

1 Department of Real Estate  
2 320 West 4th Street, Suite 350  
3 Los Angeles, California 90013-1105

4 (213) 576-6911

**FILED**  
NOV 8 2000  
DEPARTMENT OF REAL ESTATE

By Laura B. Brown

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8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \*

11 In the Matter of the Accusation of ) DRE NO. H-28594 LA  
12 SILVERCREST REALTY, INC. )  
13 and RICHARD DAVID COSNER, )  
14 individually and as )  
15 designated officer of, ) STIPULATION AND AGREEMENT  
16 Silvercrest Realty, Inc. )  
17 Respondents: )

18 It is hereby stipulated by and between SILVERCREST  
19 REALTY, INC., and RICHARD DAVID COSNER, individually and as  
20 designated officer of Silvercrest Realty, Inc. (sometimes  
21 collectively referred to as Respondents), and the Complainant,  
22 acting by and through Elliott Mac Lennan, Counsel for the  
23 Department of Real Estate, as follows for the purpose of settling  
24 and disposing of the Accusation filed on June 2, 2000, in this  
25 matter:

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1           1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and Respondents  
3 at a formal hearing on the Accusation, which hearing was to be  
4 held in accordance with the provisions of the Administrative  
5 Procedure Act (APA), shall instead and in place thereof be  
6 submitted solely on the basis of the provisions of this  
7 Stipulation and Agreement (Stipulation).

8           2. Respondents have received, read and understand the  
9 Statement to Respondent, the Discovery Provisions of the APA and  
10 the Accusation filed by the Department of Real Estate in this  
11 proceeding.

12           3. Respondents filed a Notice of Defense on June 15,  
13 2000, pursuant to Section 11506 of the Government Code for the  
14 purpose of requesting a hearing on the allegations in the  
15 Accusation. Respondents hereby freely and voluntarily withdraw  
16 said Notice of Defense. Respondents acknowledge that they  
17 understand that by withdrawing said Notice of Defense they  
18 thereby waive their right to require the Commissioner to prove  
19 the allegations in the Accusation at a contested hearing held in  
20 accordance with the provisions of the APA and that they will  
21 waive other rights afforded to them in connection with the  
22 hearing such as the right to present evidence in their defense  
23 including the right to cross-examine witnesses.

24           4. This Stipulation is based on the factual  
25 allegations contained in the Accusation. In the interest of  
26 expedience and economy, Respondents choose not to contest these  
27 allegations, but to remain silent and understand that, as a



1 result thereof, these factual allegations, without being admitted  
2 or denied, will serve as a prima facie basis for the disciplinary  
3 action stipulated to herein. The Real Estate Commissioner shall  
4 not be required to provide further evidence to prove said factual  
5 allegations.

6 5. This Stipulation is based on Respondents' decision  
7 not to contest the allegations set forth in the Accusation as a  
8 result of the agreement negotiated between the parties. This  
9 Stipulation is expressly limited to this proceeding and any  
10 further proceeding initiated by or brought before the Department  
11 of Real Estate based upon the facts and circumstances alleged in  
12 the Accusation and is made for the sole purpose of reaching an  
13 agreed disposition of this proceeding without a hearing. The  
14 decision of Respondents not to contest the allegations is made  
15 solely for the purpose of effectuating this Stipulation. It is  
16 the intent and understanding of the parties that this Stipulation  
17 shall not be binding or admissible against Respondents in any  
18 actions against Respondents by third parties.

19 6. It is understood by the parties that the Real  
20 Estate Commissioner may adopt this Stipulation as her Decision in  
21 this matter thereby imposing the penalty and sanctions on  
22 Respondents' real estate licenses and license rights as set forth  
23 in the "Order" herein below. In the event that the Commissioner  
24 in her discretion does not adopt the Stipulation, it shall be  
25 void and of no effect and Respondents shall retain the right to a  
26 hearing and proceeding on the Accusation under the provisions of  
27



1 the APA and shall not be bound by any stipulation or waiver made  
2 herein.

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

9  
10 DETERMINATION OF ISSUES

11 By reason of the foregoing stipulations, it is stipulated and  
12 agreed that the following determination of issues shall be made:

13 I

14 The conduct of SILVERCREST REALTY, INC., as described  
15 in Paragraph 4, is in violation of Section 10145 of the Business  
16 and Professions Code (Code) and Section 2950(h) of Title 10,  
17 Chapter 6 of the California Code of Regulations and is a basis  
18 for the suspension or revocation of Respondent's license and  
19 license rights as a violation of the Real Estate Law pursuant to  
20 Section 10177(d) of the Code.

