

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

FILED
JAN 20 1994
DEPARTMENT OF REAL ESTATE

Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 HUBER PROPERTY) NO. H-2872 SAC
13 MANAGEMENT, INC.,) STIPULATION IN
14 PATRICIA ANN HUBER,) SETTLEMENT AND ORDER
14 _____ Respondents.)

15 It is hereby stipulated by and between HUBER PROPERTY
16 MANAGEMENT, INC. and PATRICIA ANN HUBER (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 April 28, 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 May 7, 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 11 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

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1.

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, made the Accusation in his official capacity.

2.

At all times herein mentioned, Respondent HUBER PROPERTY MANAGEMENT is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (Code) as a real estate corporation acting by and through Respondent HUBER.

3.

At all times herein mentioned, Respondent HUBER is presently licensed and/or has licensed rights under the Code. At all times herein mentioned, Respondent HUBER is licensed as a real estate broker, and as the designated broker-officer for Respondent HUBER PROPERTY MANAGEMENT.

4.

Within the three-year period immediately preceding the filing of the Accusation, Respondents HUBER PROPERTY MANAGEMENT and HUBER, acting on behalf of another or others and in expectation of compensation, leased or rented, offered to lease or rent, solicited prospective tenants, or collected rents from certain real properties located in or near Auburn, California.

5.

During the course of the property management activities, Respondents HUBER PROPERTY MANAGEMENT and HUBER received and

1 disbursed funds held in trust on behalf of another or others in
2 the following bank accounts:

- 3 a. HUBER PROPERTY MANAGEMENT Inc., Trust Account,
4 Account No. 810-0165-029, U.S. Bank, Auburn,
5 California (hereinafter "Trust #1");
6 b. HUBER PROPERTY MANAGEMENT Inc., Trust Account,
7 Account No. 810-4980-217, U.S. Bank, Auburn,
8 California (hereinafter "Trust #2"); and,
9 c. HUBER PROPERTY MANAGEMENT, Inc., Operating Trust
10 Account, Account No. 616-9-14385, First Interstate
11 Bank, Auburn, California (hereinafter "Trust #3").

12 6.

13 In connection with Trust #2 and Trust #3, Respondents
14 HUBER PROPERTY MANAGEMENT and HUBER opened or caused to be opened
15 interest-bearing accounts using said trust funds. Said interest-
16 bearing accounts failed to comply with the requirements of Section
17 10145(d) of the Code.

18 7.

19 Within the three-year period immediately preceding the
20 filing of the Accusation, Respondents HUBER PROPERTY MANAGEMENT
21 and HUBER permitted Lois Hartley and Cindy York, persons who are
22 not licensed by the Department of Real Estate, to make withdrawals
23 from said trust fund accounts without having fidelity bond
24 coverage equal to the maximum amount of trust funds to which said
25 employees had access.

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8.

In connection with the collection and disbursement of trust funds, Respondents received and failed to deposit and maintain said funds in said bank accounts described in Paragraph 5, or disbursed said funds in such a manner that as of September 30, 1992, there was a shortage of at least \$17,398.58 of trust funds in said bank accounts.

9.

Respondents failed to obtain the prior written consent of their principal for the reduction of the aggregate balance of trust funds in said bank accounts to an amount less than the aggregate trust fund liability to the owners of said funds.

10.

In connection with said trust fund accounts described in Paragraph 5, Respondents HUBER PROPERTY MANAGEMENT and HUBER commingled their own money or property with the money or property of others received and held by Respondents HUBER PROPERTY MANAGEMENT and HUBER.

11.

In connection with the collection and disbursement of trust funds held on behalf of another or others, Respondents HUBER PROPERTY MANAGEMENT and HUBER converted at least \$16,736.62 of said trust funds to their own use or benefit or to purposes not authorized by the rightful owners of said funds.

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12.

The facts alleged above are grounds for the suspension or revocation of Respondents HUBER PROPERTY MANAGEMENT and HUBER license under the following provisions:

- a. As to Paragraph 6, under Section 2830.1 of Title 10, California Code of Regulations (Regulations) and Section 10145 of the Code in conjunction with Section 10177(d) of the Code;
- b. As to Paragraph 7, under Section 2834 of the Regulations and Section 10145 of the Code in conjunction with Section 10177(d) of the Code;
- c. As to Paragraphs 8 and 9, under Section 2832.1 of the Regulations and Section 10145 of the Code in conjunction with Section 10177(d) of the Code;
- d. As to Paragraph 10, under Section 10176(e) of the Code; and,
- e. As to Paragraph 11, under Section 10176(i) of the Code.

ORDER

I

RESPONDENT HUBER PROPERTY MANAGEMENT, INC.

