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BEFORE THE
PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **RICHARD ALBERT COX** **P.O. Box 1499** **Blairsden, CA 96103-1499** **Professional Fiduciary License No. PF 137** Respondent.	Case No. **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Gil DeLuna (Complainant) brings this Accusation solely in his official capacity as the Acting Bureau Chief of the Professional Fiduciaries Bureau (Bureau), Department of Consumer Affairs.

2. On or about August 4, 2008, the Bureau issued Professional Fiduciary License Number PF 137 to Richard Albert Cox (Respondent). The Professional Fiduciary License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Bureau under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Director of Consumer Affairs (Director) of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

STATUTORY PROVISIONS

5. Section 6584 of the Code provides in pertinent part:

"A license issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

. . .

"(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in, or related to, the practice of a professional fiduciary. For purposes of this section, unprofessional conduct includes, but is not limited to, acts contrary to professional standards concerning any provision of law substantially related to the duties of a professional fiduciary.

. . .

"(h) Violation of this chapter or of the applicable provisions of Division 4 (commencing with Section 1400), Division 4.5 (commencing with Section 4000), Division 4.7 (commencing with Section 4600), or Division 5 (commencing with Section 5000) of the Probate Code or of any of the statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary."

6. Section 16002 of the Probate Codes states:

"(a) The trustee has a duty to administer the trust solely in the interest of the beneficiaries.

"(b) It is not a violation of the duty provided in subdivision (a) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

"(1) The sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts.

"(2) The trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know."

7. Section 16004 of the Probate Code provides in pertinent part:

"(a) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary."

8. Section 16009 of the Probate Code provides in pertinent part: "The trustee has a duty to do the following: (a) To keep the trust property separate from other property not subject to the trust."

9. Section 16040 of the Probate Code provides in pertinent part:

"(a) The trustee shall administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument.

. . .

"(c) This section does not apply to investment and management functions governed by the Uniform Prudent Investor Act, Article 2.5 (commencing with Section 16045)."

10. Section 16046 of the Probate Code provides in pertinent part:

"(a) Except as provided in subdivision (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule. . . ."

11. Section 16047 of the Probate Code provides in pertinent part:

"(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

. . .

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"(c) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

"(1) General economic conditions.

"(2) The possible effect of inflation or deflation.

"(3) The expected tax consequences of investment decisions or strategies.

"(4) The role that each investment or course of action plays within the overall trust portfolio.

"(5) The expected total return from income and the appreciation of capital.

"(6) Other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries.

"(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

"(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries."

12. Section 16060 of the Probate Code states: "The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration."

13. Section 16062 of the Probate Code provides in pertinent part:

"(a) Except as otherwise provided in this section and in Section 16064, the trustee shall account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed."

14. Section 16063 of the Probate Code provides in pertinent part:

"(a) An account furnished pursuant to Section 16062 shall contain the following information:

"(1) A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the trust or since the last account.

"(2) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust or as of the end of the period covered by the account."

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REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 4476 provides in pertinent part:

"(a) The licensee shall avoid actual conflicts of interest, and consistent with the licensee's fiduciary duties, shall not engage in any activity where there is the reasonable appearance of a conflict of interest.

"(b) The licensee shall not engage in any personal, business, or professional interest or relationship that is or reasonably could be perceived as self-serving or adverse to the best interest of the consumer."

COSTS

16. Section 125.3 of the Code provides, in pertinent part, that the Director may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

R.F.P. Trust

17. In or around 1998, Respondent became trustee of the R.F.P. Trust.[1] The R.F.P. Trust is a special needs trust that was created in or around June 1980. V.A. is the beneficiary of the R.F.P. Trust.

18. Respondent prepared semiannual trust accountings for the R.F.P. Trust that he provided to V.A. Those trust accountings fail to provide adequate detail for V.A. to clearly understand the purpose of trust expenses and the true level of asset holdings. For example, Respondent's accountings do not show the shares held in assets, the description of each asset, the carry value of assets, or the market value at the ending date of the accounting for each asset listed.