21 II

22 The conduct of RICHARD DAVID COSNER, as described in  
23 Paragraph 4, constitutes a failure to keep Silvercrest Realty,  
24 Inc., in compliance with the Real Estate Law during the time that  
25 he was the officer designated by a corporate broker licensee.  
26 This conduct is a basis for the suspension or revocation of  
27 Respondent's license pursuant to Section 10177(h) of the Code.



ORDER

WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT  
TO THE WRITTEN STIPULATION OF THE PARTIES:

I

The license and licensing rights of SILVERCREST REALTY, INC. and RICHARD DAVID COSNER under the Real Estate Law shall be suspended for a period of sixty (60) days from the effective date of this Decision. Provided, however, that if a Respondent petitions, the initial thirty (30) days of said suspension (or a portion thereof) shall be permanently stayed upon condition that:

1. Respondents each pay a monetary penalty pursuant to Section 10175.2 of the Code of \$50 per day totaling, \$1,500 each, or \$3,000 total.

2. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Decision.

3. If a Respondent fails to pay the monetary penalty in accordance with the terms of the Decision, the Commissioner, may, without a hearing, order the immediate execution of all or any part of the 30 day stayed suspension, in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

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1                   4. The remaining thirty (30) days of the sixty (60)  
2 day suspension shall be stayed for two (2) years upon the  
3 following terms and conditions:

4                   (a) Respondents shall obey all laws, rules and regulations  
5 governing the rights, duties and responsibilities of a real  
6 estate licensee in the State of California; and

7                   (b) That no final subsequent determination be made after  
8 hearing or upon stipulation, that cause for disciplinary action  
9 occurred within two (2) years of the effective date of this  
10 Decision. Should such a determination be made, the Commissioner  
11 may, in her discretion, vacate and set aside the stay order and  
12 reimpose all or a portion of the stayed suspension. Should no  
13 such determination be made, the stay imposed herein shall become  
14 permanent.

15                   5. Pursuant to Section 10148 of the Business and  
16 Professions Code, Respondents SILVERCREST REALTY, INC. or RICHARD  
17 DAVID COSNER shall pay the Commissioner's reasonable cost for: a)  
18 the audit which led to this disciplinary action and, b) a  
19 subsequent audit to determine if Respondent is now in compliance  
20 with the Real Estate Law. In calculating the amount of the  
21 Commissioner's reasonable cost for said audits, the Commissioner  
22 may use the estimated average hourly salary for all persons  
23 performing audits of real estate brokers, and shall include an  
24 allocation for travel time to and from the auditor's place of  
25 work. Said amount for said audits shall not exceed \$8,000.  
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6. Respondents SILVERCREST REALTY, INC. or RICHARD

DAVID COSNER shall pay the cost of the prior and subsequent audit within 45 days of receiving an invoice from the Real Estate Commissioner detailing the activities performed during the audits and the amount of time spent performing those activities.

The Commissioner may suspend the licenses or license rights of a Respondent pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondents and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

EXECUTION OF THE STIPULATION

\* \* \* \*

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

witnesses against [redacted] and to present evidence in [redacted] defense and mitigation of the charges.

Respondent(s) can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondent(s), to the Department at the following telephone/fax number: (213) 576-6917. Respondent(s) agree, acknowledge and understand that by electronically sending to the Department a fax copy of their actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent(s) as if the Department had received the original signed Stipulation and Agreement.

DATED: 9-12-00

SILVERCREST REALTY, INC.,  
BY: RICHARD DAVID COSNER, D.O.

DATED: 9-12-00

RICHARD DAVID COSNER,  
individually and as designated  
officer of SILVERCREST REALTY,  
INC. Respondent

DATED: 9/13/00

ROSE POTHIER, ZSQ.  
Attorney for Respondents



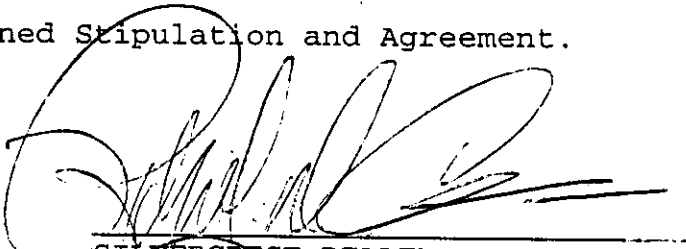


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witnesses against us and to present evidence in defense and mitigation of the charges.

