

SACD:
FLAS

FILED

APR 22 1988

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

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

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) No. H-386 SA
)
RANCHO MARMOLEJO REALTY)
and FRANK JAMES NESE,)
)
Respondents.)

ORDER DENYING REINSTATEMENT OF LICENSE

On July 5, 1984, a Decision was rendered herein revoking the real estate broker license of Respondent FRANK JAMES NESE (hereinafter referred to as "Respondent"), effective July 31, 1984, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on July 31, 1984, and Respondent has operated as a restricted licensee and as the designated broker-officer of Rancho Marmolejo Realty (hereinafter "RMR") since that time.

On January 22, 1987, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the

1 filing of said petition.

2 I have considered the petition of Respondent and the
3 evidence submitted in support thereof. Respondent has failed to
4 demonstrate to my satisfaction that he has undergone sufficient
5 rehabilitation to warrant the reinstatement of his real estate
6 broker license at this time. This determination has been made
7 in light of his history of acts and omissions which are
8 substantially related to the qualifications, functions and duties
9 of real estate licensees. That history includes:

10 1.

11 In the July 5, 1984, Decision, revoking the real estate
12 broker licenses of Respondent and RMR, it was determined that
13 there was cause to suspend or revoke the real estate license of
14 RMR under the provisions of Section 10177(d) of the California
15 Business and Professions Code (hereinafter "Code") because of its
16 violations of Section 10145 of the Code and Section 2832.1 of
17 Title 10, Chapter 6, California Code of Regulations (hereinafter
18 "Regulations"). In addition, it was found that there was cause to
19 suspend or revoke the real estate licenses and license rights of
20 Respondent under the provisions of Section 10177(h) because of his
21 failure to properly supervise the activities of RMR requiring a
22 real estate license.

23 2.

24 In the July 5, 1984, Decision, which granted Respondent
25 and RMR the right to receive restricted real estate broker
26 licenses, certain conditions were imposed. One of said conditions
27 was that the restricted licenses issued to Respondent and RMR

1 could be suspended on evidence satisfactory to the Real Estate
2 Commissioner that Respondent or RMR had violated provisions of the
3 Code or of the Regulations.

4 3.

5 On or about August 7, 1987, the Department of Real
6 Estate of the State of California completed an examination of the
7 books and records of Respondent and RMR for a one-year period
8 ending July 31, 1987. This examination found that Respondent, and
9 RMR had been operating in violation of Sections 2725, 2752 and
10 2831 of the Regulations in their failure to (1) initial and date
11 documents prepared by Respondent's salespeople; (2) notify the
12 Real Estate Commissioner in a timely manner when a salesperson was
13 terminated; and (3) maintain proper records of trust funds
14 received and not placed in a trust account. This conduct of
15 Respondent, in violating Sections 2725, 2752 and 2831 of the
16 Regulations, would have been grounds for suspension or revocation
17 of Respondent's restricted real estate license under Sections
18 10177(d) and 10177(k) of the Code. This also constitutes a basis
19 for denial of Respondent's petition for reinstatement of his real
20 estate broker license under Section 480(3) of the Code.

21 4.

22 In addition, Respondent's failure to make certain that
23 RMR was operating as a corporate licensee during 1987 in
24 compliance with real estate law indicates that Respondent is still
25 failing to properly supervise the activities of a corporation
26 conducting activities requiring a real estate license and naming
27 Respondent as its designated officer. This conduct of Respondent

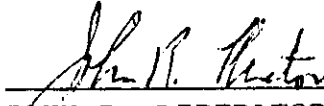
1 shows a lack of rehabilitation in that he has failed to show a
2 correction of business practices which led to the revocation of
3 his license in 1984 and said conduct is a basis for denial of his
4 petition for reinstatement of his real estate broker license under
5 Section 2911(j) of the Regulations.

6
7 NOW, THEREFORE, IT IS ORDERED that Respondent FRANK
8 JAMES NESE's petition for reinstatement of his real estate broker
9 license is denied.