1. All licenses and licensing rights of Respondent HUBER PROPERTY MANAGEMENT, INC. under the Real Estate Law are suspended for a period of thirty (30) days from the effective date of this Order; provided, however, that thirty (30) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

- 1 a. Respondent shall obey all laws, rules and regulations
2 governing the rights, duties and responsibilities of a real
3 estate licensee in the State of California;
- 4 b. That no final subsequent determination be made, after
5 hearing or upon stipulation that cause for disciplinary
6 action occurred within two (2) years of the effective date
7 of this Order;
- 8 c. That Respondent pays, within 45 days from receipt of the
9 invoice referred to in paragraph "2" below, the
10 Commissioner's reasonable costs for an audit; and,
- 11 d. If Respondent pays, within 45 days from receipt of the
12 invoice referred to in paragraph "2" below, the
13 Commissioner's reasonable cost for an audit and if no
14 further cause for disciplinary action against the real
15 estate license of Respondent occurs within two (2) years
16 from the effective date of this Order, the thirty (30) days
17 stay granted pursuant to this paragraph shall become
18 permanent.
- 19 2. Respondent shall pay, pursuant to Section 10148 of the Business
20 and Professions Code, the Commissioner's reasonable cost for an
21 audit to determine if Respondent has corrected the trust fund
22 violations found in paragraphs "6, 7, 8, and 9," of the
23 Determination of Issues. In calculating the amount of the
24 Commissioner's reasonable costs, the Commissioner may use the
25 estimated average hourly salary for all Department Audit
26 Section personnel performing audits of real estate brokers, and
27 shall include an allocation for travel costs, including

1 mileage, time to and from the auditor's place of work, and per
2 diem. The Commissioner's reasonable costs shall in no event
3 exceed \$1,248.00:

- 4 a. Respondent shall pay such cost within 45 days of receipt of
5 an invoice from the Commissioner detailing the activities
6 performed during the audit and the amount of time spent
7 performing those activities;
- 8 b. Notwithstanding the provisions of paragraph "1" herein, if
9 Respondent fails to pay within 45 days from receipt of the
10 invoice specified above, the Commissioner's reasonable
11 costs for an audit to determine if Respondent has corrected
12 the violations found in paragraphs "6, 7, 8, and 9" of the
13 Determinations of Issues, the Commissioner may order the
14 indefinite suspension of Respondent's real estate license
15 and license rights. The suspension shall remain in effect
16 until payment is made in full, or until Respondent enters
17 into an agreement satisfactory to the Commissioner to
18 provide for such payment. The Commissioner may impose
19 further reasonable disciplinary terms and conditions upon
20 Respondent's real estate license and license rights as part
21 of any such agreement.

22 II

23 RESPONDENT PATRICIA ANN HUBER

- 24 1. All licenses and licensing rights of Respondent PATRICIA ANN
25 HUBER under the Real Estate Law are suspended for a period of
26 thirty (30) days from the effective date of this Decision;
27 provided, however, that thirty (30) days of said suspension

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shall be stayed for one (1) year upon the following terms and conditions:

- a. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and,
- b. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within one (1) year of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension. Should no such determination be made, the stay imposed herein shall become permanent.

October 27, 1993
DATED


Susan Y. Bennett
SUSAN Y. BENNETT
Counsel for Complainant

* * *

I have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I 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 I would

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have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

DATED: 11/15/93 
HUBER PROPERTY MANAGEMENT, INC.,
Respondent
By: Patricia Ann Huber

DATED: 11/15/93 
PATRICIA ANN HUBER, 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
February 9, 1994.

IT IS SO ORDERED 12/15, 1993.

CLARK WALLACE
Real Estate Commissioner


1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000

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6
7 (916) 227-0789

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 TO:) CASE NO. H-2872 SAC
12 HUBER PROPERTY)
13 MANAGEMENT, INC.,) NOTICE CONCERNING COSTS
14 PATRICIA ANN HUBER.) OF SUBSEQUENT AUDITS

15 The attached Stipulation In Settlement and Order
16 contains a determination by the Real Estate Commissioner that you
17 have either violated Section 10145 of the Business and Professions
18 Code or a regulation of the Commissioner interpreting Section
19 10145, or both. Section 10148 of the Business and Professions
20 Code provides that if this finding(s) becomes final, the
21 Commissioner may charge you for the costs of any audit conducted
22 to determine if the violations found have been corrected.

23 Enclosed for your reference is a copy of the provisions
24 of Section 10148 of the Business and Professions Code.

25 Dated: October 27, 1993

26 CLARK WALLACE
27 Real Estate Commissioner

By: Susan Y. Bennett
SUSAN Y. BENNETT, Counsel

SECTION 10148, CALIFORNIA BUSINESS AND PROFESSIONS CODE

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of an audit, if prior to the audit the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

[Amended by Statutes 1989, Chapter 640.]

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

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APR 28 1993
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

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12 In the Matter of the Accusation of)
13)) NO. H-2872 SAC
14 HUBER PROPERTY)
15 MANAGEMENT, INC.,)
16 PATRICIA ANN HUBER,) ACCUSATION
17 Respondents.)

18 The Complainant, Charles W. Koenig, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against HUBER PROPERTY MANAGEMENT, INC., (hereinafter
21 "Respondent HUBER PROPERTY MANAGEMENT") and PATRICIA ANN
22 HUBER (hereinafter "Respondent HUBER") is informed and alleges as
23 follows:

24 1.

