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FILED
DEC 20 1999

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zari*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-1421 FRESNO
)	
COLONIAL HERITAGE HOMES, INC.,)	OAH NO. L-1999060379
a California corporation, and)	
ROBERTY DEAN McCUMSEY,)	
)	
Respondents.)	

ORDER DENYING RECONSIDERATION

On October 14, 1999, a Decision was rendered in the above-entitled matter. The Decision is to become effective December 20, 1999.

On November 5, 1999, Respondent petitioned for reconsideration of the Decision of October 14, 1999.

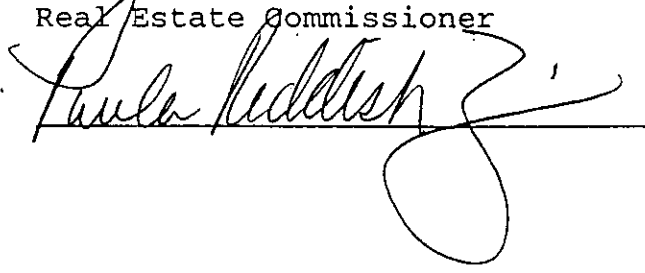
I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 14, 1999, and reconsideration is hereby denied.

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IT IS HEREBY ORDERED December 16, 1999.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



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FILED
NOV 15 1999

DEPARTMENT OF REAL ESTATE

By *Laurie A. Ziser*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-1421 FRESNO
)
COLONIAL HERITAGE HOMES, INC.,) OAH NO. L-1999060379
a California corporation, and)
ROBERT DEAN McCUMSEY,)
)
Respondents.)

ORDER STAYING EFFECTIVE DATE

On October 14, 1999, a Decision was rendered in the above-entitled matter to become effective November 18, 1999.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of October 14, 1999, is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of October 14, 1999, shall become effective at 12 o'clock noon on December 20, 1999.

DATED: November 10, 1999

JOHN R. LIBERATOR
Chief Deputy Commissioner

John R. Liberator

FILED

OCT 28 1999

DEPARTMENT OF REAL ESTATE

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Jan Arnold

* * *

In the Matter of the Accusation of)	
)	NO. H-1421 FRESNO
COLONIAL HERITAGE HOMES, INC.,)	
a California corporation, and,)	OAH NO. L-1999060379
ROBERT DEAN McCUMSEY,)	
)	
Respondents.)	

DECISION

The Proposed Decision dated October 6, 1999, 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 November 18, 1999.

IT IS SO ORDERED October 14, 1999.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:)	NO. H-1421 FRESNO
)	
COLONIAL HERITAGE HOMES, INC.,)	OAH NO. L1999060379
a California Corporation, and)	
ROBERT DEAN McCUMSEY,)	
)	
Respondents.)	
<hr/>)

PROPOSED DECISION

This matter was heard on September 28 and 29, 1999, at Los Angeles, by Jerry Mitchell, Administrative Law Judge of the Office of Administrative Hearings. The complainant was represented by James L. Beaver, Real Estate Counsel III. The respondent Robert Dean McCumsey was present, and he and respondent Colonial Heritage Homes, Inc., were represented by Lawrence H. Lackman, Attorney at Law.

FACTUAL FINDINGS

1. This Accusation was made by John W. Sweeney in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. As used herein, the word "Colonial" refers to respondent Colonial Heritage Homes, Inc., and to the name by which it was formerly known, to wit: RDM Financial Services.
3. Colonial is, and at all times mentioned herein was, licensed by the Department of Real Estate ("the Department") as a corporate real estate broker, with respondent Robert Dean McCumsey ("McCumsey") as its designated officer-broker.
4. McCumsey is, and all times mentioned herein was, licensed by the Department as a real estate broker and as the designated officer-broker of Colonial.
5. As used herein, the real property known as "Tract No. 4503 'Stockdale Greens,'" in or near the City of Bakersfield, County of Kern, State of California, constitutes a "subdivision" and "subdivided land" as those terms are used in Section 11018.2 of the Business and Professions Code ("the Code") and Section 2801.5 of Title 10, California Code of Regulations ("the Regulations").

