

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
2 DIVISION OF FINANCE AND CORPORATE SECURITIES  
3 SECURITIES SECTION  
4 BEFORE THE DIRECTOR OF THE DEPARTMENT OF  
5 CONSUMER AND BUSINESS SERVICES  
6 STATE OF OREGON

7 In the Matter of: ) O-96-0003  
8 ) ORDER TO CEASE AND DESIST;  
9 NUHART FUNDING, INC.; ) DENIAL OF EXEMPTIONS;  
10 and DAVID L. FENDALL, ) ASSESSMENT OF CIVIL PENALTIES;  
11 ) AND  
12 ) CONSENT OF RESPONDENTS  
13 Respondents. ) TO ENTRY OF ORDER

14 WHEREAS the Director of the Department of Consumer and  
15 Business Services [hereafter, the Director] has conducted an  
16 investigation of certain business activities conducted by  
17 NUHART FUNDING, INC. and DAVID L. FENDALL, Respondents  
18 herein, and has determined that Respondents transacted  
19 business in Oregon in violation of ORS Chapter 59, the  
20 Oregon Securities Law; and

21 WHEREAS Respondents wish to resolve and settle this  
22 matter, and hereafter agree to conduct any and all future  
23 business in compliance with the provisions of  
24 ORS Chapter 59, and the Oregon Administrative Rules,  
25 Chapter 441;

26 NOW THEREFORE, as evidenced by the signature on this  
Order, NUHART FUNDING, INC. and DAVID L. FENDALL hereby  
CONSENT to the entry of this Order to Cease and Desist,  
Denial of Exemptions, and Assessment of Civil Penalties,  
based upon the Director's Findings of Fact and Conclusions  
of Law as stated herein.



1 **FINDINGS OF FACT**

2 The Director FINDS that:

3 1. At all times material herein, DAVID L. FENDALL  
4 [hereafter, FENDALL] is an individual residing at 16745 NE  
5 Lewis Rogers Lane, Newberg, Oregon 97132. Oregon  
6 Corporations Division records reflect that NUHART FUNDING,  
7 INC., is an Oregon Corporation and that FENDALL is the  
8 registered agent. NUHART FUNDING's principal place of  
9 business is located at 16745 NE Lewis Rogers Lane, Newberg,  
10 Oregon 97132. DAVID L. FENDALL is the president of NUHART  
11 FUNDING, INC. and controls and directs the acts, practices,  
12 and policies of the corporation.

13 2. At all times material herein, NUHART FUNDING, INC.  
14 and DAVID L. FENDALL were not licensed by the Oregon  
15 Department of Consumer and Business Services, Division of  
16 Finance and Corporate Securities [hereafter, the Securities  
17 Section] to sell securities in Oregon.

18 3. At all times material herein, NUHART FUNDING, INC.  
19 and DAVID L. FENDALL did not have any securities  
20 registrations pending or in effect with the Securities  
21 Section.

22 4. On March 9, 1995 the State of Washington  
23 Department of Financial Institutions, Securities Division,  
24 issued a Summary Order to Cease and Desist to FENDALL, also  
25 doing business in Washington as Dave Fendall, Business  
26 Financing/Planning, Estate Planning/Money Management,



1 located at Post Office Box 462, Entiat, Washington, 98822.

2 5. In its Findings of Fact, the Washington Securities  
3 Division found that FENDALL promoted a program wherein  
4 persons or charitable organizations could invest monies into  
5 a "loan roll program" which involved the trading of  
6 international bank notes and receive a high rate of return  
7 on their investment. The Washington Securities Division  
8 found that:

- 9 a) The "loan roll program" was a security under  
10 Washington law;  
11 b) That the security offered and sold by FENDALL was  
12 not registered as a security in Washington;  
13 c) That FENDALL was not registered to offer or sell  
14 securities in Washington;  
15 d) That FENDALL omitted and/or failed to disclose  
16 material facts in connection with the offer and  
17 sale of the above described security; and  
18 e) That FENDALL offered and sold the above described  
19 security in violation of Washington law.

20 The Washington Securities Division further ordered  
21 FENDALL to cease and desist from violating Washington  
22 Securities laws. The order was duly served on FENDALL, who  
23 did not contest it.

24 6. FENDALL moved to Oregon, where he started NuHart  
25 Funding, Inc., and began promoting an investment opportunity  
26 program involving the brokerage of financial instruments  
27 between "major world banks."

28 7. FENDALL represented that he had access to a person  
29 who could broker the exchange of financial instruments such



1 as bank debentures, bank contracts, and letters of credit  
2 valued in the millions of dollars (hereinafter "the Broker")  
3 between two or more major world banks. FENDALL further  
4 represented that upon completion of the transaction, the  
5 Broker would receive a fee from the banks involved.

