

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
PROFESSIONAL FIDUCIARIES BUREAU
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No.

12 **RICHARD ALBERT COX**
13 **P.O. Box 1499**
Blairsden, CA 96103-1499

A C C U S A T I O N

14 **Professional Fiduciary License No. PF 137**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 4, 2008, the Bureau issued Professional Fiduciary License
23 Number PF 137 to Richard Albert Cox (Respondent). The Professional Fiduciary License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on March
25 31, 2013, unless renewed.

26 ///

27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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.

9
10
11
12
13
14
15
16
17
18
19

“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.”

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

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

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

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

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

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

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

17 . . .

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

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

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

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

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

27 . . .

28 ///

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

3 “(1) General economic conditions.

4 “(2) The possible effect of inflation or deflation.

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

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

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

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

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

12 “(8) An asset’s special relationship or special value, if any, to the purposes of the trust or to
13 one or more of the beneficiaries.”

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

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

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

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

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

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

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

28 ///

1 **REGULATORY PROVISIONS**

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

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

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

9 **COSTS**

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

14 **FACTUAL BACKGROUND**

15 **R.F.P. Trust**

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

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

24 ///

25 ///

26 _____
27 ¹ Initials are utilized herein to protect the trusts’ and their beneficiaries’ privacy. The
28 names of the trusts and their beneficiaries will be released to Respondent upon request in
discovery.

1 **R.D. Trust**

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

4 **Fiduciary Investments, Inc.**

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

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

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

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

19 24. With the proceeds of the sale of shares in Fiduciary Investments to Respondent's trust
20 fund clients, the company, through Respondent, purchased real estate. The company's real estate
21 holdings included the following two properties: 418 and 420 Utah Street, Portola, California
22 96122.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

3

Year	Approximate Market Value
4 2003	\$150,000-161,000
5 2004	\$169,000
6 2005	\$199,500
7 2006	\$205,000
8 2007	\$195,000
9 2008	\$174,250
10 2009	\$80,000
11 2010	\$119,500
12 2012	\$55,000

13

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

16 27. On or about March 9, 2009, the R.D. Trust purchased 1,725 shares (worth
17 \$97,948.20), or nearly half of the outstanding shares, in Fiduciary Investments from the
18 company's other shareholders. On or about March 9, 2009, the S.J.G. Trust, another trust
19 managed by Respondent, purchased 1,725 shares (worth \$97,948.20), or nearly half of the
20 outstanding shares, in Fiduciary Investments from the company's other shareholders.

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

24 29. With the proceeds of the sale of shares in Fiduciary Investments to the R.D. Trust and
25 the S.J.G. Trust, Respondent, in or around March 2009, redeemed the shares of the company's
26 remaining trust shareholders, including the R.F.P. Trust. Respondent also redeemed the shares of
27 Turdel & Fundt in the amount of \$8,469.45.
28

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

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

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

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Incompetence)**

15 32. Respondent is subject to disciplinary action under section 6584, subdivision (d) of the
16 Code for incompetence in that Respondent (1) formed a company in which he had a conflict of
17 interest; (2) sold shares in Fiduciary Investments to the R.D. Trust at a time when the company's
18 assets were declining in value; and (3) failed to prepare adequate accountings for the beneficiary
19 of the R.F.P. Trust. The circumstances of Respondent's conduct are set forth above in Paragraphs
20 17-21, 23, 25, and 27.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

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

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

3 **FOURTH CAUSE FOR DISCIPLINE**

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

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

12 **FIFTH CAUSE FOR DISCIPLINE**

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

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

19 **SIXTH CAUSE FOR DISCIPLINE**

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

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

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

9 **EIGHTH CAUSE FOR DISCIPLINE**

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

11 38. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and
12 (h) of the Code, and sections 16046 and 16047 of the Probate Code for unprofessional conduct in
13 that Respondent violated the Prudent Investor Rule by (1) investing funds from the R.F.P. Trust
14 in Fiduciary Investments; (2) investing client trust funds in an illiquid asset; and (3) investing
15 funds from the R.D. Trust in Fiduciary Investments at a time when the company's assets were
16 declining in value. The circumstances of Respondent's conduct are set forth above in Paragraphs
17 22, 23, 25, and 27.

18 **NINTH CAUSE FOR DISCIPLINE**

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

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

25 **TENTH CAUSE FOR DISCIPLINE**

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

27 40. Respondent is subject to disciplinary action under section 6584, subdivisions (d) and
28 (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