10 This Order shall become effective at 12 o'clock noon on
11 May 12, 1988.

12 DATED: April 14, 1988.

13 JAMES A. EDMONDS, JR.
14 Real Estate Commissioner

15 By: 
16 JOHN R. LIBERATOR
17 Chief Deputy Commissioner

18
19
20
21
22
23 cc: Frank James Nese
24 39 Bodega Bay Drive
25 Corona Del Mar, CA 92625

26 Rose Pothier, Esq.
27 Pothier, Moore & Hinrichs
856 North Ross St., Ste. 100
Santa Ana, California 92701

SACTO;
PLAS

FILED

APR 22 1988

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

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

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) No. H-386 SA
)
RANCHO MARMOLEJO REALTY)
and FRANK JAMES NESE,)
)
Respondents.)
)

ORDER DENYING REINSTATEMENT OF LICENSE

On July 5, 1984, a Decision was rendered herein revoking the corporate real estate broker license of Respondent RANCHO MARMOLEJO REALTY (hereinafter referred to as "Respondent"), effective July 31, 1984, but granting Respondent the right to the issuance of a restricted corporate real estate broker license. A restricted corporate real estate broker license was issued to Respondent on July 31, 1984, and Respondent has operated as a restricted licensee since that time with Frank James Nese (hereinafter "Nese") as its designated officer.

On January 22, 1987, Respondent petitioned for reinstatement of Respondent's corporate real estate broker license and the Attorney General of the State of California has been given

1 notice of the filing of said petition.

2 I have considered the petition of Respondent and the
3 evidence submitted in support thereof. Respondent has failed to
4 demonstrate to my satisfaction that it has undergone sufficient
5 rehabilitation to warrant the reinstatement of its corporate real
6 estate broker license at this time. This determination has been
7 made in light of its history of acts and omissions which are
8 substantially related to the qualifications, functions and duties
9 of real estate licensees. That history includes:

10 1.

11 In the July 5, 1984, Decision revoking the real estate
12 broker licenses of Respondent and Nese, it was determined that
13 there was cause to suspend or revoke the real estate license of
14 Respondent under the provisions of Section 10177(d) of the
15 California Business and Professions Code (hereinafter "Code")
16 because of Respondent's violations of Section 10145 of the Code
17 and Section 2832.1 of Title 10, Chapter 6, California Code of
18 Regulations (hereinafter "Regulations"). In addition, it was
19 found that there was cause to suspend or revoke the real estate
20 licenses and license rights of Nese under the provisions of
21 Section 10177(h) because of his failure to properly supervise the
22 activities of Respondent requiring a real estate license.

23 2.

24 In the July 5, 1984, Decision, which granted Respondent
25 and Nese the right to receive restricted real estate broker
26 licenses, certain conditions were imposed. One of said conditions
27 was that the restricted licenses issued to Respondent and Nese

1 could be suspended on evidence satisfactory to the Real Estate
2 Commissioner that Respondent or Nese had violated provisions of
3 the Code or of the Regulations.

4 3.

5 On or about August 7, 1987, the Department of Real
6 Estate of the State of California completed an examination of the
7 books and records of Respondent and Nese for a one-year period
8 ending July 31, 1987. This examination found that Respondent and
9 Nese had been operating in violation of Sections 2725, 2752 and
10 2831 of the Regulations in their failure to (1) initial and date
11 documents prepared by Respondent's salespeople; (2) notify the
12 Real Estate Commissioner in a timely manner when a salesperson was
13 terminated; and (3) maintain proper records of trust funds
14 received and not placed in a trust account. This conduct of
15 Respondent, in violating Sections 2725, 2752 and 2831 of the
16 Regulations, would have been grounds for suspension or revocation
17 of Respondent's restricted corporate real estate license under
18 Sections 10177(d) and 10177(k) of the Code. This also constitutes
19 a basis for denial of Respondent's petition for reinstatement of
20 its corporate real estate broker license under Section 480(3) of
21 the Code.

22 /
23 /
24 /
25 /
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

NOW, THEREFORE, IT IS ORDERED that Respondent RANCHO
MARMOLEJO REALTY's petition for reinstatement of its corporate
real estate broker license is denied.

This Order shall become effective at 12 o'clock noon on
May 12, 1988.

DATED: April 14, 1988.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By: *John R. Liberator*
JOHN R. LIBERATOR
Chief Deputy Commissioner

cc: Rancho Marmolejo Realty
39 Bodega Bay Drive
Corona Del Mar, CA 92625

Rose Pothier, Esq.
Pothier, Moore & Hinrichs
856 North Ross St., Ste. 100
Santa Ana, California 92701

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

JUL -9 1984

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY A. Drexler

* * *

In the Matter of the Accusation of)
RANCHO MARMOLEJO REALTY)
and FRANK JAMES NESE,)
Respondents.)

NO. H-386 SA

DECISION

The Proposed Decision dated June 28, 1984, of Robert Arnold, Regional Manager, Department of Real Estate, State of California, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision shall become effective at 12 o'clock

noon on July 31st 1984.

