

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 WILLIAM A. MUNDELL
4 Chairman
5 JIM IRVIN
6 Commissioner
7 MARC SPITZER
8 Commissioner

9 In the matter of)
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MICHAEL DAVID FROMKIN
33 Center Court, Tennis Villas
Dana Pointe, California 92629,
Respondent.

DOCKET NO. S-03309A-02-0000

DECISION NO. ____ 64787 ____

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION AND ORDER FOR
ADMINISTRATIVE PENALTIES**

13 **I.**

14 **INTRODUCTION**

15 On February 21, 2002, the Securities Division (“Division”) of the Arizona Corporation
16 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order
17 for Restitution, For Administrative Penalties, and for Other Affirmative Action (“Notice”) against
18 the above Respondent. The Notice specified that the Respondent would be afforded an opportunity
19 for an administrative hearing on this matter upon filing a written request with Docket Control of
20 the Commission within ten (10) days of receipt of the Notice. MICHAEL DAVID FROMKIN
21 (“FROMKIN”) was served a copy of the Notice on February 25, 2002, by certified mail to
22 FROMKIN as permitted by A.A.C. R14-4-304. FROMKIN failed to request a hearing.

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II.**FINDINGS OF FACT**

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3 1. FROMKIN whose last known address is 33 Center Court, Tennis Villas, Dana
4 Pointe, California 92629, was an officer and/or director in the following Arizona corporations:
5 SystemXpertS, Inc., The Fromkin Group, Inc., Collegiatewear, Inc., Western States Telecom, Inc.,
6 Western States Capital Services, Inc., Western States Industries, Inc., Cactus Engineering, Inc.,
7 and Air Exhibits International. At all relevant times, FROMKIN was conducting business involving
8 the offer and sale of securities within or from the state of Arizona.

9 2. During the period of at least February 9, 1995, through October 1998, FROMKIN
10 began offering for sale and sold unregistered securities within or from the state of Arizona in the
11 form of stock issued by companies with whom he associated or formed. The investments were
12 offered through general solicitations verbally by FROMKIN. FROMKIN was not a registered
13 securities salesman or dealer in the state of Arizona. The stock was not registered for sale in the
14 state of Arizona, nor offered in reliance upon an available exemption from registration, nor
15 pursuant to a notice filing. FROMKIN failed to advise offerees and shareholders that the stock
16 was not registered for sale and that he was not a registered dealer or salesman.

17 3. FROMKIN engaged in a course of business that operated as a fraud, by offering
18 and selling unregistered stock in a FROMKIN controlled company, without providing material
19 disclosure to investors. When that company purportedly failed to produce profits, FROMKIN
20 offered to exchange the stock for unregistered stock in a new FROMKIN controlled company. In
21 offering and selling unregistered stock through his several companies, FROMKIN raised at least
22 \$225,000 from at least nine (9) investors.

23 4. In December 1994, two (2) owners of a company referred to as a “sole
24 proprietorship” called Collegiatewear entered into a business agreement with FROMKIN, in an
25 effort to get an influx of cash into the business. The company was in the business of
26 manufacturing and selling clothing items to colleges and universities. FROMKIN assisted the

1 owners in incorporating the company in December 1994, in Arizona. FROMKIN received half
2 ownership of the company in the form of 500 shares of restricted stock. FROMKIN was secretary
3 and treasurer of Collegiatewear, while the original owners became president and vice president.
4 FROMKIN then began offering Collegiatewear stock for sale.

5 5. In January 1995, FROMKIN and another individual incorporated SystemXpertS,
6 Inc. in Arizona, for the purpose of selling computer systems from a retail store in Phoenix,
7 Arizona. FROMKIN was secretary and treasurer of the company.

8 6. In February 1995, FROMKIN sold at least 250 shares of unregistered stock in
9 SystemXpertS to at least one (1) investor for \$25,000. FROMKIN told the investor that the
10 investor held a 25% interest in the company. The investor was designated as Vice President of
11 SystemXpertS.

12 7. Also in February 1995, FROMKIN sold at least 250 shares of unregistered stock
13 in Collegiatewear to at least one (1) investor for \$25,000. FROMKIN told the investor that the
14 investor held a 25% interest in the company, and would receive one-half of FROMKIN's
15 purported \$1,000 weekly salary as a return on the investment.

16 8. Within a few months, both SystemXpertS and Collegiatewear went out of
17 business. The original owners of Collegiatewear discovered that FROMKIN had not been paying
18 bills, and had not invested any money into the company as promised. Further, he had sold his
19 own restricted stock in violation of their agreement, and had emptied the corporate checking
20 account, withdrawing between \$3600 and \$3800.

21 9. In May 1995, FROMKIN incorporated Western States Telecom, Inc. ("WST") in
22 Arizona. FROMKIN was president, secretary, treasurer, and director of WST. The Fromkin
23 Group, Inc. was the principal shareholder. WST initially intended to engage in long-distance
24 telephone services.

25 10. FROMKIN told the investors who had lost their investments in SystemXpertS and
26 Collegiatewear that he would make up their loss by giving them stock in WST. In May 1995,

1 one investor received 100 shares of WST. The other investor received an “Agreement” from The
2 Fromkin Group to sell the investor 100 shares of WST at \$.05 per share for a total of \$5.00, but
3 never received a stock certificate. WST had not registered its shares for sale within or from
4 Arizona.

5 11. From around May 1995, through approximately December 1995, FROMKIN sold
6 WST stock to at least seven (7) other investors for a total of \$175,000. Some investors received a
7 summary of “the WST project” and cash flow projections. FROMKIN failed to provide offerees
8 with information on how the value of WST stock was determined. FROMKIN sold shares to
9 different individuals for varying prices.

