

FILED
MAR 30 1990
DEPARTMENT OF REAL ESTATE

Laurie A. Zain

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CURTIS WADE PAGE, et al.,)
Respondents.)

NO. H-957 FRESNO
N 34331

DECISION

The Proposed Decision dated March 9, 1990,
of the Administrative Law Judge of the Office of Administrative
Hearings is hereby adopted as the Decision of the Real Estate
Commissioner in the above-entitled matter.

This Decision shall become effective at 12 o'clock noon
on April 20, 19 90.

IT IS SO ORDERED March 26, 19 90.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

John R. Liberton

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. H-957 FRESNO
)	
CURTIS WADE PAGE,)	OAH No. N-34331
KEVIN EARL CHRISTIANSEN, and)	
FOOTHILL LAND CO., INC., dba)	
Sierra Realtors and)	
Century 21 Sierra Realtors,)	
)	
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)	
Respondents.)	
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PROPOSED DECISION

On November 28 and 29, 1989, in Fresno, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David A. Peters, Counsel, represented complainant.

A. Emory Wishon, III, Attorney at Law, represented respondents Curtis Wade Page (Page), Kevin Earl Christiansen (Christiansen) and Foothill Land Co., Inc., dba Sierra Realtors and Century 21 Realtors (Sierra).

Evidence was received and the record remained open for the receipt of written closing argument. Complainant's initial closing argument was received on December 27, 1989 and marked as Exhibit 13. Respondents closing argument was received on January 24, 1990 and marked as Exhibit H. Complainant's responsive closing argument was received on February 7, 1990 and marked Exhibit 14. The record was closed and the matter was submitted.

FINDINGS OF FACT

I

Charles W. Koenig, Deputy Real Estate Commissioner of the State of California, filed the Accusation against respondents. Koenig acted in his official capacity.

II

Page is licensed as a real estate broker in the State of California with license number 600830 and was so licensed at all times relevant to this matter.

Christiansen is licensed as a real estate broker in the State of California with license number 695968 and was so licensed at all times relevant to this matter. He was the licensed broker for Sierra at all times relevant to this matter.

Sierra is licensed as a real estate broker corporation in the State of California with license number 793998 and was so licensed at all times relevant to this matter.

III

In 1976, Donald L. and Eva T. McClanahan purchased real property and buildings located at 25527 N. Auberry Road, Clovis, California, which was commonly referred to as the Marshall Station Restaurant. They operated the business for several years, then leased it out to the Stewarts who operated it for a while. Then the McClanahan's daughter and her boyfriend operated it for a while. It was vacant from sometime in late 1985 or early 1986 until it was sold.

IV

On April 27, 1985, the McClanahans listed the Marshall Station Restaurant business, but not the real property or buildings, for sale with Sierra for \$30,000. It was a three month listing and the property did not sell.

V

On May 29, 1986, the McClanahans listed the Marshall Station Restaurant, the real property of about 1.61 acres, the building, all furnishings and equipment in the restaurant and a mobile home on the property for sale with Sierra for \$139,950. It was a six month listing. By May of 1986, the restaurant business had been closed for some months. Because the restaurant was closed, it did not have the extra value of an operating business with good will and customers.

The McClanahans wanted a \$45,000 cash down payment with the remainder to be paid to them over 15 years at 10 percent interest in payments of \$1,020.33 per month.

VI

By May of 1986, the McClanahans were living in Southern California, Mr. McClanahan was ill with terminal cancer and they were behind on the mortgage payments on the property and on the mobile home.

VII

Robert Reis contacted the McClanahans about purchasing the property and was referred to Sierra. Reis contacted Stan Combs, a salesman with Sierra, and made an offer on the property. Reis offered \$115,000, with \$25,000 cash down to the McClanahans, from an outside loan of \$50,000, and the McClanahans to take back a \$90,000 note

secured by a second deed of trust. Reis was to get \$25,000 from the outside loan.