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[1] Initials are utilized herein to protect the trusts' and their beneficiaries' privacy. The names of the trusts and their beneficiaries will be released to Respondent upon request in discovery.

R.D. Trust

19. In or around November 2008, Respondent became the trustee of the R.D. Trust. The R.D. Trust is not related to the R.F.P. Trust.

Fiduciary Investments, Inc.

20. In or around August 2001, Fiduciary Investments, Inc. (Fiduciary Investments), a company established by Respondent, became incorporated in the State of California. Respondent and his wife, Barbara B. Cox, were named as directors of Fiduciary Investments. Respondent was also named as president and chief financial officer of the company. The purpose of Fiduciary Investments was to allow some of the trusts under Respondent's control to invest in real estate.

21. Respondent and his wife each owned one (1) share in Fiduciary Investments. Turdel & Fundt, a company owned by Respondent and/or his wife as a dba, owned 145 shares in Fiduciary Investments. All of the other shareholders in Fiduciary Investments were trusts that Respondent managed as trustee.

22. Respondent controlled both the price of shares in Fiduciary Investments and the purchase price of those shares. Shares in Fiduciary Investments were illiquid.

23. In or around September 2001, the R.F.P. Trust purchased 200 shares (worth $10,000) in Fiduciary Investments. Respondent never disclosed to V.A. that he had an ownership interest in Fiduciary Investments.

24. With the proceeds of the sale of shares in Fiduciary Investments to Respondent's trust fund clients, the company, through Respondent, purchased real estate. The company's real estate holdings included the following two properties: 418 and 420 Utah Street, Portola, California 96122.

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25. The following chart lists the approximate total market value of 418 and 420 Utah Street between 2003 and 2012:

Year	Approximate Market Value
2003	$150,000-161,000
2004	$169,000
2005	$199,500
2006	$205,000
2007	$195,000
2008	$174,250
2009	$80,000
2010	$119,500
2012	$55,000

26. As of March 2009, Fiduciary Investments' only assets were the two properties located at 418 and 420 Utah Street.

27. On or about March 9, 2009, the R.D. Trust purchased 1,725 shares (worth $97,948.20), or nearly half of the outstanding shares, in Fiduciary Investments from the company's other shareholders. On or about March 9, 2009, the S.J.G. Trust, another trust managed by Respondent, purchased 1,725 shares (worth $97,948.20), or nearly half of the outstanding shares, in Fiduciary Investments from the company's other shareholders.

28. Respondent did not inform the beneficiaries of the R.D. Trust about the nature of Fiduciary Investments, including the fact that Respondent had an ownership interest in the company.

29. With the proceeds of the sale of shares in Fiduciary Investments to the R.D. Trust and the S.J.G. Trust, Respondent, in or around March 2009, redeemed the shares of the company's remaining trust shareholders, including the R.F.P. Trust. Respondent also redeemed the shares of Turdel & Fundt in the amount of $8,469.45.

30. In or around 2011, Respondent dissolved Fiduciary Investments and had the company's assets, which consisted of the two properties located at 418 and 420 Utah Street, distributed equally to the R.D. Trust and the S.J.G. Trust.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

31. Respondent is subject to disciplinary action under section 6584, subdivision (d) of the Code for gross negligence in that Respondent (1) invested client trust funds in a company that Respondent formed and controlled; (2) invested his personal funds in a company in which Respondent also invested client trust funds; (3) controlled both the price of shares in Fiduciary Investments and the purchase price of those shares; and (4) sold shares in Fiduciary Investments to the R.D. Trust at a time when the company's assets were declining in value. The circumstances of Respondent's conduct are set forth above in Paragraphs 17, 19-23, 25, and 27.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

32. Respondent is subject to disciplinary action under section 6584, subdivision (d) of the Code for incompetence in that Respondent (1) formed a company in which he had a conflict of interest; (2) sold shares in Fiduciary Investments to the R.D. Trust at a time when the company's assets were declining in value; and (3) failed to prepare adequate accountings for the beneficiary of the R.F.P. Trust. The circumstances of Respondent's conduct are set forth above in Paragraphs 17-21, 23, 25, and 27.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

