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DEC 17 2011

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

ROBERT ALFRED HARGROVE,

No. H-6539 SF

Respondent.

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 8, 1992, in Case No. H-6539 SF, a Decision was rendered revoking the real estate broker license of Respondent effective June 3, 1992, 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 3, 1992, and Respondent has operated as a restricted licensee since that time.

On November 29, 2010, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker license, and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the

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1 requirements of law for the issuance to Respondent of an unrestricted real estate broker license
2 and that it would not be against the public interest to issue said license to Respondent.

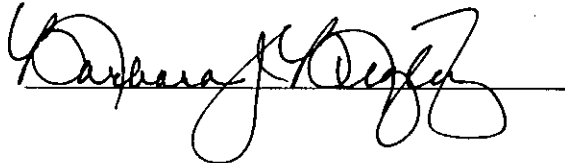
3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
4 reinstatement is granted and that a real estate broker license be issued to Respondent if
5 Respondent satisfies the following requirements:

- 6 1. Submits a completed application and pays the fee for a real estate broker
7 license within the 12 month period following the date of this Order; and
8 2. Submits proof that Respondent has completed the continuing education
9 requirements for renewal of the license sought. The continuing education courses must be
10 completed either (i) within the 12 month period preceding the filing of the completed
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 DATED: 11/21/11

14 BARBARA J. BIGBY
15 Acting Real Estate Commissioner

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COPY

FILED
AUG 14 1996

DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
ALVIN CLAIR SILBERNAGEL,)
Respondent.)

No. H-6539 SF

ORDER GRANTING REINSTATEMENT OF LICENSE

On May 8, 1992, 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 July 3, 1992, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On July 15, 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:

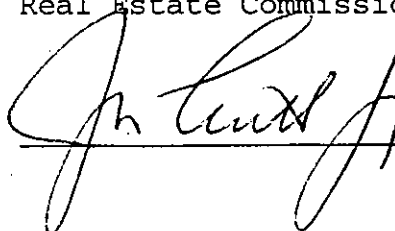
12 1. Submittal of a completed application and payment of
13 the fee for a real estate broker license.

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: 7/30/96

21 JIM ANTT, JR.
22 Real Estate Commissioner

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FILED
JUL 26 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
TONG NGOC ANH PHAM,) NO. H-6539 SF
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On May 8, 1992, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On January 19, 2000, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license.

1 On or about November 12, 1998, Respondent took and
2 passed the real estate salesperson license examination. On or
3 about July 26, 1999, Respondent filed with the Department of Real
4 Estate an application for a real estate salesperson license. In
5 response to question 24a in said application, "Have you ever had
6 a denied, suspended, restricted or revoked business or
7 professional license (including real estate) in California or any
8 other state?", Respondent answered "No" and failed to disclose in
9 said application the license disciplinary action taken in this
10 matter. Respondent has attempted to procure a real estate
11 license by fraud, misrepresentation, or deceit, or by making a
12 material misstatement of fact in an application for a real estate
13 license.

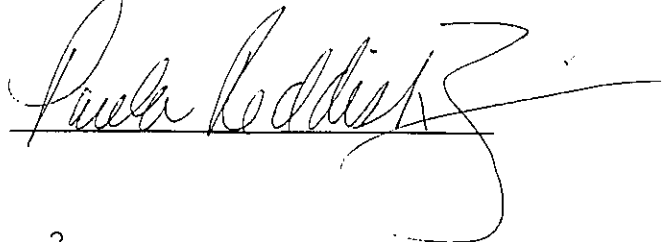
14 Consequently, Respondent has not presented evidence of
15 compliance with Section 2911 (j) and (m), Title 10, California
16 Code of Regulations.

17 NOW, THEREFORE, IT IS ORDERED that Respondent's
18 petition for reinstatement of his real estate salesperson license
19 is denied.

20 This Order shall be effective at 12 o'clock noon on
21 August 15, 2001.

22 DATED: July 18, 2001

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24 PAULA REDDISH ZINNEBANN
25 Real Estate Commissioner

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FILED
JUN 30 1992

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)	
TONG NGOC ANH PHAM aka TONY PHAM,)	No. H-6539 SF
CROWNLAND CORPORATION,)	OAH No. N-39331
BENEDICT HUNG VAN,)	
ROBERT ALFRED HARGROVE)	
and ALVIN CLAIR SILBERNAGEL,)	
Respondents.)	

ORDER DENYING RECONSIDERATION

On May 8, 1992, a Decision was rendered in the above-entitled matter. The Decision is to become effective on July 3, 1992.