The McClanahans rejected this offer. They wanted to have the first deed of trust, not a second, and Mrs. McClanahan was employed by an attorney who suggested that they would be crazy to accept this offer. Negotiations ensued. The McClanahans were under increasing financial pressure from the lenders on the property and the trailer. Page wrote those lenders and asked that they hold off foreclosing because of the continuing negotiations over the Reis offer. Page discussed the Reis offer with the McClanahans several times.

VIII

On August 6, 1986, Reis made another offer on the property. He offered \$115,000, with \$50,000 cash down to the McClanahans, from an outside loan of \$75,000, and the McClanahans to take back a \$65,000 note secured by a second deed of trust. Reis was to get \$25,000 from the outside loan, of which he was to spend \$15,000 on improvements to the property. These improvements were partially to be corrections and repairs to the restaurant building and equipment demanded by the Fresno County Department of Health before the restaurant could reopen.

The offer was contingent upon four conditions: 1) Reis meeting with Fresno County and being able to satisfy the requirements to reopen; 2) Reis and the property qualifying for the outside loan; 3) The McClanahans approving of Reis' creditworthiness; and 4) The first note and deed of trust to be assumable by the McClanahans if Reis defaulted. The McClanahans discussed this offer with Page who recommended that they turn it down if they felt uncomfortable with it. The McClanahans were concerned that Reis would receive cash from the loan but realized that it was necessary to pay for the repairs which the county required before the restaurant could reopen and to give Reis start up capital. The McClanahans did not want to take back a second note on the property but agreed to in order to sell the property. After a number of telephone discussions with Page about the risks involved in the offer, the McClanahans decided to accept it. At that point, the McClanahans really had very little choice, because they were behind in their payments on the trailer and on the property and there were no other buyers waiting in the wings. Page sweetened the pot a little for them by reducing the real estate sales fee from 10 percent to 8 percent.

IX

During the negotiations that preceeded the offer, the McClanahans wanted information about Reis' ability to perform. Page told them that Reis was in the process of being divorced, that he had recently borrowed against his farm near Visalia to pay his departing spouse her share, that he had a bird business and that he had no cash to pay down on the property or to start up the business. The McClanahans wanted to know more than this about Reis' financial situation and the contingency regarding his creditworthiness was included in the offer as accepted. The McClanahans wanted a copy of

Reis' financial statement and information regarding his credit. Page tried unsuccessfully to get this information from Reis. Then Reis suggested that Page get it from Marathon Home Loans, which was going to lend him the \$75,000 to buy the property. Marathon refused to supply a copy of Reis' financial statement or credit report but did confirm his creditworthiness in that they had lent him money on his farm and had approved the new \$75,000 loan for this property. When Page informed the McClanahans of this, they agreed to waive the contingency regarding credit information. Although the escrow instructions provided that the signatures of the buyer and seller acted to waive the contingencies, Page had the title company prepare an amendment to the escrow instructions specifically waiving the credit information contingency. This amendment was dated September 11, 1986, and was signed by the McClanahans and by Mr. and the new Mrs. Reis.

X

On August 26, 1986, Page telephoned Fran Ewert of Stewart Title to open the escrow. He described the property and the terms of the sale, including a purchase price of \$115,000 to be paid from the proceeds of a new loan on the property of \$75,000, to be taken out by the buyer who would retain \$25,000 for start up capital and improvements, and a \$65,000 note secured by a second deed of trust to be held by the seller. Ewert said that Stewart Title would not handle the escrow because the loans totaled \$140,000, which exceeded the purchase price. Page discussed this with the McClanahans and they approved a change in the listed purchase price and the separate listing of the mobile home and some restaurant equipment as security for the second loan. As security, the mobile home was valued at \$15,000 and the restaurant equipment at \$10,000 on the escrow documents. The McClanahans preferred this solution to the alternatives, which included losing the sale or reducing the second note to \$40,000 so that the first and second would total \$115,000. Page informed the McClanahans of the total amount of loans against the property. If it was overencumbered, the McClanahans were aware of it and agreed to it.

