

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
6

FILED  
APR 18 1994  
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 KILMER & ASSOCIATES, INC., ) NO. H-2912 SAC  
13 EARL GENE KILMER, ) STIPULATION AND AGREEMENT  
14 Respondents. ) IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between KILMER &  
16 ASSOCIATES, INC., and EARL GENE KILMER (sometimes referred to as  
17 Respondents), and the Complainant, acting by and through Susan Y.  
18 Bennett, Counsel for the Department of Real Estate, as follows,  
19 for the purpose of settling and disposing of the Accusation filed  
20 on July 13, 1993:

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

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

5           3. On July 27, 1993, Respondents filed a Notice of  
6 Defense pursuant to Section 11505 of the Government Code for the  
7 purpose of requesting a hearing on the allegations in the  
8 Accusation. Respondents hereby freely and voluntarily withdraw  
9 said Notice of Defense. Respondents acknowledge that they  
10 understand that by withdrawing said Notice of Defense they waive  
11 their right to require the Commissioner to prove the allegations  
12 in the Accusation at a contested hearing held in accordance with  
13 the provisions of the APA and that they waive other rights  
14 afforded to them in connection with the hearing such as the right  
15 to present evidence in defense of the allegations in the  
16 Accusation and the right to cross-examine witnesses.

17           4. Respondents, pursuant to the limitations set forth  
18 below, hereby admit that the factual allegations in Paragraphs 2  
19 through 8 of the Accusation filed in this proceeding are true and  
20 correct and the Real Estate Commissioner shall not be required to  
21 provide further evidence to prove such allegations.

22           5. It is understood by the parties that the Real Estate  
23 Commissioner may adopt the Stipulation and Agreement as his  
24 decision in this matter thereby imposing the penalty and sanctions  
25 on Respondents' real estate license and license rights as set  
26 forth in the below "Order". In the event that the Commissioner in  
27 his discretion does not adopt the Stipulation and the Agreement in

1 Settlement, it shall be void and of no effect, and Respondents  
2 shall retain the right to a hearing and proceeding on the  
3 Accusation under all the provisions of the APA and shall not be  
4 bound by any admission or waiver made herein.

5 6. The Order or any subsequent Order of the Real Estate  
6 Commissioner made pursuant to this Stipulation and Agreement in  
7 Settlement shall not constitute an estoppel, merger or bar to any  
8 further administrative or civil proceedings by the Department of  
9 Real Estate with respect to any matters which were not  
10 specifically alleged to be causes for accusation in this  
11 proceeding.

12 7. Respondent EARL GENE KILMER has received, read and  
13 understands the "Notice Concerning Costs of Subsequent Audits".  
14 Respondent EARL GENE KILMER understands that by agreeing to this  
15 Stipulation and Agreement in Settlement, the findings set forth  
16 below in the DETERMINATION OF ISSUES become final, and that the  
17 Commissioner may charge Respondent EARL GENE KILMER for the costs  
18 of any audit conducted pursuant to Section 10148 of the Business  
19 and Professions Code to determine if the violations have been  
20 corrected. The maximum costs of said audit will not exceed  
21 \$1,334.00.

22  
23 DETERMINATION OF ISSUES

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

I

The conduct of Respondents KILMER & ASSOCIATES, INC., and EARL GENE KILMER described in the Accusation as admitted above is grounds for the imposition of discipline on all of the real estate licenses and license rights of Respondents under the provisions of Sections 2830, 2831, 2831.1, 2831.2, 2832.1 of Title 10, California Code of Regulations, and Section 10145 of the Code in conjunction with Section 10177(d) of the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

ORDER

I

RESPONDENT KILMER & ASSOCIATES, INC.