33. Respondent is subject to disciplinary action under section 6584, subdivision (d) of the Code for unprofessional conduct in that Respondent (1) formed a company in which he had a conflict of interest; (2) failed to inform the beneficiaries of the R.F.P. Trust and the R.D. Trust about the nature of Fiduciary Investments before investing those trusts' funds in the company; (3) sold shares in Fiduciary Investments to the R.D. Trust at a time when the company's assets were declining in value; and (4) controlled both the price of shares in Fiduciary Investments and

the purchase price of those shares. The circumstances of Respondent's conduct are set forth above in Paragraphs 17, 19-23, 25, 27, and 28.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Duty of Loyalty))

34. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, and section 16002 of the Probate Code for unprofessional conduct in that Respondent breached his duty of loyalty by (1) failing to inform the beneficiaries of the R.F.P. Trust and the R.D. Trust about the nature of Fiduciary Investments before investing those trusts' funds in the company; and (2) selling shares in Fiduciary Investments to the R.D. Trust at a time when the company's assets were declining in value. The circumstances of Respondent's conduct are set forth above in Paragraphs 23, 25, 27, and 28.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Conflict of Interest))

35. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, section 16004 of the Probate Code, and California Code of Regulations, title 16, section 4476 for unprofessional conduct in that Respondent's investment of personal funds in a company in which Respondent also invested client trust funds created a conflict of interest. The circumstances of Respondent's conduct are set forth above in Paragraphs 17, 19-21, 23, and 27.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Commingling of Trust Funds))

36. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, and section 16009 of the Probate Code for unprofessional conduct in that Respondent commingled client trust funds in a company that he controlled and in which Respondent had an ownership interest. The circumstances of Respondent's conduct are set forth above in Paragraphs 20-23 and 27.

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SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Prudent Trustee Rule))

37. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, and section 16040, subdivision (a) of the Probate Code for unprofessional conduct in that Respondent (1) formed a company in which he had a conflict of interest; and (2) sold shares in Fiduciary Investments to the R.D. Trust at a time when the company's assets were declining in value. The circumstances of Respondent's conduct are set forth above in Paragraphs 17, 19-21, 23, 25, and 27.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Prudent Investor Rule))

38. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, and sections 16046 and 16047 of the Probate Code for unprofessional conduct in that Respondent violated the Prudent Investor Rule by (1) investing funds from the R.F.P. Trust in Fiduciary Investments; (2) investing client trust funds in an illiquid asset; and (3) investing funds from the R.D. Trust in Fiduciary Investments at a time when the company's assets were declining in value. The circumstances of Respondent's conduct are set forth above in Paragraphs 22, 23, 25, and 27.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Duty to Disclose))

39. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, and section 16060 of the Probate Code for unprofessional conduct in that Respondent failed to inform the beneficiaries of the R.F.P. Trust and the R.D. Trust about the nature of Fiduciary Investments before investing those trusts' funds in the company. The circumstances of Respondent's conduct are set forth above in Paragraphs 23, 27, and 28.

TENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Breach of Fiduciary Duty (Duty to Account))

40. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and (h) of the Code, and section 16063, subdivisions (a)(1) and (a)(2) of the Probate Code for

unprofessional conduct in that Respondent's accountings for the R.F.P. Trust (1) fail to provide adequate detail for the beneficiary to clearly understand the purpose of trust expenses and the true level of asset holdings; and (2) do not show the shares held in assets, the description of each asset, the carry value of assets, or the market value at the ending date of the accounting for each asset listed. The circumstances of Respondent's conduct are set forth above in Paragraph 18.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Professional Fiduciaries Bureau, Department of Consumer Affairs, issue a decision:

1. Revoking or suspending Professional Fiduciary License Number PF 137 issued to Richard Albert Cox;

2. Ordering Richard Albert Cox to pay the Professional Fiduciaries Bureau the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 11-19-2012

GIL DELUNA
Acting Bureau Chief
Professional Fiduciaries Bureau
Department of Consumer Affairs
State of California
Complainant