

1 Department of Real Estate  
2 P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4  
5 Telephone: (916) 227-0789  
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7

FILED  
NOV 18 1996  
DEPARTMENT OF REAL ESTATE

*Laurie A. Ziss*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-3218 SAC  
12 )  
12 AUGUST RAYMOND ALBERS, ) STIPULATION AND  
13 ) AGREEMENT IN  
13 Respondent. ) SETTLEMENT AND ORDER  
14 \_\_\_\_\_)

15 It is hereby stipulated by and between Respondent  
16 AUGUST RAYMOND ALBERS (hereinafter "ALBERS" or "Respondent"), and  
17 the Complainant, acting by and through James L. Beaver, Counsel  
18 for the Department of Real Estate, as follows, for the purpose of  
19 settling and disposing of the Accusation filed on June 18, 1996 in  
20 this matter (hereinafter "the Accusation").

21 1. All issues which were to be contested and all  
22 evidence which was to be presented by Complainant and Respondent  
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.     Respondent has received, read and understands 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 8, 1996, pursuant to Section 11505 of the  
6 Government Code, Respondent filed a Notice of Defense for the  
7 purpose of requesting a hearing on the allegations in the  
8 Accusation. Respondent hereby freely and voluntarily withdraws  
9 said Notice of Defense. Respondent acknowledges that Respondent  
10 understands that by withdrawing said Notice of Defense Respondent  
11 waives Respondent's right to require the Commissioner to prove the  
12 allegations in the Accusation at a contested hearing held in  
13 accordance with the provisions of the APA and that Respondent  
14 waives other rights afforded to Respondent in connection with the  
15 hearing such as the right to present evidence in defense of the  
16 allegations in the Accusation and the right to cross-examine  
17 witnesses.

18           4.     Respondent, subject to the limitations set forth  
19 below, hereby admits that the factual allegations in Paragraphs I  
20 through VIII, inclusive, of the Accusation are true and correct,  
21 agrees that the Real Estate Commissioner may base his decision  
22 herein on the allegations of the Accusation, and agrees that the  
23 Real Estate Commissioner shall not be required to provide further  
24 evidence to prove such allegations.

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1           5.     It is understood by the parties that the Real  
2 Estate Commissioner may adopt the Stipulation and Agreement as his  
3 decision in this matter thereby imposing the penalty and sanctions  
4 on Respondent's real estate license and license rights as set  
5 forth in the "Order" set forth below. In the event that the  
6 Commissioner in his discretion does not adopt the Stipulation and  
7 the Agreement in Settlement, this Agreement shall be void and of  
8 no effect, and Respondent shall retain the right to a hearing and  
9 proceeding on the Accusation under all the provisions of the APA  
10 and shall not be bound by any admission or waiver made herein.

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

18                           DETERMINATION OF ISSUES

19           By reason of the foregoing stipulations, agreements and  
20 waivers and solely for the purpose of settlement of the pending  
21 Accusation without a hearing, it is stipulated and agreed that the  
22 following determination of issues shall be made:

23   I

24           The acts and omissions of Respondent described in the  
25 Paragraphs I through VIII, inclusive, of the Accusation constitute  
26 fraud or dishonest dealing and are cause under Section 10177(j) of  
27 the California Business and Professions Code for the suspension or

1 revocation of all licenses and/or license rights of Respondent  
2 under the Real Estate Law (Part 1 of Division 4 of the California  
3 Business and Professions Code).

4 ORDER

5 All licenses and licensing rights of Respondent  
6 AUGUST RAYMOND ALBERS under the Real Estate Law are revoked;  
7 provided, however, a restricted real estate salesperson license  
8 shall be issued to Respondent pursuant to Section 10156.5 of the  
9 Business and Professions Code if Respondent makes application  
10 therefor and pays to the Department of Real Estate the appropriate  
11 fee for the restricted license within ninety (90) days from the  
12 effective date of this Decision. The restricted license issued to  
13 Respondent shall be subject to all of the provisions of Section  
14 10156.7 of the Business and Professions Code and to the following  
15 limitations, conditions and restrictions imposed under authority  
16 of Section 10156.6 of that Code:

17 1. The restricted license issued to Respondent may be  
18 suspended prior to hearing by Order of the Real Estate  
19 Commissioner in the event of Respondent's conviction or plea of  
20 nolo contendere to a crime which is substantially related to  
21 Respondent's fitness or capacity as a real estate licensee.