1. All licenses and licensing rights of Respondent KILMER & ASSOCIATES, INC. under the Real Estate Law are revoked.

II

RESPONDENT EARL GENE KILMER

1. All licenses and licensing rights of Respondent EARL GENE KILMER under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions 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 Order. 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

1 the following limitations, conditions and restrictions imposed  
2 under authority of Section 10156.6 of that Code:

- 3 a. The restricted license issued to Respondent may be  
4 suspended prior to hearing by Order of the Real Estate  
5 Commissioner in the event of Respondent's conviction or  
6 plea of nolo contendere to a crime which is substantially  
7 related to Respondent's fitness or capacity as a real  
8 estate licensee.
- 9 b. The restricted license issued to Respondent may be  
10 suspended prior to hearing by Order of the Real Estate  
11 Commissioner on evidence satisfactory to the Commissioner  
12 that Respondent has violated provisions of the California  
13 Real Estate Law, the Subdivided Lands Law, Regulations of  
14 the Real Estate Commissioner or conditions attaching to the  
15 restricted license.
- 16 c. Respondent shall not be eligible to apply for the issuance  
17 of an unrestricted real estate license nor for the removal  
18 of any of the conditions, limitations or restrictions of a  
19 restricted license until one year has elapsed from the  
20 effective date of this Order.
- 21 d. Respondent, shall, within nine months from the effective  
22 date of this Order, present evidence satisfactory to the  
23 Real Estate Commissioner that Respondent has, since the  
24 most recent issuance of an original or renewal real estate  
25 license, taken and successfully completed the continuing  
26 education requirements of Article 2.5 of Chapter 3 of the  
27 Real Estate Law for renewal of a real estate license. If

1 Respondent fails to satisfy this condition, the  
2 Commissioner may order the suspension of the restricted  
3 license until the Respondent presents such evidence. The  
4 Commissioner shall afford Respondent the opportunity for a  
5 hearing pursuant to the Administrative Procedure Act to  
6 present such evidence.

7 e. Respondent shall, within six months from the effective date  
8 of this Order, take and pass the Professional  
9 Responsibility Examination administered by the Department  
10 including the payment of the appropriate examination fee.  
11 If Respondent fails to satisfy this condition, the  
12 Commissioner may order suspension of Respondent's license  
13 until Respondent passes the examination.

14 f. Pursuant to Section 10148 of the Business and Professions  
15 Code, Respondent shall pay the Commissioner's reasonable  
16 cost for an audit to determine if Respondent has corrected  
17 the trust fund violations found in Paragraph I of the  
18 Determination of Issues. In calculating the amount of the  
19 Commissioner's reasonable costs, the Commissioner may use  
20 the estimated average hourly salary for all persons  
21 performing audits of real estate brokers, and shall include  
22 an allocation for travel time to and from the auditor's  
23 place of work. Respondent shall pay such cost within 45  
24 days of receiving an invoice from the Commissioner  
25 detailing the activities performed during the audit and the  
26 amount of time spent performing those activities. The  
27 Commissioner may suspend the restricted license issued to

1 Respondent pending a hearing held in accordance with  
2 Section 11500, et seq., of the Government Code, if payment  
3 is not timely made as provided for herein, or as provided  
4 for in a subsequent agreement between the Respondent and  
5 the Commissioner. The suspension shall remain in effect  
6 until payment is made in full or until a decision providing  
7 otherwise is adopted following a hearing held pursuant to  
8 this condition.

9 February 15, 1994  
10 DATED

Susan Y. Bennett  
11 SUSAN Y. BENNETT  
12 Counsel for Complainant

13 \* \* \*

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

24 3/2/94  
DATED

Earl Gene Kilmer  
KILMER & ASSOCIATES, INC.,  
By: EARL GENE KILMER, Respondent

25 3/2/94  
26 DATED

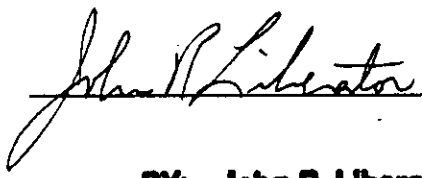
Earl Gene Kilmer  
27 EARL GENE KILMER,  
Respondent

\* \* \*

The foregoing Stipulation and Agreement for Settlement  
is hereby adopted by the Real Estate Commissioner as his Decision  
and Order and shall become effective at 12 o'clock noon on  
May 9, 1994.

IT IS SO ORDERED April 7, 1994.