XI

On September 10, 1986, the McClanahans signed the escrow instructions for the sale of the property. On September 26, 1986, escrow closed on the sale of the property and the McClanahans received the \$50,000 from the new loan, minus the pay offs on their loans, various fees and taxes, and an 8 percent realtor's fee of \$9,200 (8 percent of \$115,000). The McClanahans actually received about \$14,203.08 of the \$50,000 at the close of escrow. Of the \$25,000 that was to go to Reis from the new loan, after various fees, charges, taxes, loan brokerage commission and two months advance interest were subtracted, Reis received about \$11,772.56 for start up capital and the required improvements.

XII

Before escrow closed on the property, Mr. Reis began making the required improvements and corrections to the property plus some

cosmetic improvements. The required improvements were quite extensive and included: electrical wiring; plumbing; roof leaks; ceiling, wall and floor refinishing; repair of the walk-in refrigerator; and other structural repairs and code requirements. These repairs had to be completed and receive approval of the county health department before the restaurant could reopen. The first payment on the second note was not due until two months after closing to give Reis time to complete the repairs. The repairs and approvals took longer than expected. Reis did not make the first payment on the second note when it was due. The McClanahans refused to extend additional time and started foreclosure proceedings when the second payment was not made in a timely fashion. When the McClanahans started foreclosure proceedings, Reis had only had the restaurant open for a few days. The McClanahans foreclosed on Reis. The McClanahans offered the property for sale at \$120,000 but were unable to sell it. Marathon foreclosed on the first mortgage when the McClanahans could not pay it and took the real property and the restaurant building in March of 1987. The McClanahans retained the mobile home and the restaurant equipment which were security on the second mortgage. They were able to sell the mobile home for about \$11,000 and still have the restaurant equipment.

Marathon offered the real property and the restaurant building for sale in March of 1987 for \$85,000 and finally sold it in March of 1989 for \$55,000.

XIII

During the negotiations and discussions that preceeded the sale to Reis, Page discussed with the McClanahans the risks of a deal in which the buyer put no money down and actually received money at the close of escrow. In order to protect themselves in the event that Reis defaulted, the McClanahans insisted that the new first mortgage be assumable by them on default.

XIV

Christiansen and Page purchased Sierra in 1985 from Page's father and Christiansen's father-in-law. During the period of 1986 through February 22, 1989, Christiansen was the designated broker for Sierra and Sierra did not have a written agreement with Page as required. They were notified of this requirement by an agent of the Department on February 15, 1989, and immediately corrected it. Page became the designated broker for Sierra on February 23, 1989, and on that day entered into a written broker-salesperson contract with Christiansen.

DETERMINATION OF ISSUES

I

Complainant failed to establish cause for discipline of respondent Page's license for violation of the Business and Professions Code:

- A. Section 10177(g),
- B. Sections 10176(a) and (i), and
- C. Sections 10176(b) and (i).

II

Complainant failed to establish cause for discipline of respondents Christiansen's and Sierra's licenses for violation of the Business and Professions Code:

- A. Sections 10176(a) and (i),
- B. Sections 10176(b) and (i), and
- C. 10177(g).

III

Complainant established cause for discipline of the licenses of respondents Christiansen and Sierra for violations of the Business and Professions Code, section 10177(d) in conjunction with Title 10, California Code of Regulations, section 2726 as found in Finding XIV.

ORDER


I

The Accusation is dismissed as to respondent Curtis Wade
Page.

II

The real estate licenses of Kevin Earl Christiansen and Foothill Land Co., Inc., dba Sierra Realtors and Century 21 Sierra Realtors are suspended for a period of seven days. However, the suspensions are stayed and respondents are placed on probation for one (1) year.

Dated: _____



LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

1 DAVID A. PETERS, Counsel
2 Department of Real Estate
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4 Sacramento, CA 95818-7000
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DEPARTMENT OF REAL ESTATE

Laurie A. Gian

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CURTIS WADE PAGE,)
KEVIN EARL CHRISTIANSEN, and)
FOOTHILL LAND CO., INC., dba)
Sierra Realtors and)
Centruy 21 Sierra Realtors,)
Respondents.)

