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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Kathleen Contreras

* * *

In the Matter of the Accusation and)
Statement of Issues of:)

KENNETH ALFRED HOKE,)

Respondent.)

Nos. H-6522 SF and
H-6521 SF

OAH No. N 39190

DECISION

The Proposed Decision dated January 30, 1992, 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.

AS TO THE ACCUSATION

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.

AS TO THE STATEMENT OF ISSUES

The application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to respondent. There is no statutory restriction on when a new application may again be made for an unrestricted

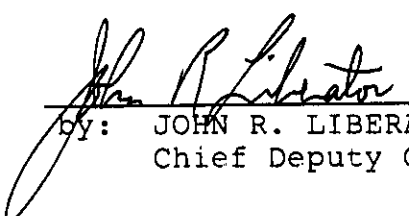
license. Petition for removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code.

If and when application is made for a real estate broker license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner.

This Decision shall become effective at 12 o'clock noon
on March 25th, 1992.

IT IS SO ORDERED February 27, 1992.

CLARK WALLACE
Real Estate Commissioner


by: JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
and Statement of Issues of:	)	Nos. H-6522 SF and
	)	H-6521 SF
KENNETH ALFRED HOKE,	)	
	)	OAH No. N 39190
Respondent.	)	
	)	

PROPOSED DECISION

These matters, consolidated for hearing, were heard before Nancy L. Rasmussen, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 1 and November 13, 1991, at San Francisco, California.

The complainant was represented by Deidre L. Johnson, Counsel.

Respondent Kenneth Alfred Hoke appeared and was represented by William H. Hoogs, Attorney at Law, 1915 Addison Street, Berkeley, California 94704.

The record was left open for the submission of written argument by the parties. Respondent's brief was received on December 2, 1991 and was marked for identification as Exhibit D. Complainant's reply brief was received on December 17, 1991 and was marked for identification as Exhibit 16. The matter was thereupon submitted for decision.

FINDINGS OF FACT

I

The accusation and statement of issues were made by Edward V. Chiolo in his official capacity as Deputy Real Estate Commissioner of the State of California.

II

Respondent Kenneth Alfred Hoke ("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) as a real estate salesperson. The license is

currently in effect, although the expiration date was not established.

III

Respondent filed with the Department of Real Estate of the State of California an application dated July 3, 1990 for issuance of a real estate broker license.

IV

On December 4, 1989, in the Municipal Court for the San Leandro-Hayward Judicial District, County of Alameda, State of California, respondent was convicted on his plea of no contest of violating Penal Code section 242 (battery) and Health and Safety Code section 1235 (health facility license violations).

V

The facts and circumstances of the convictions are as follows:

From August, 1985 until October, 1988, respondent and his wife Wandia Hoke operated an intermediate care facility in Hayward for developmentally disabled adults. They were licensed by the Department of Health Services ("DHS"). In October, 1988, there were four clients residing at the facility, three of whom had very limited or no verbal ability. Pursuant to a complaint from a former employee of the facility that respondent and one of his employees had hit clients, DHS staff examined the clients and found them to have bruises and sores on their bodies. The clients were then removed from the facility and placed elsewhere.

After removal of the clients, DHS personnel attempted to obtain the clients' medical records from the facility. Such records are legally required to be readily available to DHS upon request. When the records were requested from respondent, he told the DHS representative that he would not provide them--that DHS staff would have to talk to respondent's attorney. There followed numerous attempts by DHS to arrange through the office of respondent's attorney inspection of the records. DHS was told that the records would be available by a certain date, and they were not, and that the attorney's office would call DHS back, and that was not done. Although some records were finally made available to DHS, the complete records were only made available for inspection and copying approximately three weeks after the original request, after DHS had issued an investigative subpoena duces tecum.

VI

During the time DHS was attempting unsuccessfully to gain access to the facility's records, a criminal complaint was issued charging respondent with four counts of violating Penal Code section 368(b) (inflicting pain or suffering/endangering health of dependent adult), three counts of which related to one of respondent's former clients at the facility and the fourth relating to another such client, and one count of violating Health and Safety Code section 1431(b) (preventing DHS examination of records).

Over a year after the complaint was filed, respondent entered into the plea bargain which resulted in his conviction. The offenses to which respondent pled no contest, Penal Code section 242 and Health and Safety Code section 1235, were stipulated lesser included offenses of Penal Code section 368(b) and Health and Safety Code section 1431(b), respectively.

VII

Respondent was sentenced to three years' court probation with a condition that he not own, operate, be employed by or otherwise connected with an intermediate care facility for mentally retarded/developmentally disabled adults.

VIII

Although respondent understands that he cannot now deny his convictions, he avers that he never hit a client of the facility and only pled no contest because the matter had gone on so long and he could not afford further litigation. Respondent contends that the bruises and sores on his clients' bodies in October, 1988 were the result of their own self-abusive or clumsy behavior. The evidence was insufficient to establish the cause of the clients' injuries. It cannot be found that respondent struck any of his clients.

Respondent concedes that he might have technically violated some DHS regulations, but he denies intentionally committing violations. Although respondent contests the legal validity of the citations, he was cited by DHS on at least six occasions for undetermined violations, as well as for failing to produce the medical records requested after removal of the clients in October, 1988. Respondent's counsel characterized the criminal prosecution and convictions as stemming from a "vendetta" between DHS and respondent.