22 2. The restricted license issued to Respondent may be  
23 suspended prior to hearing by Order of the Real Estate  
24 Commissioner on evidence satisfactory to the Commissioner that  
25 Respondent has violated provisions of the California Real Estate  
26 Law, the Subdivided Lands Law, Regulations of the Real Estate  
27 Commissioner or conditions attaching to the restricted license.



1           3. Respondent shall not be eligible to apply for the  
2 issuance of an unrestricted real estate license nor for the  
3 removal of any of the conditions, limitations or restrictions of a  
4 restricted license until three (3) years have elapsed from the  
5 effective date of this Decision.

6           4. Respondent shall submit with any application for  
7 license under an employing broker, or any application for transfer  
8 to a new employing broker, a statement signed by the prospective  
9 employing real estate broker on a form approved by the Department  
10 of Real Estate which shall certify:

11           (a) That the employing broker has read the Decision of  
12           the Commissioner which granted the right to a  
13           restricted license; and

14           (b) That the employing broker will exercise close  
15           supervision over the performance by the restricted  
16           licensee relating to activities for which a real  
17           estate license is required.

18           5. Respondent shall, within nine (9) months from the  
19 effective date of the Decision, present evidence satisfactory to  
20 the Real Estate Commissioner that Respondent has, since the most  
21 recent issuance of an original or renewal real estate license,  
22 taken and successfully completed the continuing education  
23 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
24 for renewal of a real estate license. If Respondent fails to  
25 satisfy this condition, the Commissioner may order the suspension  
26 of the restricted license until the Respondent presents such  
27 evidence. The Commissioner shall afford Respondent the




1 opportunity for a hearing pursuant to the Administrative Procedure  
2 Act to present such evidence.

3           6. Respondent shall, within six (6) months from the  
4 issuance of the restricted license, take and pass the Professional  
5 Responsibility Examination administered by the Department  
6 including the payment of the appropriate examination fee. If  
7 Respondent fails to satisfy this condition, the Commissioner may  
8 order suspension of Respondent's license until Respondent passes  
9 the examination.

10           7. Any restricted real estate salesperson license  
11 issued to Respondent may be suspended or revoked for a violation  
12 by Respondent of any of the conditions attaching to the restricted  
13 license.

14  
15 November 4, 1996  
16 DATED

  
17 JAMES L. BEAVER, Counsel  
18 DEPARTMENT OF REAL ESTATE

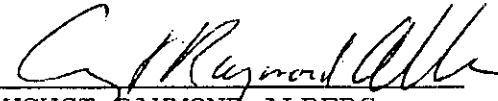
19 \* \* \*

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

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10-31-96

DATED



AUGUST RAYMOND ALBERS  
Respondent

\* \* \*

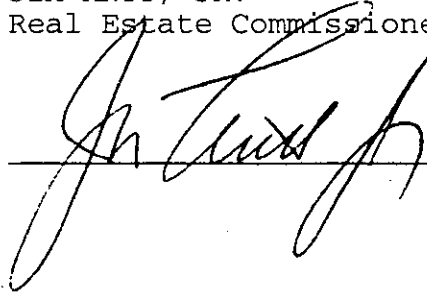
The foregoing Stipulation and Agreement for Settlement  
is hereby adopted by the Real Estate Commissioner as his Decision  
and Order and shall become effective at 12 o'clock noon on  
December 9, 1996.

IT IS SO ORDERED

11-14

, 1996.

