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DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID ELIOT WEST,)
Respondent.)

No. H-6391 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On April 5, 1991, a Decision was rendered herein
revoking the real estate broker license of Respondent, 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 June 21, 1991, and Respondent has
operated as a restricted licensee without cause for disciplinary
action against Respondent since that time.

On December 21, 1993, 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
filing of said petition.

///

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate broker
6 license and that it would not be against the public interest to
7 issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's petition
9 for reinstatement is granted and that a real estate broker license
10 be issued to Respondent if Respondent satisfies the following
11 conditions within six months from the date of this Order:

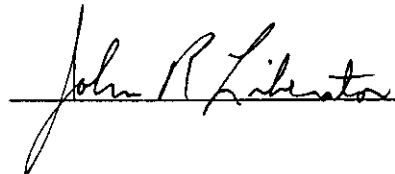
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

14 2. Submittal of evidence of having, since the most
15 recent issuance of an original or renewal real estate license,
16 taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license.

19 This Order shall be effective immediately.

20 DATED: February 24, 1995

21 JOHN R. LIBERATOR
22 Interim Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

In the Matter of the Accusation of)
DAVID ELIOT WEST,)
aka DAVID E. WEST,)
aka DAVID WEST,)
Respondent.)

No. H-6391 SF

OAH N-37163

DECISION

The Proposed Decision dated March 22, 1991, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock
noon on May 10, 19 91.

IT IS SO ORDERED April 5, 19 91.

JOHN R. LIBERATOR
Chief Deputy Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	
DAVID ELIOT WEST,	)	Case No. H-6391 SF
aka DAVID E. WEST,	)	
aka DAVID WEST,	)	OAH No. N 37163
	)	
Respondent.	)	
	)	
	)	

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on March 8, 1991.

Complainant was represented by David B. Seals, Counsel.

Respondent David Eliot West was present and was represented by James L. Hillman, Attorney at Law, #1 Kaiser Plaza, Suite 715, Oakland, California 94612.

FINDINGS OF FACT

I

Complainant Edward V. Chiolo made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

II

David Eliot West ("respondent") is presently licensed and has licensing rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). At all times relevant, respondent has been licensed as a real estate broker doing business as West Investment Groups and West Management Company. Respondent's license is scheduled to expire on June 17, 1994.

III

On January 31, 1989, in the Municipal Court for the Berkeley-Albany Judicial District, County of Alameda, State of California, respondent was convicted, upon his plea of nolo contendere, of a violation of Unemployment Insurance Code section 2108 (willful failure to make contributions).

IV

Respondent's conviction was the result of his willful failure to make unemployment insurance contributions on behalf of the employees of his real estate brokerage from June 1986 through May 1988. The amount of unpaid contributions was not established. While the Employment Development Department has made a claim on respondent for \$32,000 including penalties, respondent maintains the amount of unpaid taxes was only \$4,500.

V

Respondent attributes his nonpayment of unemployment contributions and subsequent criminal conviction to a series of bad business judgments. In early 1986 respondent's business, West Management Company, managed over 1300 apartment and condominium residential units and processed over 1500 checks each month. In mid-1986 respondent, in an attempt to streamline its business, switched accounting systems. Four days after the change, respondent's controller was forced to go on medical leave. Respondent promoted someone from inside the company who proved to be unable to handle the new system. Respondent saw that there was a problem within fifteen days of the changeover. Within forty-five days he realized the new system would not work and switched back to the original accounting system.

By the time he switched back, however, respondent's books were in disarray and he was unable to provide his clients with an accurate accounting of the amounts in their trust accounts. Respondent was forced to hire additional accounting personnel and consultants to straighten out his books. While respondent's accounting expenditures had been \$30,400 in 1985, they rose to \$65,882 in 1986. He spent an additional \$52,854 in 1987 and \$38,807 in 1988. At the same time, the brokerage's income declined significantly because of a general downturn in the market and because respondent's clients began to leave due to his inability to properly service them. When those clients left, because of the state of his books respondent was unable to determine exactly how much rent had been collected on their behalves and how much was due them. Respondent elected to pay the clients the full amount which would have been due them had all rents been paid. Respondent was forced to dip into the operating account to meet resulting shortages in the trust accounts. As a result of all this, respondent testified, he found himself without enough money to pay his taxes, both state and federal. In addition to the \$32,000 claim made by the Employment Development Department, the Internal Revenue Service has made a claim against respondent for more than \$200,000, although respondent maintains the actual amount of unpaid taxes is \$124,000.