On May 20, 1992, Respondent Tong Ngoc Anh Pham aka Tony Pham petitioned for reconsideration of the Decision of May 8, 1992.

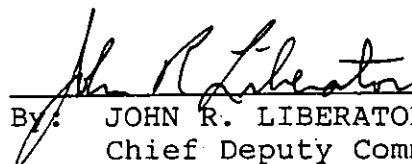
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I have given due consideration to the petition of
Respondent. I find no good cause to reconsider the Decision of
May 8, 1992, and reconsideration is hereby denied.

IT IS SO ORDERED June 26, 1992.

CLARK WALLACE
Real Estate Commissioner


By: JOHN R. LIBERATOR
Chief Deputy Commissioner

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FILED
JUN 30 1992

DEPARTMENT OF REAL ESTATE

By Lynda Montiel
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
TONG NGOC ANH PHAM aka TONY PHAM,)	No. H-6539 SF
CROWNLAND CORPORATION,)	OAH No. N-39331
BENEDICT HUNG VAN,)	
ROBERT ALFRED HARGROVE)	
and ALVIN CLAIR SILBERNAGEL,)	
Respondents.)	

ORDER DENYING RECONSIDERATION

On May 8, 1992, a Decision was rendered in the above-entitled matter. The Decision is to become effective on July 3, 1992.

On May 15, 1992, Respondent Alvin Clair Silbernagel petitioned for reconsideration of the Decision of May 8, 1992.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of May 8, 1992, and reconsideration is hereby denied.

IT IS SO ORDERED June 26, 1992.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
BY: JOHN R. LIBERATOR
CHIEF DEPUTY COMMISSIONER

COPY

FILED
MAY 27 1992

DEPARTMENT OF REAL ESTATE

By Lynette Montiel
Lynette Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

TONG NGOC ANH PHAM)

aka TONY PHAM,)

CROWNLAND CORPORATION,)

BENEDICT HUNG VAN,)

ROBERT ALFRED HARGROVE)

and ALVIN CLAIR SILBERNAGEL,)

Respondents.)

No. H-6539 SF

OAH No. N-39331

ORDER STAYING EFFECTIVE DATE

On May 8, 1992, a Decision was rendered in the above-entitled matter to become effective at 12 o'clock noon on June 3, 1992.

IT IS HEREBY ORDERED that the effective date of the Decision of May 8, 1992, is stayed as to TONG NGOC ANH PHAM aka TONY PHAM only, for a period of thirty (30) days.

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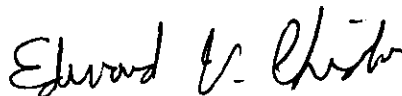
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1 The Decision of May 8, 1992, shall become effective at
2 12 o'clock noon on July 3, 1992.

3 DATED: May 27, 1992.

4 CLARK WALLACE
5 Real Estate Commissioner

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7 by: EDWARD V. CHIOLO
8 Deputy Real Estate Commissioner
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FILED
MAY 22 1992
DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*
Lynda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE.

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

TONG NGOC ANH PHAM)
aka TONY PHAM,)
CROWNLAND CORPORATION,)
BENEDICT HUNG VAN,)
ROBERT ALFRED HARGROVE)
and ALVIN CLAIR SILBERNAGEL,)

Respondents.)

No. H-6539 SF

OAH No. N-39331

ORDER STAYING EFFECTIVE DATE

On May 8, 1992, a Decision was rendered in the above-
entitled matter to become effective at 12 o'clock noon on
June 3, 1992.

IT IS HEREBY ORDERED that the effective date of the
Decision of May 8, 1992, is stayed as to ALVIN CLAIR SILBERNAGEL
only, for a period of thirty (30) days.

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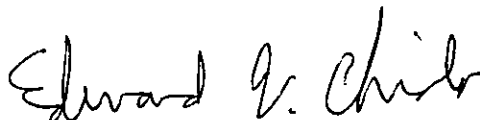
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1 The Decision of May 8, 1992, shall become effective at
2 12 o'clock noon on July 3, 1992.

3 DATED: May 22, 1992.

4 CLARK WALLACE
5 Real Estate Commissioner

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7 by: EDWARD V. CHIOLO
8 Deputy Real Estate Commissioner
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FILED
MAY 13 1992

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *Lynne Montiel*
Lynne Montiel

* * *

In the Matter of the Accusation of)
)
TONG NGOC ANH PHAM)
aka TONY PHAM,)
CROWNLAND CORPORATION,)
BENEDICT HUNG VAN,)
ROBERT ALFRED HARGROVE)
and ALVIN CLAIR SILBERNAGEL,)
)
Respondents.)

