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

4 Telephone: (916) 227-0789

FILED  
FEB 17 2004

DEPARTMENT OF REAL ESTATE

By Jean Arnold

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of )	NO. H-8532 SF
12	LOIS GARNER REALTY, INC., )	
13	JOHN ELBURT HOMAN and )	<u>STIPULATION AND AGREEMENT</u>
14	ALISA RENNAE ORTIZ, )	<u>IN SETTLEMENT AND ORDER</u>
15	Respondents. )	

16 It is hereby stipulated by and between LOIS GARNER  
 17 REALTY, INC., JOHN ELBURT HOMAN and ALISA RENNAE ORTIZ,  
 18 (Respondents) and their attorney of record, Shannon B. Jones, and  
 19 the Complainant, acting by and through David B. Seals, Counsel  
 20 for the Department of Real Estate, as follows for the purpose of  
 21 settling and disposing of the Accusation filed on September 24,  
 22 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

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 October 20, 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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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 his 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 his 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 LOIS

1 GARNER REALTY, INC. under Section 10137 of the Code in  
2 conjunction with Section 10177(d) of the Code, Respondent JOHN  
3 ELBURT HOMAN under Section 10177(h) of the Code and Respondent  
4 ALISA RENNAE ORTIZ under Sections 10130 and 10131(a) of the Code  
5 in conjunction with Section 10177(d) of the Code.

6 ORDER

7 I

8 All licenses and licensing rights of Respondents LOIS  
9 GARNER REALTY, INC., JOHN ELBURT HOMAN and ALISA RENNAE ORTIZ  
10 under the Real Estate Law are suspended for a period of ninety  
11 (90) days from the effective date of this Order; provided,  
12 however, that:

13 1. Sixty (60) days of said suspension shall be stayed  
14 for two (2) years 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 two (2) years  
22 from the effective date of this Order. Should such a  
23 determination be made, the Commissioner may, in his  
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 90-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.

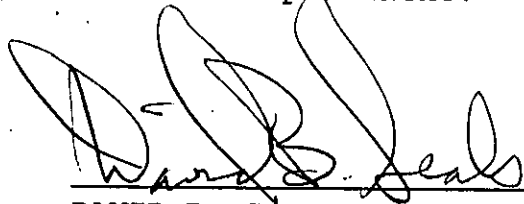
14                   B.     No further cause for disciplinary action  
15 against the Real Estate licenses of said Respondent  
16 occurs within two (2) years from the effective date of  
17 the decision in this matter.

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 two (2) years 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.

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11 DATED:

11 1/9/2004

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12 DAVID B. SEALS, Counsel  
13 DEPARTMENT OF REAL ESTATE

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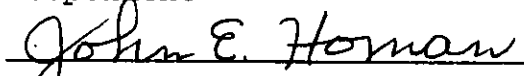
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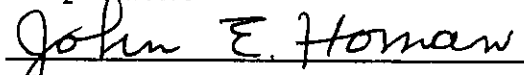
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1 \* \* \*

2 I have read the Stipulation and Agreement, have  
3 discussed it with my counsel, and its terms are understood by me  
4 and are agreeable and acceptable to me. I understand that I am  
5 waiving rights given to me by the California Administrative  
6 Procedure Act (including but not limited to Sections 11506,  
7 11508, 11509, and 11513 of the Government Code), and I willingly,  
8 intelligently, and voluntarily waive those rights, including the  
9 right of requiring the Commissioner to prove the allegations in  
10 the Accusation at a hearing at which I would have the right to  
11 cross-examine witnesses against me and to present evidence in  
12 defense and mitigation of the charges.

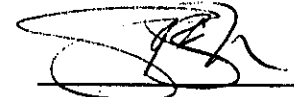
13  
14 DATED: December 22, 2003   
ALISA RENNAE ORTIZ  
Respondent

15  
16 DATED: December 16, 2003   
LOIS GARNER REALTY, INC.  
Respondent

17  
18 DATED: December 16, 2003   
JOHN ELBURT HOMAN  
Respondent

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21 \* \* \*

22 I have reviewed the Stipulation and Agreement as to  
23 form and content and have advised my clients accordingly.

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25 DATED: December 26, 2003   
Shannon B. Jones  
Attorney for Respondents


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

March 9, 2004.

IT IS SO ORDERED January 23, 2004.