IT IS SO ORDERED July 5, 1984.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By:

Robert P. Martinez
ROBERT P. MARTINEZ
Chief Deputy Commissioner

IV

At all times mentioned herein, FRANK JAMES NESE (hereinafter NESE) was the designated broker for RMR and was therefore responsible in accordance with Section 10159.2 of the Code for the supervision and control of activities conducted on behalf of the corporation by its officers and employees for which a real estate license is required.

V

At all times mentioned herein, RMR through its officers and employees engaged in the business of, acted in the capacity of, advertised and assumed to act as a real estate broker in the State of California as described in Section 10131(a) of the Code, including the selling or offering to sell, buying or offering to buy, soliciting prospective sellers and purchasers of, obtaining listings for, and negotiating the sale of real property. These activities were performed for others for or in expectation of a compensation.

VI

In the course of its activities as a real estate broker, RMR accepted funds in trust to be held on behalf of sellers and buyers, and caused these trust funds to be deposited in Account No. 06-026-958, Santa Ana Office, Imperial Bank (hereinafter the "Trust Account").

VII

Trust funds deposited into the Trust Account were disbursed, diverted, or otherwise appropriated by employees of RMR without the consent of each person to whom funds were owed from the account. This activity reduced the balance of funds in the account to an amount at least \$39,000 less than the existing aggregate trust fund liability of RMR to all owners of said funds as of April 30, 1983.

VIII

RMR and NESE, upon discovery of the shortage in the Trust Account by the Department of Real Estate, have deposited into the Trust Account a sum in excess of \$39,000. It appears that all or substantially all of the funds improperly disbursed from the Trust Account were withdrawn without the knowledge or consent of any of the officers of RMR by an unlicensed person in the employ of RMR. That person is no longer employed by RMR or NESE.

IX

Each act, omission, course of conduct, and violation described in Findings VI, VII, and VIII hereinabove, was carried out, occurred, and/or committed over an extended period of time while NESE was the officer designated by the corporation pursuant to the provisions of Section 10211 of the Code. NESE failed to terminate said acts, omissions, courses of conduct, and violations prior to audit and discovery by the Department of Real Estate.

DETERMINATION OF ISSUES

I

RMR's conduct, as set forth in Finding VII, constitutes cause to suspend or revoke its real estate license and license rights under the provisions of Section 10177(d) of the Code, in conjunction with Section 10145 of the Code and with Section 2832.1, Chapter 6, Title 10, California Administrative Code.

II

NESE's conduct, as set forth in Finding IX, constitutes grounds to suspend or revoke his real estate license and/or license rights under the provisions of Section 10177(h) of the Business and Professions Code.

ORDER

WHEREFORE, THE FOLLOWING ORDERS ARE HEREBY MADE pursuant to the written stipulation of the parties:

I

All licenses and license rights of RANCHO MARMOLEJO REALTY and FRANK JAMES NESE under Part I of Division 4 of the Business and Professions Code are revoked.

II

A restricted real estate broker license shall be issued to each Respondent pursuant to Section 10156.5 of the Business and Professions Code upon Respondents' application and payment of the appropriate fee, provided the application is made within 90 days from the effective date of the Decision herein. The corporate Respondent may be qualified to act as a corporate real estate broker, pursuant to any restricted license so issued, through either the individual Respondent and/or through another officer or officers properly qualified by a corporate respondent.


Each restricted license issued to a respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Business and Professions Code.

A. The restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner in the event that respondent is convicted or enters a plea of nolo contendere to a crime which bears a significant relationship to the qualifications or capacity of respondent to function as a real estate licensee.

B. The restricted license may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Real Estate Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to the restricted license.

C. Respondent shall report in writing to the Department of Real Estate, as the Real Estate Commissioner shall direct by separate written order issued while the restricted license is in effect, such information concerning said respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but need not be limited to, periodic independent accountings of trust funds in the custody and control of respondent, and periodic summaries of salient information concerning each real estate transaction in which respondent engaged during the period covered by the report.

DATED: 6/28/84



ROBERT ARNOLD
Regional Manager
Department of Real Estate

Sacto

FILED

MAY -3 1984

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY *[Signature]*

In the Matter of the Accusation of
RANCHO MARMOLEJO REALTY,
et al.,
Respondent(s)

Case No. H-386 SA

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 314 West First Street, Los Angeles, California 90012

on the 11th day of June, 1984, at the hour of 10:00 am., or as soon thereafter as the matter can be heard, upon the charges made in the Accusation served upon you.