No. H-6539 SF

OAH N-39331

DECISION

The Proposed Decision dated April 15, 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.

This Decision shall become effective at 12 o'clock noon

on June 3rd, 1992.

IT IS SO ORDERED

5/8, 1992.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

No. H-6539 SF

TONG NGOC ANH PHAM

OAH No. N-39331

aka TONY PHAM;

CROWNLAND CORPORATION;

BENEDICT HUNG VAN;

ROBERT ALFRED HARGROVE;

and ALVIN CLAIR SILBERNAGEL,

Respondent.

PROPOSED DECISION

This matter was heard before Nancy L. Rasmussen, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 20, 1992, at Berkeley, California.

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

Respondents Benedict Hung Van and Robert Alfred Hargrove appeared and were represented by Robert E. Amos, Attorney at Law, 2350 Mission College Blvd., Suite 310, Santa Clara, California 95054. Mr. Amos also represented respondent Crownland Corporation.

Respondent Alvin Silbernagel appeared and represented himself.

There was no appearance by or on behalf of respondent Tong Ngoc Anh Pham, also known as Tony Pham.

The record was left open for complainant to submit the signed stipulation entered into between complainant and respondents Crownland Corporation, Benedict Hung Van and Robert Alfred Hargrove. This document was received on March 12, 1992 and marked as Exhibit 39 in evidence, whereupon the record was closed.

FINDINGS OF FACT

I

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

II

Process was duly served upon respondents. Compliance with Government Code sections 11505 and 11509 was established.

III

Complainant made a motion to amend the accusation as follows:

1. On page 5, line 12: Delete "Close of Escrow" and substitute "Loan Application Date."

2. On page 5, line 13: Delete "October 8" and substitute "June 30."

3. On page 5, line 14: Delete "331 Greenpark Way" and substitute "1921 Messina Drive;" delete "October 27" and substitute "June 15."

4. On page 5, line 15: Delete "3072 Via Del Sol" and substitute "2437-2439 Gareth Circle;" delete "October 27" and substitute "May 25."

IV

Respondents Tong Ngoc Anh Pham, Crownland Corporation, Benedict Hung Van, Robert Alfred Hargrove and Alvin Clair Silbernagel are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

V

Tong Ngoc Anh Pham, also known as Tony Pham, ("Pham") was and is licensed by the Department of Real Estate ("Department") as a real estate salesperson, and the license will expire on May 10, 1994. At all times mentioned herein until July 5, 1989, the license was in effect. At no time between July 5, 1989, when the license expired, and May 11, 1990, when the license was reinstated, was Pham licensed by the Department as either a real estate salesperson or broker.

VI

Crownland Corporation ("Crownland") is and was at all times mentioned herein licensed as a corporate real estate

broker. The license will expire on May 10, 1992. Prior to November 17, 1988, Crownland was so licensed by and through Mong Trinh Thi Pham as its designated officer. Commencing January 12, 1989, Crownland was so licensed through Robert Alfred Hargrove as its designated officer. Hargrove was canceled as the designated officer on January 3, 1992.

VII

At all times mentioned herein, Benedict Hung Van ("Van") was licensed by the Department as a real estate salesperson. The license expired on August 2, 1991 with the right to late renewal thereof. At all times mentioned herein, Van was the president of Crownland and the sole owner of its shares.

VIII

Robert Alfred Hargrove ("Hargrove") is and was at all times mentioned herein licensed as a real estate broker. The license will expire on December 22, 1992. At all times mentioned herein on and after January 12, 1989, Hargrove was licensed as the designated officer of Crownland. Hargrove was canceled as the designated officer on January 3, 1992.

IX

Alvin Clair Silbernagel ("Silbernagel") is and was at all times mentioned herein licensed as a real estate broker, individually and doing business as Altas Realty. The license will expire on September 28, 1995.

X

At all times mentioned herein, Crownland engaged in the business of, acted in the capacity of, advertised and assumed to act as a real estate broker in California. As such, Crownland operated and conducted a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation.

FIRST CAUSE OF ACTION (Pham only)

XI

Commencing May 23, 1988, Pham was hired as a real estate salesperson and employee of Silbernagel, doing business as Altas Realty ("Altas"). Silbernagel notified the Department that he had employed Pham, and from May 23, 1988 until July 5, 1989, when Pham's license expired, he was Pham's broker of record.

XII

In July, 1986, Pham was employed as a real estate salesperson with real estate broker Von T. Hoge ("Hoge"), the designated officer of Foothill Mortgage Corporation, under a written broker-salesperson contract. On November 11, 1988, Pham terminated this relationship.