6. At all times mentioned herein, McCumsey, doing business as "Traditional Homes," and Colonial, as McCumsey's nominee, had an option to acquire, for the purpose of sale, from the original recipient of a public report for "Tract No. 4503 'Stockdale Greens,'" or from a successor to the interest of the original recipient, five or more subdivision interests, hereinafter referred to as "lots," in said subdivision.

7. Beginning on or about May 14, 1997, McCumsey, doing business as "Traditional Homes" and acting as the agent of Colonial, and Colonial, itself, offered five or more lots in "Tract No. 4503 'Stockdale Greens'" for sale without having first obtained a subdivision public report issued by the Department expressly authorizing the sale of said lots by or on behalf of McCumsey, Traditional Homes or Colonial.

8. McCumsey, doing business as "Traditional Homes" and acting as the agent of Colonial, and Colonial, itself, sold the following lots in "Tract No. 4503 'Stockdale Greens'" without having first obtained a subdivision public report issued by the Department expressly authorizing the sale of said lots by or on behalf of McCumsey, Traditional Homes or Colonial:

<u>DATE</u>	<u>PURCHASERS</u>	<u>LOTS</u>
05/14/97	Ralph and Mary Cox	Lot 12
05/30/97	Lester and Christine Surgener	Lot 17
09/19/97	Michael and Angela Marchbanks	Lot 15
03/31/98	Joyce L. Mccoy	Lot 18
06/05/98	Tillie Resley	Lot 35
08/14/98	Billy and Imojean Graham	Lot 16
09/30/98	Edwin Crail Brown	Lot 14

9. McCumsey and Colonial raise as a defense or mitigation their claim that an employee of the Department recommended they get a legal opinion, they obtained such an opinion, their representative sent a copy of it to the Department, the Department did not take issue with it, and they (respondents) relied upon it. In pertinent part, the opinion stated: "an 'owner, person or subdivider' who purchases, owns or options less than five (5) subdivision interests in a subdivision – at any one point in time – from the original recipient of a Public Report, is NOT under any requirement to obtain *another* DRE Public Report in order to offer to sell or lease those subdivision interests." Respondents did not inform the Department that they had an option to acquire five or more interests. Whether they informed the writer of the opinion of that fact is unknown, but seems unlikely in view of the premise on which the opinion is based.

10. There was no evidence that anyone with whom respondents dealt suffered a loss as a result of their conduct.

LEGAL CONCLUSIONS

1. The facts set forth in Factual Findings 7 and 8, above, constitute violations by McCumsey and Colonial of Section 11018.2 of the Code and Section 2801.5 of the Regulations, for which their licenses are subject to discipline pursuant to Section 10177(d) of the Code.

2. The facts set forth in Factual Finding 9 do not constitute a defense and, at best, constitute only the slightest mitigation.

ORDER RE COLONIAL HERITAGE HOMES, INC.

All licenses and license rights of respondent Colonial Heritage Homes, Inc., under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to 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 Code:

1. The restricted license issued to respondent shall be suspended for the first ninety (90) days following its issuance.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the 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.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

ORDER RE ROBERT DEAN McCUMSEY

All licenses and license rights of respondent Robert Dean McCumsey under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to 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 Code:

1. The restricted license issued to respondent shall be suspended for the first ninety (90) days following its issuance.
2. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
3. The restricted license issued to respondent may be suspended prior to hearing by order of the Real Estate Commissioner on evidence satisfactory to the 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.
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.
5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license

until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: October 6, 1999

A handwritten signature in cursive script, appearing to read "J. Mitchell", written in black ink.