NO. H-957 FRESNO

ACCUSATION

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against CURTIS WADE PAGE, KEVIN EARL CHRISTIANSEN, and FOOTHILL LAND CO., INC. is informed and alleges as follows:

I

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

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CURTIS WADE PAGE (hereinafter "Respondent PAGE"), KEVIN EARL CHRISTIANSEN (hereinafter "Respondent CHRISTIANSEN") and FOOTHILL LAND CO., INC., dba Sierra Realtors and Century 21 Sierra Realtors (hereinafter "Respondent SIERRA REALTORS") 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) (hereinafter "Code").

III

At all times material herein, Respondent PAGE was licensed as a real estate broker acting in the employ of Respondents CHRISTIANSEN and SIERRA REALTORS.

IV

At all times material herein, Respondent CHRISTIANSEN was licensed as a real estate broker and as the designated broker-officer of Respondent SIERRA REALTORS.

V

At all times material herein, Respondent SIERRA REALTORS was licensed as a real estate broker corporation with Respondent CHRISTIANSEN as designated broker-officer.

VI

At all times material herein, Respondents PAGE, CHRISTIANSEN and SIERRA REALTORS were performing acts requiring a real estate license for or in expectation of a compensation.

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VII

On or about May 29, 1986, Donald Leroy and Eva Theresa McClanahan (hereinafter "Sellers") listed for sale with Respondent SIERRA REALTORS through Respondent PAGE personal property including a mobile home and real property owned by Sellers commonly known as the Marshall Station Restaurant located at 25527 N. Auberry Road, Clovis, California (hereinafter "the Property").

VIII

On or after July 1, 1986, Respondent PAGE told Sellers that Robert Reis (hereinafter "Buyer") was interested in purchasing the Property. In order to induce Sellers into accepting an offer from Buyer, Respondent PAGE represented to Sellers that Buyer had a good credit rating.

IX

Respondent PAGE's representation described in Paragraph VIII above, was false or misleading and was known by Respondent PAGE to be false or misleading when made by Respondent PAGE with no reasonable grounds for believing said representation to be true. In truth and in fact, Respondent PAGE had not checked the Buyer's credit rating.

X

In reliance on the false or misleading representation made by Respondent PAGE described in Paragraph VIII above, Sellers agreed to consider Buyer's offer to purchase the Property.

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XI

During July 1986, Respondent PAGE represented to Sellers that Buyer was offering the following terms among others on the purchase of the Property:

- 1) Purchase price of \$115,000.00;
- 2) Buyer to borrow \$75,000.00 on the Property;
- 3) Seller to receive \$50,000.00;
- 4) Buyer to receive \$25,000.00 to be used for repairs on the Property and for working capital; and
- 5) Seller to carry back a second deed of trust for the balance of the purchase price.

XII

During July 1986, Sellers requested that Respondent PAGE include as a condition to any sales agreement on the Property that the Buyer's credit worthiness be approved by the Sellers.

XIII

During July 1986, Respondent PAGE in order to induce Sellers into selling the Property to Buyer, represented to Sellers that Respondent PAGE would provide Sellers with Buyer's financial statement and credit reports. Respondent failed to provide a financial statement or credit reports to Sellers on the Buyer prior to the close of escrow or at any other time.

XIV

On or about August 6, 1986, Respondent PAGE caused a written purchase offer on the Property from Buyer to be presented to the Sellers. Said offer included the following terms among others:

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XVIII

On or about August 26, 1986, Respondent PAGE in order to induce Sellers into signing the escrow instructions described in Paragraph XVII above and to induce Sellers into selling the Property to Buyer, represented to Sellers that the terms of the written purchase offer described in Paragraph XIII above, would not be changed by Sellers signing of the escrow instructions. Respondent represented to Sellers that the reason for the changes in the escrow instructions was to enable the Buyer to obtain the loan needed to purchase the Property. Respondent PAGE further represented to Sellers that Sellers would pay taxes on a sales price of \$115,000.00.