JIM ANTT, JR.  
Real Estate Commissioner



FILED  
AUG 15 1996

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By Lauriel Zain

In the Matter of the Accusation of

AUGUST RAYMOND ALBERS,

Case No. H-3218 SAC

OAH No. N-9608036

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, CA 95814

on Friday, November 22nd, 1996, 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 15, 1996

By James L. Beaver  
JAMES L. BEAVER Counsel



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2 Department of Real Estate  
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FILED  
JUN 18 1996  
DEPARTMENT OF REAL ESTATE

By *Lauriel Zear*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

10 In the Matter of the Accusation of )  
11 AUGUST RAYMOND ALBERS, ) NO. H-3218 SAC  
12 Respondent, ) ACCUSATION  
13 \_\_\_\_\_ )

14 The Complainant, Charles W. Koenig; a Deputy Real Estate  
15 Commissioner of the State of California, for cause of Accusation  
16 against AUGUST RAYMOND ALBERS, also known as Gus Albers  
17 (hereinafter "Respondent"), is informed and alleges as follows:

18 I

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

22 II

23 Respondent is presently licensed and/or has license  
24 rights under the Real Estate Law, Part 1 of Division 4 of the  
25 Business and Professions Code (hereinafter "Code").

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III

At all times herein mentioned, Respondent was and now is licensed by the California Department of Real Estate as a real estate broker.

IV

At all times herein mentioned, Respondent was employed by California Prudential Realty (hereinafter "PCR"), a California real estate brokerage.

V

Between January 23, 1995 and February 25, 1995, Respondent, acting within this State, solicited and obtained the series of investments tabulated below in one-year investment certificates which, by the terms thereof, called for the return to each investor of the entire principal sum of the investment plus interest on said principal sum at the rate of 15% per annum, principal and interest thereon fully due and payable on or about the first anniversary of the investment.

<u>Date</u>	<u>Investor</u>	<u>Amount</u>
01-23-95	Joanne B. Jackson	\$ 1,000.00
01-25-95	Joanne B. Jackson	\$ 1,000.00
01-25-95	J. Carol Rushton	\$ 1,000.00
02-24-94	Chuck Nichols	\$37,000.00
Unknown	Charles Dennon	\$15,000.00

VI

In soliciting and obtaining the investments described in Paragraph V, above, Respondent representing to the investors that PCR had established an investment pool to assist in financing

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1 sales of real property to be arranged by PCR; that the PCR  
2 investment pool was managed for PCR by Respondent; that the  
3 investments would be deposited by Respondent in the PCR investment  
4 pool; that, in soliciting the investment, Respondent was the agent  
5 and employee of PCR acting within the course and scope of such  
6 agency and employment; and that PCR would be obligated to repay  
7 the principal and interest thereon at maturity in one year (herein  
8 "the representations").

9 VII

10 Respondent made the representations with the intent of  
11 inducing the investors to invest in the investment certificates.  
12 When Respondent made the representations, Respondent knew the  
13 representations would be material to a decision by the investors  
14 to invest in the investment certificates. In making the  
15 investments, the investors relied on the representations.

16 VIII

17 The representations were false, as Respondent knew at  
18 the time Respondent made the representations. In truth and fact,  
19 at the time Respondent made the representations Respondent  
20 intended to use, and thereafter did use, the funds invested by the  
21 investors to pay Respondent's personal obligations and to defray  
22 Respondent's personal living expenses. In truth and fact, as  
23 Respondent knew at the time Respondent made the representations,  
24 the investment pool referred to by Respondent in the  
25 representations had not been established by, for, or with the  
26 knowledge or consent of PCR.

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The acts and omissions of Respondent described above constitute fraud and dishonest dealing and cause pursuant to the provisions of Section 10177(j) of the Code for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 Respondent 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 provisions of law.

  
CHARLES W. KOENIG  
Deputy Real Estate Commissioner

Dated at Sacramento, California  
this 30<sup>th</sup> day of May, 1996.