JERRY MITCHELL
Administrative Law Judge

FILED
JUL 21 1999

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Laurie L. Zier

In the Matter of the Accusation of

COLONIAL HERITAGE HOMES, INC.,
a California corporation, and
ROBERT DEAN McCUMSEY,

}

Case No. H-1421 FRESNO

OAH No. L-1999060379

Respondent

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 the
Office of Administrative Hearings, 320 West Fourth Street,
6th Floor, Suite 630, Los Angeles, CA 90013

on September 28, 1999 through October 1, 1999, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of
hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten
(10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission 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.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The
interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: July 21, 1999

By James L. Beaver
JAMES L. BEAVER
Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
MAY 27 1999

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zim*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of)	No. H-1421 FRESNO
12	COLONIAL HERITAGE HOMES, INC.,)	<u>ACCUSATION</u>
13	a California corporation, and)	
14	ROBERT DEAN McCUMSEY,)	
15	Respondents.)	

16 The Complainant, John W. Sweeney, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against COLONIAL HERITAGE HOMES, INC., a California corporation,
19 and ROBERT DEAN McCUMSEY (hereinafter "Respondents"), is informed
20 and alleges as follows:

21 I

22 Respondents are presently licensed and/or have license
23 rights under the Real Estate Law, Part 1 of Division 4 of the
24 Business and Professions Code (hereinafter "Code").

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II

The Complainant, John W. Sweeney, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity:

III

At all times herein mentioned, Respondent COLONIAL HERITAGE HOMES, INC. (hereinafter "COLONIAL") was and now is licensed by the Department of Real Estate of the State of California (hereinafter "the Department") as a corporate real estate broker by and through Respondent ROBERT DEAN McCUMSEY, (hereinafter "McCUMSEY") as designated officer-broker of Respondent COLONIAL to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, Respondent McCUMSEY was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of Respondent COLONIAL.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of Respondent COLONIAL, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with Respondent COLONIAL committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their corporate authority and employment.

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VI

At all times mentioned herein Respondents were the owner or subdivider or agents of the owner or subdivider of subdivided lands as defined in Sections 11000, 11003, and 11004.5 of the Code.

VII

Said subdivided lands are known as or commonly called Tract No. 4503 "Stockdale Greens" and are located in or near the City of Bakersfield, County of Kern, State of California (hereinafter "said Subdivision").

VIII

Beginning on or about May 14, 1997, Respondents, individually and through Respondents' agents, solicited prospective purchasers, offered for sale and sold lots, units or parcels in said Subdivision, including but not limited to lots 12, 14, 15, 16, 17, 18, and 35, in said Subdivision.

IX

On or about the dates tabulated below, Respondents offered for sale and sold the lots tabulated below in said Subdivision to the purchasers tabulated below:

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	<u>DATE</u>	<u>PURCHASER</u>	<u>LOTS</u>
1			
2	05/14/97	Ralph and Mary Cox	Lot 12
3	05/30/97	Lester and Christine Surgener	Lot 17
4	09/19/97	Michael and Angela Marchbanks	Lot 15
5	03/31/98	Joyce L. McCoy	Lot 18
6	06/05/98	Tillie Resley	Lot 35
7	08/14/98	Billy and Imojean Graham	Lot 16
8	09/30/98	Edwin Crail Brown	Lot 14

9 X

10 Respondents sold and offered for sale lots, units, or

11 parcels in said Subdivision, as described in Paragraphs VIII and

12 IX, above, without having first obtained a public report as

13 required by Section 11018.2 of the Business and Professions Code

14 of the State of California (hereinafter "the Code") and Section

15 2801.5 of Chapter 6, Title 10, California Code of Regulations

16 (hereinafter "the Regulations").

17 XI

18 The acts and omissions of Respondents described in

19 Paragraph X, above, constitute cause for the suspension or

20 revocation of the licenses and license rights of Respondents under

21 Section 10177(d) of the Code in conjunction with Section 2801.5 of

22 the Regulations and Section 11018.2 of the Code.

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



JOHN W. SWEENEY
Deputy Real Estate Commissioner

Dated at Fresno, California,
this 24th day of May, 1999.