XIII

During the time Pham worked for Hoge, he never informed her that he was also employed by Altas and engaging in activities with Altas for which a real estate license was required and for or in expectation of compensation. Pham's activities with Altas primarily involved the listing, sale and purchase of residential real property, including but not limited to the sale of 741 Delaware Avenue, Santa Clara, California on September 29, 1988.

XIV

During the time Pham worked for Hoge as well as Altas, he never informed Silbernagel that he was also employed by Hoge and engaging in activities with Hoge for which a real estate license was required and for or in expectation of compensation. Pham's activities for Hoge primarily involved the solicitation, negotiation and processing of loans to be secured by deeds of trust to real property, including but not limited to the following:

<u>Property</u>	<u>Loan Application Date</u>
174 Checkers Drive	June 30, 1988
1921 Messina Drive	June 15, 1988
2437-2439 Gareth Circle	May 25, 1988

XV

Crownland stipulated to the following facts:

Commencing on or about August 28, 1988, Pham was hired as a real estate salesperson and loan agent with Crownland. At no time after that date did Pham inform and disclose to Crownland that he was already employed by either Silbernagel or Hoge.

XVI

The evidence established and Crownland stipulated to the following facts:

After his hire by Crownland and while legally licensed in the employ of Silbernagel, Pham performed activities for Crownland for which a real estate license is required and for or in expectation of compensation. Pham acted as a loan agent and solicited, negotiated and processed loans to be secured by deeds

of trust to real property in various transactions, including but not limited to the following:

<u>Property</u>	<u>Loan File Opened</u>
2921 Valhalla	September 3, 1988
3776 Masters Court	September 12, 1988
2681 Camino Ecco	September 14, 1988
387 Lassen Park Circle	October 20, 1988
2148 Carob Wood Lane	October 25, 1988
1746 Hillsdale	November 25, 1988
6980 Sessions Drive	November 29, 1988
3326 Desertwood Lane	December 2, 1988
33037 Grebe Court	December 7, 1988

XVII

At no time between August 28, 1988 and July 5, 1989 did Pham inform Silbernagel that he was also employed by Crownland and engaged in activities on Crownland's behalf for which a real estate license is required, including but not limited to the transactions listed in Finding XVI.

XVIII

At no time between August 28, 1988 and November 11, 1988 did Pham inform Hoge that he was also employed by Crownland and engaged in activities on Crownland's behalf for which a real estate license is required, including but not limited to the transactions listed in Finding XVI.

XIX

Pham's association with or employment by more than one real estate broker at the same time involved fraud, misrepresentation and dishonest dealing as to each broker and each real estate sale or loan transaction in which he engaged.

SECOND CAUSE OF ACTION (Pham and Silbernagel)

XX

After Pham's license expired on July 5, 1989, Pham continued to engage in activities for which a license is required, on behalf of Silbernagel doing business as Altas Realty, for or in expectation of compensation. These activities included but were not limited to the following transactions:

<u>Property Listed</u>	<u>Date</u>	<u>Close of Escrow</u>
444 Bataan Court	September 22, 1989	No Sale
1655 Ridgetree Way	August 20, 1989	October 17, 1989
2663 Mignon Drive	August 3, 1989	October 11, 1989

XXI

Silbernagel paid Pham a commission for his services on the Ridgetree Way transaction described in Finding XX.

XXII

On an undetermined date after Pham's license expired July 5, 1989 but no later than sometime in August, 1989, Silbernagel became aware that Pham had not renewed his license. Silbernagel's secretary had called Pham prior to the expiration date to remind him to renew his license, and she subsequently attempted to contact Pham on numerous occasions to inquire whether he had done so. Silbernagel discussed the matter with Pham on several occasions. Pham told him that he had completed the 45 hours of continuing education required for license renewal. Silbernagel's testimony was inconsistent with respect to whether Pham also represented that he had submitted the renewal application to the Department. Silbernagel first testified either that Pham told him or led him to believe that he had renewed his license but had not received his new license due to the Department's delay in processing the renewal. Silbernagel claimed that he relied on Pham's assurances because of Pham's history of good work and good paperwork. Later, Silbernagel conceded that he understood that Pham was "lax in getting his paperwork in" to the Department.

