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 2 Department of Real Estate
 3 185 Berry Street, Room 5816
 4 San Francisco, CA 94107-1770

5 (415) 557-3220

FILED
 JUN 14 1988

DEPARTMENT OF REAL ESTATE

By C. Westbrook
 C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

11 In the Matter of the Application of)
 12 MICHAEL JAMES DE PROTO,)
 13 Respondent.)

No. H-5914 SF

OAH No. N-30555

DECISION AFTER REJECTION

16 The matter came on for hearing before Ruth S. Astle,
 17 Administrative Law Judge of the Office of Administrative Hearings,
 18 in San Francisco, California, on January 8, 1988.

19 Complainant was represented by Vera Winter Lee, Staff
 20 Counsel.

21 Respondent was present and represented by Matthew C.
 22 Freeman, Attorney at Law, Freeman & Freeman, 350 E Street, Suite
 23 310, Santa Rosa, California 95404.

24 Evidence was received, the hearing was closed and the
 25 matter was submitted.

26 On January 14, 1988, the Administrative Law Judge
 27 submitted a Proposed Decision which I declined to adopt as my
 Decision herein. Pursuant to Section 11517(c) of the Government

1 Code of the State of California, respondents were served with
2 notice of my determination not to adopt the Proposed Decision of
3 the Administrative Law Judge along with a copy of said Proposed
4 Decision. Respondent was notified that the case would be decided
5 by me upon the record, the transcript of proceedings held on
6 January 8, 1988 and upon any written argument offered by
7 respondent and complainant. Argument was submitted on behalf of
8 both.

9 I have given careful consideration to the record in this
10 case including the transcript of proceedings of January 8, 1988.

11 The following shall constitute the Decision of the Real
12 Estate Commissioner in this proceeding:

13 FINDINGS OF FACT

14 I

15 Edward V. Chiolo made the Statement of Issues in his
16 official capacity as a Deputy Real Estate Commissioner of the
17 State of California and not otherwise.

18 II

19 Michael James De Proto (respondent) made application to
20 the Department of Real Estate (Department) for a real estate
21 broker license on May 21, 1987.

22 FIRST CAUSE OF ACTION

23 III

24 Respondent was issued a real estate salesperson license
25 by the Department in 1978 and his license expired on May 24,
26 1982. His license was reissued on June 27, 1983 and revoked
27 effective May 7, 1987. Respondent was issued a restricted real

1 estate salesperson license effective October 14, 1987.

2 IV

3 From May 24, 1982 to June 26, 1983, respondent acted in
4 the capacity of a real estate salesperson while his license was in
5 expired status. This fact was grounds for disciplinary action in
6 a prior proceeding entitled "In the Matter of the Accusation of H.
7 Gregory Trafton, and Michael James De Proto, Respondents", Case
8 No. H-5598 SF, OAH No. N 25926.

9 SECOND CAUSE OF ACTION

10 V

11 At all times mentioned below, H. Gregory Trafton
12 (Trafton) was licensed as a real estate broker and his license was
13 revoked effective September 3, 1986.

14 VI

15 Between June 27, 1983 and April 23, 1984, respondent,
16 while in the employ of Trafton as a real estate salesperson,
17 solely managed a property management company under the fictitious
18 name D & G Equity Management, formerly known as D & G Associates
19 (D & G). During that time period, respondent rented and managed
20 real properties in the Guerneville area and through the receipt of
21 management fees deducted from rental payments made on those
22 properties, respondent accepted compensation directly from his
23 principals.

24 VII

25 Between June 27, 1983 and April 23, 1984, respondent
26 received trust funds and deposited them into an interest bearing
27 trust account maintained by D & G. The interest that was earned

1 on the account insured to the benefit of D & G rather than to
2 owners of the trust funds.

3 VIII

4 The matters set forth in Findings VI and VII were also
5 grounds for disciplinary action in the case set forth in
6 Finding IV. This case resulted in the issuance of the restricted
7 salesperson license that respondent presently holds.

8 IX

9 Respondent's problems in the case referred to above
10 were a result of lack of knowledge rather than any intent on
11 respondent's part to commit fraud or misrepresentation.
12 Respondent has attended a number of real estate courses since that
13 time including courses that involve instruction in the handling of
14 trust funds. Respondent has passed the broker examination.