6 8. FENDALL represented to potential investors that  
7 the Broker needed investment capital or "seed money" which  
8 could be leveraged to purchase the financial instruments and  
9 generate capital. FENDALL further represented that if  
10 persons invested funds with the Broker to finance these  
11 transactions the investor(s) would receive a return on  
12 his/her investment in an amount from 10 to 25% of the amount  
13 invested. The return on investment would be paid from the  
14 fee the Broker expected to receive for brokering the  
15 transaction, which was payable upon completion of the  
16 transaction.

17 9. FENDALL told potential investors that he and  
18 NUHART FUNDING, INC. would receive a fee for assisting in  
19 brokering the transaction described above, which would also  
20 be paid from the fee the Broker expected to receive for  
21 brokering the transaction.

22 10. FENDALL represented to potential investors that he  
23 and NUHART FUNDING, INC. and the Broker engaged in such  
24 transactions on a regular basis and that the transactions  
25 were not subject to Oregon securities laws.

26 11. FENDALL failed to make the following disclosures



1 to potential investors in the course of his solicitation of  
2 funds:

- 3 a) That he was not licensed in Oregon to transact  
4 business in securities; and  
5 b) That he was the subject of prior administrative  
6 action and sanctions by the Washington Securities  
7 Division in 1995 as a result of previous  
8 securities related activities directly associated  
9 with the type of investment opportunity he was  
10 promoting in Oregon.

11 12. Between March 1, 1995 and May 5, 1995, FENDALL  
12 obtained \$200,000 from three Oregon investors who he  
13 convinced to invest in the above described investment  
14 program.

15 13. On or about May 5, 1995 FENDALL paid \$200,000 to  
16 WILMA K. WARREN [hereafter, WARREN] to broker a transaction  
17 on his behalf. Concurrent with the investment, and at  
18 WARREN's direction, FENDALL signed documents entitled  
19 "Special Power of Attorney", "Irrevocable Payment Order",  
20 "Blocked Funds and Trading Program Agreement" and "Cash  
21 Investment and Trading Agreement." The transaction was to  
22 close on or about June 1, 1995.

23 14. Neither FENDALL nor the investors had any control  
24 over the funds provided to WARREN, nor any right to exercise  
25 any direction or control over the brokered transaction.

26 15. WARREN failed to broker a loan by June 1, 1995 and  
did not pay FENDALL any of the fees promised to him under  
their agreement. FENDALL then requested WARREN to return  
the total sum invested. Only after FENDALL threatened legal



1 action did WARREN return his investment. WARREN returned  
2 \$200,000 to FENDALL on or about August 23, 1995.

3 **CONCLUSIONS OF LAW**

4 The Director CONCLUDES that:

5 1. The investor funds obtained by Fendall for the  
6 purchase of the "Cash Investment and Trading Agreement" and  
7 "The Blocked Funds and trading Program Agreement" described  
8 in Finding of Fact #13 above are "investment contracts" and  
9 therefore "securities" as that term is defined in  
10 ORS 59.015(17)(A)(a), in that each transaction involves:

- 11 a) An investment of money;  
12 b) In a common enterprise;  
13 c) With the expectation of profit; and  
14 d) Under the control and direction of others.

15 2. The securities described in Findings of Fact #8  
16 and #13 above were required to be registered in Oregon  
17 pursuant to ORS 59.055.

18 3. Respondents, by offering and selling the  
19 securities described in Findings of Fact #8 and #13 above,  
20 offered and sold unregistered securities in violation of ORS  
21 59.055.

22 4. Respondents, by offering and selling the  
23 securities described in Findings of Fact #8 and #13 above,  
24 while not licensed to sell securities in Oregon, effected  
25 unlicensed securities transactions in violation of  
26 ORS 59.165(1).

5. The false statements and omissions of facts



1 described in Findings of Fact #10 and #11 are material to an  
2 informed decision to purchase the investment Respondent was  
3 offering for sale.

4 6. Respondents violated ORS 59.135(2) when they made  
5 untrue statements of material facts and omitted to state a  
6 material fact necessary in order to make the statements  
7 made, in the light of the circumstances under which they are  
8 made, not misleading, when Fendall made the statements  
9 described in Finding of Fact #10 and omitted the information  
10 described in Finding of Fact #11, all in connection with the  
11 sale of a security.

12 **ORDER**

13 **NOW THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING**

14 **ORDERS:**

15 1. Respondents NUHART FUNDING, INC. and DAVID L.  
16 FENDALL are **ORDERED TO CEASE AND DESIST** from:

- 17 a) Offering or selling securities, in or from Oregon  
18 in violation of ORS Chapter 59.  
19 b) Violating any of the provisions of ORS Chapter 59,  
and Oregon Administrative Rules Chapter 441.

20 2. Pursuant to the authority of ORS 59.045  
21 Respondents NUHART FUNDING, INC. and DAVID L. FENDALL are  
22 **DENIED** the use of any exemptions authorized by ORS 59.025  
23 and/or ORS 59.035.