VI

Based upon the matters set forth in Finding V, it is found that, pursuant to Title 10, California Code of Regulations

section 2910(a)(3), respondent's conviction is deemed to be substantially related to the qualifications, functions and duties of a real estate licensee. While respondent contends that he had no intent to defraud and received no material benefit from his nonpayment of taxes, the evidence shows that respondent's nonpayment of taxes was motivated at least in part by personal financial benefit. Simply stated, respondent sought to keep his business afloat by using monies which should have been used to pay taxes for other purposes. Maintaining that business was obviously to respondent's financial benefit.

VII

In May 1988 respondent filed a Chapter 11 bankruptcy. After his conviction in January 1989, respondent was placed on three years probation and was ordered to make restitution through the Bankruptcy Court. Respondent expects to be able to make full restitution to both the Employment Development Department and the Internal Revenue Service in April or May 1991 when the long-delayed sale of a property of which he is part owner closes escrow. Upon completion of that sale, respondent's bankruptcy will be converted to a Chapter 7 liquidation.

VIII

Respondent is 44 years old. He is the sole support of his wife and two teenaged children.

Respondent was first licensed as a real estate salesperson in 1974 and as a broker in 1977. Respondent's real estate management company, which has been in business for eight years, currently employs eight people in addition to respondent.

As to the events which led to his conviction, respondent realizes he made a mistake by not going to the government to explain his financial situation and to try to work out an arrangement to pay his taxes. In his words, failure to do so "compounded a bad business decision." All respondent's taxes have been paid since May 1988 and the accounting practices which caused the initial problem in the business have been corrected.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against respondent exists pursuant to Business and Professions Code section 490 by reason of the matters set forth in Findings III and VI.

II

The evidence presented demonstrated that respondent has corrected the business practices which led to his failure to pay unemployment insurance contributions, that all such contributions

have been made since May 1988, a period of nearly three years, and that respondent recognizes the wrongfulness of his acts. Considering all those facts, it is determined that it would not be against the public interest to permit respondent to retain his real estate broker license upon an appropriately restricted basis.

ORDER

All real estate licenses and licensing rights issued to respondent David Eliot West by the Department of Real Estate 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 within thirty (30) 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 the authority of section 10156.6 of that Code:

- (a) 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 bears a significant relation to respondent's fitness or capacity as a real estate licensee.
- (b) 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 this 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 limitations, conditions or restrictions of a restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent, or until his criminal probation is terminated, whichever is longer.
- (d) Respondent shall, within twelve (12) months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that he 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 con-

dition, 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.

- (e) Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning 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 shall 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: March 22, 1991

Michael C. Cohn
MICHAEL C. COHN
Administrative Law Judge

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JAN 23 1991

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

DAVID ELIOT WEST
aka DAVID E. WEST
aka DAVID WEST,

Case No. H-6391 SF

OAH No. N 37163

Respondent(s)

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 _____
OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,
455 Golden Gate Avenue, Room 2248, San Francisco, CA 94102

on the 8th day of March, 1991, at the hour of 1:30 pm, 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.

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: Jan. 23, 1991

By David B. Seals
DAVID B. SEALS, Counsel

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DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

DAVID B. SEALS, Counsel
Department of Real Estate
185 Berry Street, Room 5816
San Francisco, California 94107-1770
(415) 557-3220

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
DAVID ELIOT WEST)
aka DAVID E. WEST)
aka DAVID WEST,)
Respondent.)

NO. H-6391 SF
ACCUSATION

The Complainant, EDWARD V. CHILOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against DAVID ELIOT WEST aka DAVID E. WEST aka DAVID WEST (hereinafter Respondent), is informed and alleges as follows:

I

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code (hereinafter Code) as a real estate broker and is doing business as West Investment Groups and West Management Company.

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II

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity.

III

On or about January 31, 1989, in the Municipal Court for the Berkeley-Albany Judicial District, County of Alameda, State of California, Respondent was convicted of violation of Section 2108 of the California Unemployment Insurance Code (WILFUL FAILURE TO MAKE CONTRIBUTIONS), a crime which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Section 490 of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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 Respondent under the Real Estate Law (Part 1 of Division 4 of the Business

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1 and Professions Code), and for such other and further relief as
2 may be proper under other provisions of law.

3
4 *Edward V. Chio*

5 EDWARD V. CHIOLO
6 Deputy Real Estate Commissioner

7 Dated at San Francisco, California

8 this 9th day of August, 1990.