15 X

16 Respondent has obtained a restricted real estate
17 salesperson license and placed his license with real estate broker
18 Ernest McCulloh (McCulloh) effective October 14, 1987, and, prior
19 to October 14, 1987 McCulloh had registered the D & G fictitious
20 name with the Department as McCulloh's fictitious name.

21 XI

22 Respondent, however, is not sufficiently rehabilitated
23 to operate without supervision. Respondent has not corrected his
24 business practices in that:

25 / / / / / /

26 / / / / / /

27 / / / / / /

- 1 A. Respondent again operated D & G without a real
2 estate broker license from May 4, 1987 to October
3 14, 1987, although he had known since at least 1983
4 that a real estate broker license is required to
5 operate a property management business.
- 6 B. Respondent continues to operate D & G in the
7 capacity of a real estate broker without a real
8 estate broker license. He operates without any
9 supervision from his broker, McCulloh, whose
10 operation is in another city. Respondent instead
11 relies on reference books and his attorney.
- 12 C. Respondent fails to realize that primary
13 responsibility for trust fund handling is the
14 broker's. Respondent is not seeking and following
15 his broker's instructions.
- 16 D. Respondent fails to understand that he can only
17 be compensated by the broker under whom he is at the
18 time licensed. Respondent has consistently received
19 his compensation directly from his broker's
20 principals by disbursing funds from the D & G trust
21 account to the D & G operating account and then
22 disbursing funds to himself from the D & G operating
23 account, although he had no instructions from his
24 broker to do so, and although the D & G fictitious
25 name was not registered to respondent's broker until
26 October 14, 1987.

27 / / / / / /

1
2 Considering respondent's continuing pattern of violation
3 of the Real Estate Law, as set out above in Paragraphs IV through
4 VIII and XI, it would not be in the public interest to issue a
5 real estate broker license to respondent at this time.

DETERMINATION OF ISSUES

First Cause Of Action

I

8
9 The facts alleged above in Paragraphs III and IV violate
10 Section 10130 of the Business and Professions Code (Code), and
11 constitute grounds for disciplinary action under the provisions of
12 Section 10177(d) of the Code and constitute grounds for denial of
13 respondent's application for a real estate broker license under
14 the provisions of Section 480(a)(3) of the Code.

Second Cause of Action

II

16
17 The facts alleged above in paragraph VII establish a
18 violation of Section 10145 of the Code and the facts alleged in
19 Paragraph VI establish a violation of Section 10137 of the Code.
20 Respondent's violations of Code Sections 10145 and 10137
21 constitute grounds for disciplinary action under Sections 10177(d)
22 and 10137 respectively and constitute grounds for denial of
23 respondent's application for a real estate broker license under
24 the provisions of Section 480(a)(3) of the Code.

/ / / / / /

/ / / / / /

/ / / / / /

Other Matters

III

The matters set forth in Findings IX, X, XI and XII have been considered in making the following order.

ORDER

I

The May 21, 1987 application of respondent MICHAEL JAMES DE PROTO for a real estate broker license is hereby denied.

This Decision shall become effective at 12 o'clock noon on July 5, 1988.

IT IS SO ORDERED June 13, 1988.

JAMES A. EDMONDS, JR.
Real Estate Commissioner

By:

John R. Liberator
JOHN R. LIBERATOR
Chief Deputy Commissioner

COPY

FILED
FEB 02 1988
DEPARTMENT OF REAL ESTATE
By C. Westbrook
C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
MICHAEL JAMES DE PROTO,
Respondent.

NO. H-5914 SF
N 30555

NOTICE

TO: MICHAEL JAMES DE PROTO, Respondent
and
MATTHEW C. FREEMAN, his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated January 13, 1988, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated January 13, 1988, is attached
hereto for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record
herein including the transcript of the proceedings held on

/ / / / /

1 January 8, 1988, and any written argument hereafter submitted on
2 behalf of respondent and complainant.

3 Written argument of respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of January 8, 1988, at the San Francisco office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

8 Written argument of complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 respondent at the San Francisco office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: January 29, 1988

14
15 JAMES A. EDMONDS, JR.
16 Real Estate Commissioner

17 By: John R. Liberator
18 JOHN R. LIBERATOR
19 Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application)
of)

MICHAEL JAMES DE PROTO,)

Respondent.)
_____)

CASE NO. H-5914 SF

OAH NO. N-30555

PROPOSED DECISION

This matter was heard before Ruth S. Astle,
Administrative Law Judge of the Office of Administrative
Hearings, State of California on January 8, 1988 in San
Francisco, California.