24 3. Pursuant to the authority of ORS 59.995, the  
25 **DIRECTOR ASSESSES** the following civil penalty:

- 26 a) Respondents NUHART FUNDING, INC. and DAVID L.  
FENDALL, jointly and severally, are hereby



1 **ORDERED TO PAY** the sum of \$1,000 for violations stated  
2 herein, which penalty shall be paid in the following  
manner:

3 b) \$250.00 of such penalty shall be payable as  
4 follows: an initial payment of \$25.00 on or before  
5 March 18, 1996, and monthly payments of no less  
6 that \$25.00 per month, for a period of nine (9)  
7 consecutive months thereafter, such payments to be  
8 due and payable on or before the fifteenth day of  
9 each month, commencing April 15, 1996. Each such  
payment shall be made payable to the Department of  
10 Consumer and Business Services, and delivered to  
11 the Division of Finance and Corporate Securities,  
12 Room 410 Labor & Industries Building, 350 Winter  
13 Street NE, Salem, Oregon 97310.

14 c) The remaining \$750.00 of such penalty shall be  
15 suspended for so long as Respondents are in full  
16 compliance with the terms of this Cease and Desist  
17 Order, and further, so long as the payments  
18 described in paragraph (b) above are made in a  
19 timely manner; provided, however, that the  
20 suspended portion of this penalty (\$750.00) and  
21 all amounts still owed under paragraph (b) herein  
22 shall be immediately due and payable upon a  
23 determination by the DIRECTOR that Respondents  
24 have violated any term of this Order or any  
25 provisions of ORS Chapter 59 and/or Oregon  
26 Administrative Rules Chapter 441, or that  
Respondents have failed to make any monthly  
payment in a timely manner. The Division of  
Finance and Corporate Securities shall take  
whatever remedies are available to collect the  
entire amount due, including but not limited to  
those remedies provided in ORS 59.995.

The entry of this Order in no way limits further  
remedies which may be available to the Director under Oregon  
law to enforce this matter.

DATED this 28<sup>th</sup> day of March, 1996.

  
\_\_\_\_\_  
KERRY BARNETT, DIRECTOR  
DEPARTMENT OF CONSUMER & BUSINESS SERVICES

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97310  
Telephone: (503) 378-4387





1 **CORPORATE ACKNOWLEDGMENT**

2 There appeared before me this 25th day of March,  
3 1996 DAVID L. FENDALL, who was first duly sworn on oath, and  
4 stated that he was and is the president of NUHART FUNDING,  
5 INC., that he is authorized and empowered to sign this  
6 Consent to Entry of Order and to bind NUHART FUNDING, INC.  
7 to the terms hereof.

8 SUBSCRIBED to before me this 25th day of March,  
9 1996.



*Shirley J. Steinmeyer*  
Notary Public for Oregon

14 Shirley J. Steinmeyer  
15 Printed Name of Notary Public

16 My commission expires: 2/16/97

17  
18 **CONSENT TO ENTRY OF ORDER**

19 I, DAVID L. FENDALL, Respondent herein, state that I  
20 have read the foregoing Consent Order; that I know and fully  
21 understand the contents hereof; that I consent to the entry  
22 of this Order and admit the allegations contained therein;  
23 that I have been represented by legal counsel in this  
24 matter; that I have been advised of my right to a hearing  
25 and that I consent to the Entry of this Order without  
26 further hearing on this matter; that I consent to entry of

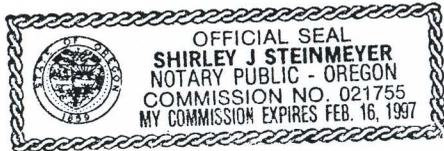
Division of Finance and Corporate Securities  
Laboratory Building  
350 Winter Street, Suite 410  
Salem, OR 97310  
Telephone: (503) 378-4387



1 this Order voluntarily without any force or duress; that I  
2 understand that the Director reserves the right to take  
3 further actions against me to enforce this Order or upon  
4 discovery of other violations of Oregon law; and that I will  
5 fully comply with the terms and conditions stated herein.

6 I further assure the Director that I will not engage in  
7 activities in the future similar to those described herein,  
8 or act as a broker-dealer, salesperson, or issuer's  
9 representative, or transact any securities business in the  
10 state of Oregon unless such activities or transactions are  
11 in full compliance with Oregon law.

12 DATED this 25<sup>th</sup> day of March, 1996.



14 David L. Fendall  
15 DAVID L. FENDALL  
16 16745 NE Lewis Rogers Lane  
17 Newberg, OR 97132

17 SUBSCRIBED AND SWORN to before me this 25th day of  
18 March, 1996 .

19  
20 Shirley J. Steinmeyer  
21 Notary Public of Oregon

22 My commission expires: 2/16/97

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97310  
Telephone: (503) 378-4387