You may be present at the hearing, and you may be represented by counsel, but you are neither required to be present at the hearing nor to be represented by counsel. If you are not present in person, nor represented by counsel at the hearing, the Department may take disciplinary action against you upon any express admissions, 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.

DATED: May 3, 1984

cc: Rancho Marmolejo Realty
Frank James Nese
Rose Pothier, Esq.
Sacto
OAH
BSV

JAMES A. EDMONDS, JR.
DEPARTMENT OF REAL ESTATE

By *[Signature]*
Counsel

Handwritten initials

FILED

APR 12 1984

DEPARTMENT OF REAL ESTATE
BY *[Signature]*

1 ROBERT F. HOWELL, Counsel
Department of Real Estate
2 107 South Broadway, Room 8107
Los Angeles, California 90012
3 (213) 620-4790
4
5
6
7

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) NO. H-386 SA
12 RANCHO MARMOLEJO REALTY and)
FRANK JAMES NESE,) A C C U S A T I O N
13)
14 Respondents.)

15 The Complainant, Randolph Brendia, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against RANCHO MARMOLEJO REALTY and FRANK JAMES NESE, alleges as
18 follows:

19 1. The Complainant, Randolph Brendia, a Deputy Real
20 Estate Commissioner of the State of California, makes this
21 Accusation in his official capacity.

22 2. Each respondent is presently licensed and/or has
23 license rights under the Real Estate Law (Part 1 of Division 4 of
24 the Business and Professions Code, hereafter the "Code").

25 /
26 /
27 /

1 3. At all times mentioned herein, RANCHO MARMOLEJO
2 REALTY, (hereinafter RMR) was licensed by the Department of Real
3 Estate as a corporate real estate broker.

4 4. At all times mentioned herein, FRANK JAMES NESE
5 (hereinafter NESE) was the designated broker for RMR and was
6 therefore responsible in accordance with Section 10159.2 of the
7 Code for the supervision and control of activities conducted on
8 behalf of the corporation by its officers and employees for which
9 a real estate license is required.

10 5. At all times mentioned herein, RMR through its
11 officers and employees engaged in the business of, acted in the
12 capacity of, advertised and assumed to act as a real estate broker
13 in the State of California as described in Section 10131(a) of the
14 Code, including the selling or offering to sell, buying or offering
15 to buy, soliciting prospective sellers and purchasers of, obtaining
16 listings for, and negotiating the sale of real property. These
17 activities were performed for others for or in expectation of a
18 compensation.

19 6. In the course of its activities as a real estate
20 broker, RMR accepted funds in trust to be held on behalf of
21 sellers and buyers, and caused these trust funds to be deposited
22 in Account No. 06-026-958, Santa Ana Office, Imperial Bank (here-
23 inafter the "Trust Account").

24 7. Trust funds deposited into the Trust Account were
25 disbursed, diverted, or otherwise appropriated by officers and
26 employees of RMR without the consent of each person to whom funds
27 were owed from the account. This activity reduced the balance of

1 funds in the account to an amount at least \$39,000 less than the
2 existing aggregate trust fund liability of RMR to all owners of
3 said funds as of April 30, 1983, in violation of Section 10145 of
4 the Code and Section 2832.1, Chapter 6, Title 10, California
5 Administrative Code.

6 8. RMR and NESE, upon discovery of the shortage in the
7 Trust Account by the Department of Real Estate, have deposited into
8 the Trust Account a sum in excess of \$39,000. It appears that all
9 or substantially all of the funds improperly disbursed from the
10 Trust Account were withdrawn without the knowledge or consent of
11 any of the officers of RMR by an unlicensed person in the employ
12 of RMR. That person is no longer employed by RMR or NESE.

13 9. RMR's conduct, as set forth in Paragraph 7, consti-
14 tutes cause to suspend or revoke its real estate license and license
15 rights under the provisions of Section 10177(d) of the Code, in
16 conjunction with Section 10145 of the Code and with Section 2832.1,
17 Chapter 6, Title 10, California Administrative Code.

18 10. Each act, omission, course of conduct, and violation
19 described in Paragraphs 6, 7, and 8 hereinabove, was carried out,
20 occurred, and/or committed over an extended period of time while
21 NESE was the officer designated by the corporation pursuant to the
22 provisions of Section 10211 of the Code. NESE'S failure to
23 terminate said acts, omissions, courses of conduct, and violations
24 prior to audit and discovery by the Department of Real Estate,
25 constitutes cause to suspend or revoke his real estate license and
26 license rights under the provisions of Section 10177(h) of the Code.

27

/