IX

1. Respondent has held a real estate salesperson's license since 1982. It was because of Wandia Hoke's background

in the field of recreation that she and respondent decided to open an intermediate care facility. Respondent's role in the venture was primarily as the business manager; he spent 20 to 30 hours per week on the operation of the facility. Respondent also worked full time in real estate during the time he and his wife were licensed by DHS.

2. Since February, 1991, respondent has been employed by Century 21/Bishop Realty in Fremont. A letter was submitted from broker Alan Bishop, in which he indicates that respondent explained to him prior to employment "some of the problems he was having with the District Attorney's Office of Alameda County." Mr. Bishop describes respondent as "a competent and reliable real estate agent" and recommends that he be granted a broker's license.

3. Respondent has also held a license issued by the Department of Insurance, under which he has sold some insurance.

4. Respondent is seeking a real estate broker's license so that he can work for himself; he feels that he has been treated unfairly by brokers in the past. He does not have any concrete plans to employ other salespersons should he receive a license.

5. Respondent, age 41, and his wife have been married for 15 years and have two daughters, ages ten and two. Respondent has been a member of the Community Reformed Church in Oakland since 1976. His former pastor there, who respondent had informed of his convictions, wrote in a letter submitted that respondent is "a person of good moral character--honest, reliable, cooperative and helpful...."

X

Penal Code section 242, one of the offenses of which respondent was convicted, is not substantially related to the qualifications, functions or duties of a real estate licensee, either as a matter of law or by the facts and circumstances in this case.

Health and Safety Code section 1235 is not as a matter of law substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's conviction for this offense, however, was based upon his failure as a DHS licensee to make his records available to DHS upon its request. These facts and circumstances establish a substantial relation of the offense to the licensed activity because of the importance of real estate licensees cooperating with investigations and other regulatory activity of the Department of Real Estate and complying with the requirement

that real estate brokers make their records available to the Department.

DETERMINATION OF ISSUES

I

Cause for license discipline exists under Business and Professions Code section 490 by reason of respondent's conviction of violating Health and Safety Code section 1235.

II

Cause for license discipline was not established under Business and Professions Code section 490 by reason of respondent's conviction of violating Penal Code section 242.

III

Cause to deny the license exists under Business and Professions Code section 480(a) by reason of respondent's conviction of violating Health and Safety Code section 1235.

IV

Cause to deny the license was not established under Business and Professions Code section 480(a) by reason of respondent's conviction of violating Penal Code section 242.

V

In view of the passage of time since respondent's offense and conviction and the absence of any evidence of misconduct by respondent as a real estate salesperson, it would not be against the public interest to allow respondent to keep his real estate salesperson's license on a restricted basis and to grant him a restricted broker's license.

ORDER

I

All licenses and licensing rights of respondent Kenneth Alfred Hoke under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson 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 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 that Code:

1. 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.
2. 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.
3. 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 one year has elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - a. That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - b. That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.
5. Respondent shall, within 18 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

II

The application of respondent Kenneth Alfred Hoke for a real estate broker license is denied; provided, however, a restricted real estate broker license shall be issued to respondent pursuant to section 10156 of the Business and Professions Code if respondent makes application therefor within 90 days from the effective date of the Decision herein. The restricted license issued to the 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - a. The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - b. The receipt of evidence 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.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until one year has

elapsed from the date of issuance of the restricted license to respondent.

3. Respondent shall, within six months from
the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

DATED:

January 30, 1992

Nancy L. Rasmussen
NANCY L. RASMUSSEN
Administrative Law Judge

NLR:lhj

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AUG 29 1991

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

KENNETH ALFRED HOKE,

By

Victoria Dillon
Victoria Dillon

Case No. H-6522 SF

OAH No. N 39190

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

OFFICE OF ADMINISTRATIVE HEARINGS

455 Golden Gate Ave., Room 2248, San Francisco, CA 94102

(1 day hearing)

on the 1st day of October, 19 91, at the hour of 9:00 a.m., or as soon thereafter
as the matter can be heard, upon 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 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. The interpreter must be approved by the Administrative Law Judge 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 Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: August 29, 1991

By

Deidre L. Johnson
DEIDRE L. JOHNSON,

Counsel

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DEIDRE L. JOHNSON, Counsel
Department of Real Estate
185 Berry Street, Room 3400
San Francisco, California 94107-1770
(415) 904-5917

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DEPARTMENT OF REAL ESTATE

By Linda Montiel
Linda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
KENNETH ALFRED HOKE,)
Respondent.)

NO. H-6522 SF
ACCUSATION

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against KENNETH ALFRED HOKE (hereafter 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 (hereafter Code) as a real estate salesperson and the license will expire on July 21, 1991.

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 and not

1 otherwise.

2 III

3 On or about December 4, 1989, in the Municipal Court
4 of California, County of Alameda, San Leandro-Hayward Judicial
5 District, Respondent was convicted of Section 242 of the
6 California Penal Code (Battery) and Section 1235 of the Health
7 and Safety Code (Health Facility License Violation), crimes
8 which bear a substantial relationship under Section 2910, Title
9 10, California Code of Regulations to the qualifications,
10 functions or duties of a real estate licensee.

11 IV

12 The facts alleged above constitute cause under Section
13 490 of the Code for suspension or revocation of all licenses and
14 license rights of Respondent under the Real Estate Law.

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

22
23 *Edward V. Chiole*

24 EDWARD V. CHIOLO
25 Deputy Real Estate Commissioner

26 Dated at San Francisco, California

27 this 24th day of JUNE, 19 91.