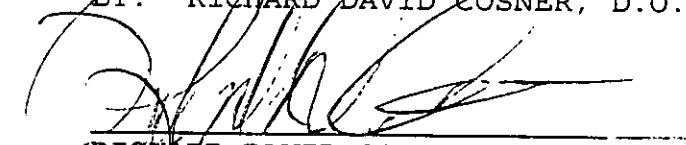
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DATED: 9-21-00



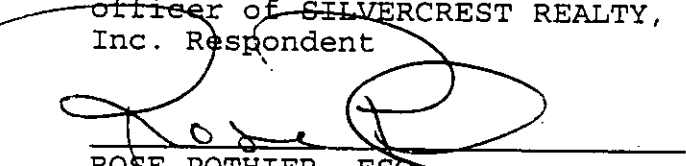
SILVERCREST REALTY, INC.,  
BY: RICHARD DAVID COSNER, D.O.

DATED: 9-21-00



RICHARD DAVID COSNER,  
individually and as designated  
officer of SILVERCREST REALTY,  
Inc. Respondent

DATED: 9/25/00



ROSE POTHIER, ESQ.  
Attorney for Respondents

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2                   The foregoing Stipulation and Agreement is hereby  
3 adopted as my Decision and Order and shall become effective at 12  
4 o' clock noon on November 28, 2000.

5                   IT IS SO ORDERED October 23, 2000.

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7                   PAULA REDDISH ZINNEMANN  
8                   Real Estate Commissioner

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10                   *Paula Reddish*  
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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILE  
AUG 3 2000  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of ) Case No. H-28594 LA  
SILVERCREST REALTY, INC. et al., ) OAH No. L-2000070019  
Respondent. )

By Laura B. Orton

AMENDED NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, 6<sup>th</sup> Floor, Suite 630, Los Angeles, California, on SEPTEMBER 18, 2000, at the hour of 9:00 a.m. 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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: August 3, 2000.

DEPARTMENT OF REAL ESTATE

By: Elliott MacLennan  
ELLIOTT MAC LENNAN, Counsel

cc: Silvercrest Realty, Inc.  
Richard David Cosner  
Rose Pothier, Esq.  
Sacto, OAH

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*Hay*

ELLIOTT MAC LENNAN, Counsel SBN #66674  
Department of Real Estate  
320 W. 4th Street, Suite 350  
Los Angeles, California 90013-1105  
  
Telephone (213) 576-6911

**FILED**  
JUN 2 2008  
DEPARTMENT OF REAL ESTATE

By *Jana B. Jones*

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
SILVERCREST REALTY, INC.; and, )  
RICHARD DAVID COSNER, )  
individually, and as )  
designated officer of )  
Silvercrest Realty, Inc., )  
Respondents. )

No. H-28594 LA  
A C C U S A T I O N

The Complainant, Daniel M. Hatt, acting in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of accusation against SILVERCREST REALTY, INC., dba Prudential California Realty, and RICHARD DAVID COSNER, individually and as designated officer of Silvercrest Realty, Inc., is informed and alleges as follows:

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SILVERCREST REALTY INC. (SILVERCREST), RICHARD DAVID  
COSNER (COSNER), sometimes collectively referred to as  
Respondents, are presently licensed and/or have license rights  
under the Real Estate Law (Part 1 of Division 4 of the California  
Business and Professions Code).

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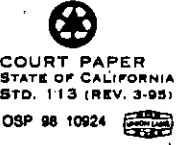
All references to the "Code" are to the California  
Business and Professions Code and all references to "Regulations"  
are to Title 10, Chapter 6, California Code of Regulations.

3

On February 10, 1998, SILVERCREST was first licensed by  
the Department of Real Estate of the State of California  
(Department) as a corporate real estate broker. From February 10,  
1998 to date, COSNER was and is the designated officer.

4

At all times mentioned, COSNER was licensed by the  
Department as designated officer of SILVERCREST to qualify it and  
to act for it as a real estate broker. And, as provided by  
Section 10159.2 of the Code, was responsible for the supervision  
and control of the activities conducted on SILVERCREST' behalf by  
its officers, managers and employees as necessary to secure full  
compliance with the provisions of the Real Estate Law including  
the supervision of the salespersons licensed to the corporation in  
the performance of acts for which a real estate license is  
required. On May 2, 1986, COSNER was first licensed by the  
Department as a real estate broker.



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Whenever reference is made in an allegation in the accusation to an act or omission of SILVERCREST such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with SILVERCREST committed such act or omission while engaged in the furtherance of the business or operation of SILVERCREST and while acting within the course and scope of its corporate authority, agency and employment.

Since February 10, 1998, in the City of Riverside, Riverside County, SILVERCREST acted as a real estate broker, within the meaning of Section 10131(a) of the Code, including the operation of a residential resale real property brokerage. In addition, SILVERCREST conducted broker controlled escrows under the exemption set forth for such activity in Section 17006(a)(4) of the California Financial Code.