Complainant was represented by Vera Winter Lee, Staff
Counsel.

Respondent was present and represented by Matthew C.
Freeman, Attorney at Law, Freeman & Freeman, 350 E Street,
Suite 310, Santa Rosa, California 95404.

---FINDINGS OF FACT

I

Edward V. Chiolo made the Statement of Issues in his
official capacity as a Deputy Real Estate Commissioner of the
State of California and not otherwise.

II

Michael James De Proto (respondent) made application
to the Department of Real Estate (Department) for a real estate
broker license on May 21, 1987.

First Cause of Action

III

Respondent was issued a real estate salesperson
license by the Department in 1978 and his license expired on

May 24, 1982. His license was reissued on June 27, 1983 and revoked effective May 7, 1987. Respondent was issued a restricted real estate salesperson license effective October 14, 1987.

IV

From May 24, 1982 to June 26, 1983, respondent acted in the capacity of a real estate salesperson while his license was in expired status. This fact was grounds for disciplinary action in a prior proceeding entitled "In the Matter of the Accusation of H. Gregory Trafton, and Michael James De Proto, Respondents", Case No. H-5598 SF, OAH No. N 25926.

Second Cause of Action

V

At all times mentioned below, H. Gregory Trafton (Trafton) was licensed as a real estate broker and his license was revoked effective September 3, 1986.

VI

Between June 27, 1983 and April 23, 1984, respondent, while in the employ of Trafton as a real estate salesperson, solely managed a property management company under the fictitious name D & G Equity Management, formerly known as D & G Associates (D & G). During that time period, respondent rented and managed real properties in the Guerneville area and through the receipt of management fees deducted from rental payments made on those properties, respondent accepted compensation directly from his principals.

VII

Between June 27, 1983 and April 23, 1984, respondent received trust funds and deposited them into an interest bearing trust account maintained by D & G. The interest that was earned on the account inured to the benefit of D & G rather than to owners of the trust funds.

VIII

The matters set forth in Findings VI and VII were also grounds for disciplinary action in the case set forth in Finding IV. This case resulted in the restricted salesperson license that respondent presently holds.

IX

Respondent's problems in the case referred to above were a result of lack of knowledge rather than any intent on

respondent's part to commit fraud or misrepresentation. Respondent has attended a number of real estate courses since that time including courses that involve instruction in the handling of trust funds. Respondent has passed the brokers examination.

X

Respondent has changed his business practices to conform with the requirements of the law and regulations. He now relies heavily on his attorney for advice in handling matters for which he needs guidance.

XI

Although respondent has not been on a restricted salesperson license for one year, the previous matter was heard on February 4, 1986. Respondent has not had any problems with his business practices since that date. Other legal proceedings caused the effective date of the restricted license to be much later than it would have been in the normal course of events. It would not be against the public interest under the circumstances to issue a restricted broker license to respondent at this time.

DETERMINATION OF ISSUES

First Cause of Action

I

By reason of the matters set forth in Findings III and IV, cause for denial exists pursuant to sections 10130, 10177(d), and 480(a)(3) of the Business and Professions Code.

Second Cause of Action

II

By reason of the matters set forth in Findings V, VI, VII and VIII, cause for denial exists pursuant to sections 10145, 10137, 10177(d), and 480(a)(3) of the Business and Professions Code.

Other Matters

III

The matters set forth in Findings IX, X, and XI have been considered in making the following order.

ORDER

1. The application of Michael James De Proto for issuance of a real estate broker license is hereby denied.

2. A restricted real estate broker license shall be issued to respondent under Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fees for said license within ninety (90) days of the Decision.

3. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following conditions:

- NOT ADOPTED*
- A. Said restricted license 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.
 - B. Said restricted license may be suspended prior to hearing by Order of the Commissioner on evidence satisfactory to the Commissioner that respondent has violated the provisions of the California Real Estate Law, Regulations of the Real Estate Commissioner and conditions attaching to the restricted license.
 - C. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

DATED: January 13, 1988

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge

RSA:lhj

COPY

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 08 1987

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

MICHAEL JAMES DE PROTO,

Respondent

By C. Westbrook

C. Westbrook

Case No. H-5914 SF

OAH No. N
(per telecon)

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of
Administrative Hearings, State Bldg., Rm 2248, 455 Golden Gate Ave., San Francisco, CA 94102
(1/2 day hearing)
on the 8th day of January, 19 88, at the hour of 1:30 p.m., or as soon thereafter
as the matter can be heard, upon the Statement of Issues 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 based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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. The interpreter must be approved by the hearing officer conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the hearing officer directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: December 8, 1987

By VERA WINTER LEE
VERA WINTER LEE, Counsel

COPY

1 VERA WINTER LEE, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 5816
4 San Francisco, CA 94107-1770

5 (415) 557-3220

FILED
NOV 04 1987

DEPARTMENT OF REAL ESTATE

By C. Westbrook
C. Westbrook

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

11 In the Matter of the Application of)
12 MICHAEL JAMES DE PROTO,)
13 Respondent.)
14 _____)
No. H-5914 SF
STATEMENT OF ISSUES
(B&P Code Section 10152)

15 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against MICHAEL JAMES DE PROTO (hereinafter respondent) alleges as
18 follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California (Department) for a real estate
22 broker license on or about May 21, 1987.

23 II

24 Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

27 / / / / /

III

Respondent was issued a real estate salesperson license by the Department in 1978 and his license expired on May 24, 1982. His license was reissued on June 27, 1983 and revoked effective May 7, 1987.

IV

From approximately May 24, 1982 to approximately June 26, 1983, respondent acted in the capacity of a real estate salesperson while his license was in expired status.

V

Respondent's acts and omissions as set out in Paragraph IV violate Section 10130 of the Business and Professions Code (Code) and constitute grounds for disciplinary action under the provisions of Section 10177(d) of the Code.

VI

The facts as alleged above constitute grounds for denial of respondent's application for a real estate broker license under the provisions of Section 480(a)(3) of the Code.

SECOND CAUSE OF ACTION

I

There is hereby incorporated into this second separate cause of action all of the allegations contained in Paragraph I, II and III of the First Cause of Action with the same force and effect as if herein fully set forth.

II

At all times mentioned below, H. GREGORY TRAFTON (Trafton) was licensed as a real estate broker and his license was

1 revoked effective August 4, 1986.

2 III

3 Between June 27, 1983 and April 23, 1984, respondent,
4 while in the employ of Trafton as a real estate salesperson,
5 solely managed a property management company under the fictitious
6 name D & G Equity Management, formerly known as D & G Associates
7 (D & G). During that time period, respondent rented and managed
8 real properties in the Guerneville area and through the receipt of
9 management fees deducted from rental payments made on those
10 properties, respondent accepted compensation directly from his
11 principals.

12 IV

13 Between June 27, 1983 and April 23, 1984, respondent
14 received trust funds and deposited them into an interest bearing
15 trust account maintained by D & G. The interest that was earned
16 on the account inured to the benefit of D & G rather than to the
17 owners of the trust funds.

18 V

19 Respondent's acts and omissions as set out in Paragraph
20 IV violate Section 10145 of the Code and constitute a basis for
21 disciplinary action under the provisions of Section 10177(d) of
22 the Code.

23 VI

24 Respondent's acts and omissions as set out in Paragraphs
25 III violated Section 10137 of the Code and constitute a basis for
26 discipline under that same section.

27 / / / / /

VII

The facts alleged above constitute grounds for denial of respondent's application for a real estate broker license under the provisions of Section 480(a)(3) of the Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate broker license to respondent, and for such other and further relief as may be proper in the premises.

Edward V. ChioLO

EDWARD V. CHIOLO
Deputy Real Estate Commissioner

Dated at San Francisco, California,
this 4th day of November, 1987.