurred within two (2) years of the
20 effective date of this Decision. Should such a
21 determination be made, the Commissioner may, in his
22 discretion, vacate and set aside the stay order and
23 reimpose all or a portion of the stayed suspension.
24 Should no such determination be made, the stay imposed
25 herein shall become permanent.

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II

Pursuant to Section 10148 of the Code, Respondents, or either of them shall pay the Commissioner's reasonable cost for an audit to determine if Respondents are in compliance with the Real Estate Law. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Respondents shall pay such cost, not to exceed \$2,600, 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 suspend the license issued to either Respondent pending a hearing 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 Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter 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: 10-27-98

Elliott Mac Lennan
ELLIOTT MAC LENNAN
Counsel for Complainant

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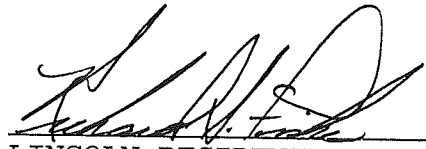
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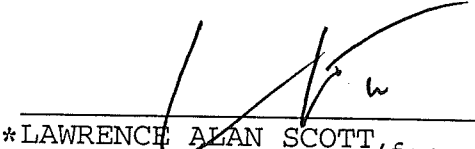
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We have read the Stipulation and Agreement and its terms are understood by us and are agreeable and acceptable to us. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we 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 we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

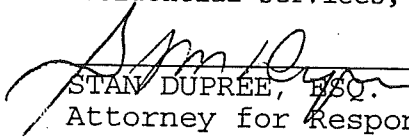
DATED: 12/98


LINCOLN RESIDENTIAL SERVICES, INC.
Respondent,
BY: Richard I. Fisher

DATED: 1/20/99


*LAWRENCE ALAN SCOTT, former
individually and as a designated
officer of Lincoln Residential
Services, Inc., Respondent
*No Longer affiliated with Lincoln
Residential Services, Inc.

DATED: 1/20/99


STAN DUPREE, ESQ.
Attorney for Respondents

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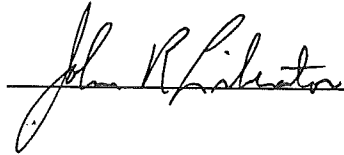
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The foregoing Stipulation and Agreement is hereby adopted
as my Decision and Order and shall become effective at 12 o'clock
noon on March 16, 1999.

IT IS SO ORDERED February 9, 1999.

JOHN R. LIBERATOR
Acting Commissioner





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I

LINCOLN RESIDENTIAL SERVICES, INC. (LRS), and LAWRENCE ALAN SCOTT (SCOTT), individually and as designated officer of Lincoln Residential Services, Inc., sometimes collectively referred to as Respondents, are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

II

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

III

At all times mentioned, LRS was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker. LRS was originally licensed on November 3, 1995.

IV

At all times mentioned, SCOTT was licensed by the Department as designated officer of LRS to qualify LRS and to act for LRS as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of LRS by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required. SCOTT was originally licensed on January 13, 1993.

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V

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

VI

At all times mentioned, in the Foster City, San Mateo County, California, LRS acted as a real estate broker within the meaning of Section 10131(b) of the Code including the operation and conduct of a property management business with the public wherein, for or in expectation of compensation, for another or others, leased or rented or offered to lease or rent, or placed for rent, or solicited listings of places for rent, or solicited for prospective tenants, or collected rents from real property, or improvements thereon.

VII

On February 6, 1998, the Department completed a field audit examination of the books and records of LRS pertaining to the activities described in Paragraph VI. The audit examination covered the period of time beginning on April 1, 1997 and ending on December 31, 1997. The audit examination revealed the following violations of the Code and the Regulations.

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VIII

At all times mentioned, in connection with the property management activities described in Paragraph VI, LRS accepted or received funds in trust (trust funds) from or on behalf of actual or prospective lessors and lessees, and thereafter made disposition of such funds. LRS maintained the following trust accounts as the depository of said funds:

"Lincoln Property Company N.C. Inc.
Agent for Laurel Springs Apartments - T/A
Account Number 120015904"
Mid-State Bank
Lompoc, California

IX

With respect to the trust funds referred to in Paragraph VIII, it is alleged that LRS:

(a) Failed to place funds, including funds received in certain property management transactions including but not limited to holding deposits from prospective tenants English, Cavazos, Rodriguez and Mayo, accepted on behalf of another into the hands of the owner of the funds, into a neutral escrow depository or into a trust fund account in the name of the broker as trustee at a bank or other financial institution not later than three business days following receipt of the funds by the broker or by the broker's salesperson, as required by Section 2832 of the Regulations; and

(b) Permitted unlicensed and unbonded persons G. Rossi, S. Leeder and N. Davis, to be authorized signatories on the trust account, in violation of Section 2834 of the Regulations.



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X

The conduct of LRS, described in Paragraph IX, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
IX(a)	Section 10145 of the Code and Section 2832 of the Regulations
IX(b)	Section 10145 of the Code and Section 2834 of the Regulations

Each of the foregoing violations separately constitutes cause for the suspension or revocation of the real estate license and license rights of LRS under Section 10177(d) of the Code.

XI

During the course of the audit examination, the Department attempted to complete a field audit examination of the books and records of LRS pertaining to the activities described in Paragraph VI, above, for the period beginning on April 1, 1997 and ending on December 31, 1997. LRS failed to produce or maintain certain records of LRS' activity during this period requiring a real estate license including copies of the holding deposits checks for six property owners English, Ruiz, Cavazos, Harris, Rodriguez, Roy and Mayo, in violation of Section 10148 of the Code.

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XIII

The overall conduct of SCOTT, constitutes a failure on his part, as officer designated by a corporate broker licensee, responsible for the supervision and control over the activities conducted on behalf of LRS by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required. This conduct is cause for the suspension or revocation of the real estate license and license rights of SCOTT pursuant to the provisions of Sections 10159.2 and 10177(h) of the Code.

XIII

The audit examination also revealed that LRS used the fictitious name of "Lincoln Residential Services," to conduct licensed activities on behalf of LRS without holding a license bearing said fictitious business name. The conduct of LRS, in failing to obtain a license for use of the aforesaid name, is in violation of Section 2731 of the Regulations and is cause to suspend or revoke LRS' real estate license and license rights under Section 10177(d) of the Code.

XIV

The overall conduct of LRS constitutes negligence or incompetence. This conduct and these violations are cause for the suspension or revocation of the real estate license and license rights of LRS under Section 10177(g) of the Code.

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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 the license and license rights of LINCOLN RESIDENTIAL SERVICES, INC., and LAWRENCE ALAN SCOTT, individually and as designated officer or Lincoln Residential Services, Inc., 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 other applicable provisions of law.

Dated at Los Angeles, California
this 20th day of August, 1998.

THOMAS MC CRADY

Deputy Real Estate Commissioner

cc Lawrence Alan Scott
c/o Lincoln Residential Services, Inc.
Sacto
CL