CLARK WALLACE  
Real Estate Commissioner



BY: John R. Liberator  
Chief Deputy Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
AUG 17 1993  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of  
KILMER & ASSOCIATES, INC.,  
EARL GENE KILMER,

}

By Kathleen Contreras

Case No. H-2912 SAC

OAH No. N-07143

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 the  
Office of Administrative Hearings, 501 J Street, Suite 220,  
Second Floor Hearing Rooms, Sacramento, California 95814

on Thursday -- January 20, 1994, at the hour of 9:00 AM,  
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: August 16, 1993

By Susan Y. Bennett  
SUSAN Y. BENNETT  
Counsel

1 SUSAN Y. BENNETT, Counsel  
2 Department of Real Estate  
3 P. O. Box 187000  
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED  
JUL 13 1993  
DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 KILMER & ASSOCIATES, INC., )  
14 EARL GENE KILMER, )  
Respondents. )

NO. H-2912 SAC  
ACCUSATION

15 The Complainant, Charles W. Koenig, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against KILMER & ASSOCIATES, INC., (hereinafter "Respondent  
18 KILMER & ASSOCIATES") and EARL GENE KILMER (hereinafter  
19 "Respondent KILMER") is informed and alleges as follows:

20 1.

21 The Complainant, Charles W. Koenig, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Accusation in  
23 his official capacity.

24 2.

25 At all times herein mentioned, Respondent KILMER &  
26 ASSOCIATES is presently licensed and/or has license rights under  
27 the Real Estate Law (Part 1 of Division 4 of the Business and

1 Professions Code) (Code) as a real estate corporation acting by  
2 and through Respondent **KILMER**.

3 3.

4 At all times herein mentioned, Respondent **KILMER** is  
5 presently licensed and/or has licensed rights under the Code. At  
6 all times herein mentioned, Respondent **KILMER** is licensed as a  
7 real estate broker, and as the designated broker-officer for  
8 Respondent **KILMER & ASSOCIATES**.

9 4.

10 Within the three-year period immediately preceding the  
11 filing of the Accusation, Respondents **KILMER & ASSOCIATES** and  
12 **KILMER**, acting on behalf of another or others and in expectation  
13 of compensation, leased or rented, offered to lease or rent,  
14 solicited prospective tenants, or collected rents from certain  
15 real properties located in or near Fairfield, California.

16 5.

17 During the course of the property management activities,  
18 Respondents **KILMER & ASSOCIATES** and **KILMER** received and  
19 disbursed funds held in trust on behalf of another or others in an  
20 account known as Kilmer & Associates Property Management Trust,  
21 Account No. 01-5202-2, Suisun Valley Bank, Fairfield, California.  
22 Said trust fund account was not in the name of the broker as  
23 trustee.

24 6.

25 In connection with said trust account, Respondents  
26 **KILMER & ASSOCIATES** and **KILMER** received and failed to deposit  
27 and maintain said funds in said bank account or disbursed said

1 funds in such a manner that as of December 31, 1992, there was a  
2 shortage of at least \$11,339.86 of trust funds in said bank  
3 account.

4 7.

5 Respondents **KILMER & ASSOCIATES** and **KILMER** failed to  
6 obtain the prior written consent of their principal for the  
7 reduction of the aggregate balance of trust funds in said bank  
8 account to an amount less than the aggregate trust fund liability  
9 to the owners of said funds.

10 8.

11 Within the three year period immediately preceding the  
12 filing of the Accusation, in connection with the trust funds  
13 described in Paragraph 5, above, Respondents **KILMER & ASSOCIATES**  
14 and **KILMER** failed to:

15 (a) Maintain a separate record for each beneficiary or  
16 transaction, accounting therein for all said trust funds  
17 received, deposited and disbursed in conformance with  
18 Section 2831.1, Title 10, California Code of Regulations  
19 (Regulations); and,

20 (b) Maintain and perform a reconciliation with the records  
21 of all trust funds received and disbursed as required by  
22 Section 2831.1 of the Regulations, at least once a month  
23 in conformance with Section 2831.2 of the Regulations.

24 9.

25 The facts alleged above are grounds for the suspension  
26 or revocation of Respondents **KILMER & ASSOCIATES** and **KILMER**  
27 pursuant to Sections 2830, 2831, 2831.1, 2831.2, and 2832.1 of the

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Regulations and Section 10145 of the Code in conjunction with  
Section 10177(d) of the Code.

10.

In the alternative as to Respondent **KILMER**, the facts  
alleged above are grounds for the suspension or revocation of all  
licenses and license rights of Respondent **KILMER** 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 **KILMER & ASSOCIATES**  
and **KILMER** 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.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California  
this 30th day of June, 1993.