  
\_\_\_\_\_  
JOHN R. LIBERATOR  
Chief Deputy Commissioner



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

**FILED**  
NOV 05 2003

DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

LOIS GARNER REALTY, INC.  
JOHN ELBURT HOMAN,  
ALISA RENNAE ORTIZ

} Case No. H-8532 SF

} OAH No. N2003110044

*Shelly El*

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*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 **WEDNESDAY--DECEMBER 17, 2003**, at the hour of **11:00 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: NOVEMBER 5, 2003

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

flag

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

FILED

SEP 24 2003

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

DEPARTMENT OF REAL ESTATE

By Jean Arund

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11	In the Matter of the Accusation of	)	No. H-8532 SF
12	LOIS GARNER REALTY, INC.,	)	<u>ACCUSATION</u>
13	JOHN ELBURT HOMAN and ALISA	)	
14	RENNAE ORTIZ,	)	
	Respondents.	)	

15 The Complainant, Les R. Bettencourt, a Deputy Real  
16 Estate Commissioner of the State of California for cause of  
17 Accusation against LOIS GARNER REALTY, INC. (hereinafter  
18 "Respondent LGR"), JOHN ELBURT HOMAN (hereinafter "Respondent  
19 HOMAN") and ALISA RENNAE ORTIZ (hereinafter "Respondent ORTIZ"),  
20 is informed and alleges as follows:

21 I

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

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1 II

2 Respondents are licensed and/or have license rights  
3 under the Real Estate Law, Part 1 of Division 4 of the California  
4 Business and Professions Code (hereinafter "Code") as follows:

5 (a) Respondent LGR as a corporate real estate broker,  
6 through Respondent HOMAN as the designated  
7 officer.

8 (b) Respondent HOMAN as a real estate broker and as the  
9 designated officer for Respondent LGR.

10 (c) Respondent ORTIZ as a real estate salesperson.

11 III

12 At all times mentioned herein, as the designated  
13 officer of Respondent LGR, Respondent HOMAN was responsible for  
14 the supervision and control of the activities conducted on behalf  
15 of Respondent LGR by its officers and employees as necessary to  
16 secure full compliance with the provisions of the Real Estate  
17 Law.

18 IV

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

27 ///

1 V

2 At all times herein mentioned, Respondent ORTIZ was in  
3 the employ of Respondent LGR.

4 VI

5 On or about April 4, 2001, Respondent ORTIZ listed the  
6 real property located at 16 Cindy Place, Brentwood (hereinafter  
7 the "Property").

8 VII

9 On or about May 12, 2001 the real estate salesperson  
10 license of Respondent ORTIZ expired.

11 VIII

12 On or about July 6, 2001 Respondent ORTIZ solicited an  
13 extension on the listing of the Property and performed other  
14 services for which a real estate license is required in  
15 relationship to her listing of the Property, including but not  
16 limited to the completing of a Real Property Transfer Disclosure  
17 Statement on the Property, until the close of escrow on the  
18 Property on or about October 17, 2001. Respondent ORTIZ was  
19 compensated for such activities by Respondent LGR. Respondent  
20 ORTIZ did not possess a real estate license during this time.

21 IX

22 On or about October 19, 2001 Respondent ORTIZ obtained  
23 a listing on the real property located at 75 Cloverleaf Circle,  
24 Brentwood. This is an activity for which a real estate license is  
25 required and was done for or in expectation of compensation.  
26 Respondent ORTIZ did not possess a real estate license at this  
27 time.

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X

On or about January 14, 2002 Respondent ORTIZ renewed her real estate salesperson license.

XI

On or about July 1, 2002 Respondent LGR was dba Alain Pinel Realtors but Respondent LGR did not hold a license bearing that fictitious name in violation of Section 2731, Title 10, California Code of Regulations (hereinafter the "Regulations").

XII

On or about July 1, 2002 Respondent LGR had a branch office located at 4421 Balfour Road, Ste. C, Brentwood but had not obtained a branch office license for that location in violation of Section 10163 of the Code.

XIII

On or about July 1, 2002 Jill Fisher was a signatory on the trust account of Respondent LGR. However, Jill Fisher was not licensed by the Department nor was there fidelity bond coverage at least equal to the minimum amount of trust funds to which she had access at the time, in violation of Section 2834 of the Regulations.

XIV

At all times mentioned herein, Respondent HOMAN failed to exercise reasonable supervision over the activities of Respondent LGR, and permitted, ratified and/or caused the conduct described above. Respondent HOMAN failed to reasonably or adequately review, oversee, inspect and manage the personnel and activities of Respondent LGR, and/or to establish reasonable

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


3 XV

4 The acts and/or omissions of Respondents described  
5 above are grounds for the revocation or suspension of  
6 Respondents' licenses under the following sections of the  
7 Business and Professions Code and the Regulations:

- 8 (a) As to Respondent LOIS GARNER REALTY, INC. under  
9 Section 10177(d) in conjunction with Sections  
10 10137 and 10163 of the Code and Sections 2731 and  
11 2834 of the Regulations;
- 12 (b) As to Respondent ALISA RENNAE ORTIZ only, under  
13 Sections 10130 and 10131(a) in conjunction with  
14 Section 10177(d) of the Code;
- 15 (c) As to Respondent JOHN ELBURT HOMAN only, under  
16 Section 10177(h) of the Code and Section 2725 of  
17 the Regulations in conjunction with Section  
18 10177(d) of the Code.

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1                   WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondents,  
5 and each of them, under the Real Estate Law (Part 1 of Division 4  
6 of the Business and Professions Code) and for such other and  
7 further relief as may be proper under other provisions of law.

8  
9                     
10                   LES R. BETTENCOURT  
11                   Deputy Real Estate Commissioner

12 Dated at Oakland, California,  
13 this 12th day of June, 2003.  
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