10 12. Some investors received financial projections for an 18-month period.
11 FROMKIN told investors that he expected they would make millions. At least one (1) investor
12 received a document stating that the expected return on the investment through February 1996,
13 was 128.3%. There was no basis for such a claim. Investors were not given a prospectus, nor
14 did they receive any balance sheets, income statements, or other material information about the
15 business history of WST and its officers and directors.

16 13. FROMKIN solicited one (1) investor during a round of golf, saying that WST was
17 selling a 2% share in the company for \$25,000. FROMKIN said that the money would be used to
18 expand the company into New Mexico and Utah during 1996. FROMKIN estimated that a
19 \$25,000 investment would return \$53,500 in 1996, a profit of 114%. FROMKIN said he would
20 return all invested money if he were ever asked to do so.

21 14. FROMKIN guaranteed the investment in WST stock in writing against any loss.
22 FROMKIN wrote to some investors, promising that The Fromkin Group, Inc. pledged to
23 repurchase shares at \$250 per share during the term of ownership of the stock. In January 1995,
24 FROMKIN had incorporated The Fromkin Group, Inc. in Arizona. The initial business was to
25 purchase or otherwise acquire businesses. FROMKIN was president, CEO, director and
26

1 principal shareholder. Suzanne Fromkin, his wife, was secretary, director, and principal
2 shareholder. There were no other incorporators, officers, or directors.

3 15. Investors received monthly “dividend” checks in WST for one (1) to four (4)
4 months after investing. The checks were in amounts of \$100 to \$600. The payments then
5 stopped. When investors asked to redeem their shares under the guarantee, FROMKIN failed to
6 pay them back. FROMKIN told some investors that WST was defunct due to the actions of his
7 partner and that FROMKIN was going to sue his partner for fraud. FROMKIN told other
8 shareholders that WST’s difficulties resulted from reselling problems, along with the fact that the
9 company had been unable to open additional offices as anticipated. FROMKIN promised all the
10 investors that they would not lose their money, because FROMKIN would put them in another
11 investment.

12 16. In August 1996, FROMKIN incorporated Cactus Engineering, Inc. (“Cactus”) in
13 Arizona. FROMKIN was an incorporator and director of Cactus. Cactus was purportedly in the
14 business of “electromechanical distribution and manufacturing.” Around November 1996,
15 FROMKIN told some WST investors that he would transfer their lost WST investment to shares
16 in Cactus. Investors received no prospectus, but some investors saw a chart of financial
17 projections on the company. FROMKIN told some investors that Cactus had projected sales of
18 \$1.8 million dollars for 1997. By June 1997, FROMKIN told investors that Cactus had ceased
19 operations, there was nothing left, and that the money was gone. The stock in Cactus was
20 unregistered.

21 17. In October 1997, FROMKIN incorporated Western States Capital Services, Inc.
22 (“WSCS”), a purported financial services company, in Arizona. FROMKIN was the statutory
23 agent, secretary, director, and principal officer of WSCS. FROMKIN offered at least four (4)
24 investors in Cactus the opportunity to exchange shares for WSCS shares. WSCS stock was not
25 registered for sale in Arizona.

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1 18. In October 1998, FROMKIN incorporated Air Exhibits International (“AEI”) in
2 Arizona. FROMKIN was secretary and treasurer. AEI was purportedly a production company
3 that owned an exhibit entitled “The Spirit of Flight World Tour.” The exhibit would detail the
4 history of flight and was to open in San Francisco, California. At least two (2) investors asked
5 for their money back from their stock investments, and FROMKIN offered them stock in AEI in
6 exchange. The AEI stock was not registered for sale in Arizona. At least one (1) investor was
7 moved from WST shares to Cactus shares to AEI shares, without any consent on his part.

8 19. FROMKIN failed to provide offerees with a prospectuses or equivalent offering
9 documents containing material information about SystemXpertS, Inc., Collegiatewear, WST,
10 Cactus, or AEI. Information withheld included, but was not limited to, capitalization, a plan of
11 distribution, federal tax aspects, redemptions and risks involved in these endeavors.

12 20. FROMKIN failed to disclose information on the background of the officers and
13 key personnel, the directors or principal stockholders of the listed companies, including the
14 business backgrounds and experience of the officers and directors in setting up and operating any
15 of the listed entities. Additionally, FROMKIN failed to disclose the financial condition and
16 business histories of himself and his companies.

17 21. By continually forming new corporations, and transferring investor shares to the
18 new entity, without providing a prospectus or other material information, FROMKIN perpetrated
19 the false image that FROMKIN was a successful venture capitalist. In fact, FROMKIN was
20 engaged in a pattern of deception about his business dealings. Between 1994 and 1999,
21 FROMKIN was involved in the incorporation of no less than 31 Arizona corporations and
22 L.L.C.’s.

23 22. FROMKIN failed to disclose how investors’ funds would actually be used, and in
24 fact, gave conflicting uses to various investors. FROMKIN failed to tell offerees that some
25 investors had received shares in exchange for stock in another FROMKIN company that was
26 defunct, thereby diluting the value of all of the shares.

1 administrative penalty in the amount of \$45,000. Payment shall be made in full by cashier's check
2 or money order on the date of this Order, payable to the "State of Arizona."

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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6 CHAIRMAN

COMMISSIONER

COMMISSIONER

7 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
8 Executive Secretary of the Arizona Corporation
9 Commission, have hereunto set my hand and caused the
10 official seal of the Commission to be affixed at the
11 Capitol, in the City of Phoenix, this _____ day of
12 _____, 2002.

13 _____
14 BRIAN C. McNEIL
15 Executive Secretary

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17 _____
18 DISSENT

19 This document is available in alternative formats by contacting Shelly M. Hood, Executive
20 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
21 shood@cc.state.az.us.