25 The Complainant, Charles W. Koenig, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation in
27 his official capacity.

1 2.

2 At all times herein mentioned, Respondent **HUBER**
3 **PROPERTY MANAGEMENT** is presently licensed and/or has license
4 rights under the Real Estate Law (Part 1 of Division 4 of the
5 Business and Professions Code) (Code) as a real estate corporation
6 acting by and through Respondent **HUBER**.

7 3.

8 At all times herein mentioned, Respondent **HUBER** is
9 presently licensed and/or has licensed rights under the Code. At
10 all times herein mentioned, Respondent **HUBER** is licensed as a real
11 estate broker, and as the designated broker-officer for Respondent
12 **HUBER PROPERTY MANAGEMENT**.

13 4.

14 Within the three-year period immediately preceding the
15 filing of the Accusation, Respondents **HUBER PROPERTY MANAGEMENT**
16 and **HUBER**, acting on behalf of another or others and in
17 expectation of compensation, leased or rented, offered to lease or
18 rent, solicited prospective tenants, or collected rents from
19 certain real properties located in or near Auburn, California.

20 5.

21 During the course of the property management activities,
22 Respondents **HUBER PROPERTY MANAGEMENT** and **HUBER** received and
23 disbursed funds held in trust on behalf of another or others in
24 the following bank accounts:

- 25 a. **HUBER PROPERTY MANAGEMENT** Inc., Trust Account, Account No.
26 810-0165-029, U.S. Bank, Auburn, California (hereinafter "Trust
27 #1");

1 b. HUBER PROPERTY MANAGEMENT Inc., Trust Account, Account No.
2 810-4980-217, U.S. Bank, Auburn, California (hereinafter "Trust
3 #2"); and,

4 c. HUBER PROPERTY MANAGEMENT, Inc., Operating Trust Account,
5 Account No. 616-9-14385, First Interstate Bank, Auburn,
6 California (hereinafter "Trust #3").

7 6.

8 In connection with Trust #2 and Trust #3, Respondents
9 HUBER PROPERTY MANAGEMENT and HUBER opened or caused to be
10 opened interest-bearing accounts using said trust funds. Said
11 interest-bearing accounts failed to comply with the requirements
12 of Section 10145(d) of the Code.

13 7.

14 Within the three-year period immediately preceding the
15 filing of the Accusation, Respondents HUBER PROPERTY MANAGEMENT
16 and HUBER permitted Lois Hartley and Cindy York, persons who are
17 not licensed by the Department of Real Estate, to make withdrawals
18 from said trust fund accounts without having fidelity bond
19 coverage equal to the maximum amount of trust funds to which said
20 employees had access.

21 8.

22 In connection with the collection and disbursement of
23 trust funds, Respondents received and failed to deposit and
24 maintain said funds in said bank accounts described in Paragraph
25 5, or disbursed said funds in such a manner that as of
26 September 30, 1992, there was a shortage of at least \$17,398.58 of
27 trust funds in said bank accounts.

1 9.

2 Respondents failed to obtain the prior written consent
3 of their principal for the reduction of the aggregate balance of
4 trust funds in said bank accounts to an amount less than the
5 aggregate trust fund liability to the owners of said funds.

6 10.

7 In connection with said trust fund accounts described in
8 Paragraph 5, Respondents **HUBER PROPERTY MANAGEMENT** and **HUBER**
9 commingled their own money or property with the money or property
10 of others received and held by Respondents **HUBER PROPERTY**
11 **MANAGEMENT** and **HUBER**.

12 11.

13 In connection with the collection and disbursement of
14 trust funds held on behalf of another or others, Respondents **HUBER**
15 **PROPERTY MANAGEMENT** and **HUBER** converted at least \$16,736.62 of
16 said trust funds to their own use or benefit or to purposes not
17 authorized by the rightful owners of said funds.

18 12.

19 The facts alleged above are grounds for the suspension
20 or revocation of Respondent's license under the following
21 provisions:

- 22 (a) As to Paragraph 6, under Section 2830.1 of Title 10,
23 California Code of Regulations (Regulations) and Section 10145
24 of the Code in conjunction with Section 10177(d) of the Code;
25 (b) As to Paragraph 7, under Section 2834 of the Regulations and
26 Section 10145 of the Code in conjunction with Section 10177(d)
27 of the Code;

1 (c) As to Paragraphs 8 and 9, under Section 2832.1 of the
2 Regulations and Section 10145 of the Code in conjunction with
3 Section 10177(d) of the Code;

4 (d) As to Paragraph 10, under Section 10176(e) of the Code; and,

5 (e) As to Paragraph 11, under Section 10176(i) of the Code.

6 12.

7 In the alternative as to Respondent **HUBER**, the facts
8 alleged above are grounds for the suspension or revocation of all
9 licenses and license rights of Respondent **HUBER** under Section
10 10177(h) of the Code.

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

19
20 
21 CHARLES W. KOENIG
22 Deputy Real Estate Commissioner

23 Dated at Sacramento, California,
24 this 21st day of March, 1993