Audit No. LA 990253

(Residential Resale Brokerage and Broker Escrow Audit)

On January 26, 2000, the Department completed a field audit examination of the books and records of SILVERCREST dba Prudential California Realty pertaining to its residential resale and escrow activities referred to in Paragraph 6. The audit examination covered a period of time beginning on March 1, 1998 and ending on November 30, 1999. The audit examination revealed violations of

1 the Code and the Regulations as set forth in the following  
2 paragraphs.

3 8

4 In connection with the activities described in Paragraph  
5 7, above, SILVERCREST accepted or received funds in trust (trust  
6 funds) from or on behalf of actual or prospective buyers and  
7 sellers. Thereafter SILVERCREST made disposition of such funds.  
8 SILVERCREST maintained the following trust accounts at the  
9 Imperial Bank in Beverly Hills, California, during the audit  
10 period as set forth below:

11 "Silvercrest Realty, Inc./Escrow Trust Account (T/A #1)  
12 Account Number 31-018-374"

13 "Silvercrest Realty, Inc./Broker's Trust Account (T/A #2)  
14 Account Number 31-018-277"

15 9

16 With respect to the trust funds referred to in Paragraph  
17 8, SILVERCREST:

18 (a) Permitted, allowed or caused the disbursement of  
19 trust funds from T/A #1, the escrow trust account, where the  
20 disbursement of these funds reduced the total of aggregate funds  
21 in the trust account; to an amount which, on November 30, 1998,  
22 was \$9,290.68 less than the existing aggregate trust fund  
23 liability of SILVERCREST to every principal who was an owner of  
24 these funds, without first obtaining their prior written consent,  
25 as required by Section 10145 of the Code and Section 2832.1,  
26 2950(d), 2950(g) and 2951 of the Regulations;

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(b) Permitted, allowed or caused the disbursement of trust funds from T/A #2, the broker's trust account, where the disbursement of these funds reduced the total of aggregate funds in the trust account, to an amount which, on November 30, 1998, was \$1,258.34 less than the existing aggregate trust fund liability of SILVERCREST to every principal who was an owner of these funds, without first obtaining their prior written consent, as required by Section 10145 of the Code and Section 2832.1, 2950(d), 2950(g) and 2951 of the Regulations; and,

(c) Failed to advise all parties to the escrow operation of SILVERCREST of its ownership of said escrow company, as required by Regulation 2950(h).

10

The conduct of SILVERCREST, described in Paragraph 9, above, violated the Code and the Regulations now set forth:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
9(a)	Section 10145 of the Code, and Sections 2832.1, 2950(d), 2950(g) and 2951 of the Regulations
9(b)	Section 10145 of the Code, and Sections 2832.1, 2950(d), 2950(g) and 2951 of the Regulations
9(c)	Sections 2950(h) of the Regulations
	/
	/



1 Each of the foregoing violations separately constitutes cause for  
2 the suspension or revocation of the real estate license and  
3 license rights of SILVERCREST under Section 10177(d) of the Code  
4 as indicated.

5 11

6 The overall conduct of Respondent COSNER constitutes  
7 negligence. This conduct is cause for the suspension or  
8 revocation of his real estate license and license rights under  
9 Section 10177(g) of the Code.

10 12

11 The conduct of Respondent COSNER, constitutes a failure  
12 on the part of COSNER, as officer designated by a corporate broker  
13 licensee, to exercise the reasonable supervision and control over  
14 the licensed activities of SILVERCREST as required by Section  
15 10159.2 of the Code, and to keep it in compliance with the Real  
16 Estate Law, is cause for the suspension or revocation of the real  
17 estate licenses and license rights of COSNER pursuant to the  
18 provisions of Sections 10159.2 and 10177(h) of the Code.

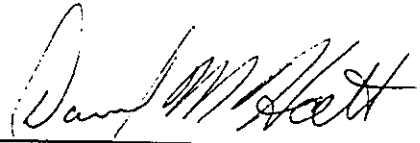
19 WHEREFORE, Complainant prays that a hearing be conducted  
20 on the allegations of this Accusation and that upon proof thereof,  
21 a decision be rendered imposing disciplinary action against the  
22 licenses and license rights of Respondents SILVERCREST REALTY,  
23 INC., and RICHARD DAVID COSNER, individually and as designated  
24 officer of SILVERCREST REALTY, Inc. under the Real Estate Law  
25 (Part 1 of Division 4 of the Business and Professions Code) and  
26 for such other and further relief as may be proper under other  
27 applicable provisions of law.



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Dated at Los Angeles, California

This 2<sup>nd</sup> day of June, 2000.



Deputy Real Estate Commissioner

cc: Silvercrest Realty, Inc  
Richard David Cosner  
Sacto.  
Audit Section  
DH  
TM