XIX

Respondent PAGE's representations described in Paragraph XVIII above, were false or misleading and were known by Respondent PAGE to be false or misleading when made by Respondent PAGE with no reasonable grounds for believing said representations to be true. In truth and in fact, the escrow instructions did change the terms of the written purchase offer and Sellers would be required to pay taxes based upon the sales price of \$140,000.00 included in the escrow instructions.

XX

On or about September 10, 1986, in reliance on the representations made by Respondent PAGE, Sellers signed the escrow instructions on the sale of the Property.

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XXI

Beginning on or before August 6, 1986 and continuing through the close of escrow on the sale of the Property, Respondents PAGE, CHRISTIANSEN and SIERRA REALTORS failed to disclose to Sellers the material fact that by signing the escrow instructions Sellers would waive the condition contained in the written purchase offer requiring Sellers' approval of Buyer's credit worthiness and financial statement. In the alternative, Respondents PAGE, CHRISTIANSEN and SIERRA REALTORS failed or neglected to arrange for Sellers' approval of Buyer's credit worthiness and financial statement prior to Sellers signing of the escrow instructions.

XXII

On or about September 26, 1986, escrow closed on the sale of the Property.

XXIII

Beginning on or about December 1, 1986 and continuing thereafter, Buyer failed to make payments to Sellers on the second deed of trust.

XXIV

Respondents CHRISTIANSEN and SIERRA REALTORS owed a fiduciary duty to the Sellers by force of the listing agreement described in Paragraph VII above, and by force of the commission received by said Respondents from the transaction. Said Respondents failed to advise the Sellers as to their best interests in the transaction and as to the potential problems with protecting their equity in the Property.

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XXV

Within the three (3) year period immediately preceding the filing of this Accusation and continuing thereafter, Respondents CHRISTIANSEN and SIERRA REALTORS failed to have a written agreement with each of their salespersons, whether licensed as a salesperson or as a broker under a broker-salesperson arrangement, dated and signed by the parties and covering material aspects of the relationship between the parties.

XXVI

The facts alleged above are grounds for the suspension or revocation of the licenses of Respondents PAGE, CHRISTIANSEN and SIERRA REALTORS under the following Sections of the Code:

(1) As to Paragraphs VIII and XVIII, under Sections 10176(a) and 10176(i) of the Code, or in the alternative, under Section 10177(g) of the Code as to Respondent PAGE.

(2) As to Paragraph XIII, under Sections 10176(b) and 10176(i) of the Code, or in the alternative, under Section 10177(g) of the Code as to Respondent PAGE.

(3) As to Paragraphs XVI and XXI, under Sections 10176(a) and 10176(i) of the Code, or in the alternative, under Section 10177(g) of the Code as to Respondents PAGE, CHRISTIANSEN and SIERRA REALTORS.

(4) As to Paragraph XXIV, under Sections 10176(a) and 10176(i) of the Code, or in the alternative, under Section 10177(g) of the Code as to Respondents CHRISTIANSEN and SIERRA REALTORS.

1 (5) As to Paragraph XXV, under Section 10177(d) of the
2 Code in conjunction with Section 2726 of Title 10, California Code
3 of Regulations, as to Respondents CHRISTIANSEN and SIERRA
4 REALTORS.


5 WHEREFORE, Complainant prays that a hearing be conducted
6 on the allegations of this Accusation and that upon proof thereof,
7 a decision be rendered imposing disciplinary action against all
8 licenses and license rights of Respondents, under the Real Estate
9 Law (Part 1 of Division 4 of the Business and Professions Code)
10 and for such other and further relief as may be proper under the
11 provisions of law.

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CHARLES W. KOENIG
Deputy Real Estate Commissioner

16 Dated at Sacramento, California

17 this 29th day of June, 1989.

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