XXIII

When the escrows closed on Pham's Mignon Drive and Ridgetree Way transactions, Silbernagel prepared commission checks for Pham in the amounts of \$7,050.00 and \$1041.50, respectively. The Mignon Drive commission check was dated October 13, 1989 and the Ridgetree Way commission check was dated October 17, 1989. Silbernagel held the checks because he had not received Pham's renewed license. In early December, 1989, Deputy Real Estate Commissioner Dan Wegner made contact with Silbernagel in connection with his investigation of Crownland and Pham. Although the sequence of events was not precisely established, Silbernagel at some point discussed with Wegner the commission checks he was holding for Pham. Pham also came to Silbernagel and asked for the checks, stating that he needed money. Silbernagel reluctantly released the Ridgetree Way check for \$1041.50. The following day, he received notification from Wegner that it would be a violation for him to pay a commission to an unlicensed salesperson. Silbernagel attempted to stop payment on the check, but it had already been negotiated by Pham. The Mignon Drive check for \$7,050.00 was never released to Pham.

XXIV

Silbernagel has been a real estate broker for 17 years with no license discipline. He has three branch offices now, as he did in May, 1988. Silbernagel has a high volume operation

with approximately 100 salespersons. His standard broker-salesperson agreement, which he had with Pham, is that Silbernagel is paid a \$45 per month flat fee plus a \$200 transaction fee on closed transactions. The balance of the commission goes to the agent, i.e. the broker receives no percentage of the commission. Silbernagel also rents private offices to salespersons and charges a salesperson \$60 per month if he just wants to keep his license active.

XXV

Since Silbernagel's involvement with the Department over Pham's license, he has changed his office procedures to make sure that a salesperson cannot continue to work with an expired license. All licenses are displayed on a board opposite his secretary's desk, with a yellow marker on each license nearing expiration. The expiration dates are kept on computer and a reminder notice is mailed to each salesperson prior to license expiration. Silbernagel calls any salesperson whose license has expired and asks for his new license. If a salesperson represents that he has renewed his license but has not received the new license from the Department, Silbernagel requires the salesperson to produce his canceled check for the renewal fees. A sign is posted which states that a salesperson may not engage in any real estate activity if his license is expired.

THIRD CAUSE OF ACTION (Pham and Crownland)

XXVI

The evidence established and Crownland stipulated to the following facts:

After his license expired on July 5, 1989, Pham continued to engage in activities for which a real estate license is required on Crownland's behalf, for or in expectation of compensation, including but not limited to the following transactions:

<u>Property</u>	<u>Date</u>
720 Salt Lake Drive	August 3, 1989
7913 Daffodil Way	August 9, 1989
890 Coventry	August 14, 1989
2504 Roslyn Court	August 18, 1989
4178 Rosenbaum Avenue	October 12, 1989

XXVII

Crownland stipulated to the following facts:

Crownland paid Pham commissions for services Pham rendered for which a license is required subsequent to July 5,

1989, including but not limited to the transactions listed in Finding XXVI.

FOURTH CAUSE OF ACTION
(Crownland, Van and Hargrove)

Crownland, Van and Hargrove stipulated to the facts set forth in Findings XXVIII through XXXIX:

XXVIII

When Crownland hired or retained the services of Pham as a real estate salesperson, Crownland failed or omitted to enter into a written broker-salesperson contract with Pham covering material aspects of the relationship between the parties, including but not limited to supervision, duties and compensation.

XXIX

Mong Trinh Tai Pham resigned as the designated officer of Crownland effective November 17, 1988. Hargrove became the designated officer of Crownland on January 12, 1989. Between November 17, 1988 and January 12, 1989, Crownland did not have any designated broker officer through whom to operate and was therefore not validly licensed as a real estate broker corporation, and was not entitled to conduct any business for which a real estate license is required.

XXX

Between November 17, 1988 and January 12, 1989, Crownland continued to engage in the solicitation, negotiation, processing and brokering of applications from borrowers for loans to be secured by deeds of trust to real property, without a duly licensed designated officer through whom to operate and by whom to be supervised, including but not limited to the following transactions:

<u>Property</u>	<u>Loan File Opened</u>
1746 Hillsdale	November 25, 1988
6980 Sessions Drive *	November 29, 1988
3326 Desertwood Lane	December 2, 1988
33037 Grebe Court	December 7, 1988

* This address has been corrected from "6920 Session Drive" as alleged in the accusation. This conforms with the evidence supporting Finding XVI with respect to the same property.

XXXI

By at least about September 3, 1988, Crownland conducted its mortgage loan brokerage activities under the ficti-

tious business name of Crownland Funding as a "subsidiary" of Crownland Corporation. At no time thereafter through at least November 30, 1989 did Crownland obtain a fictitious business name license from the Department.

XXXII

Commencing in November of 1989 the Department conducted an audit of the books and records of Crownland relating to its mortgage loan brokerage business only. It was ascertained that from at least September of 1988, Crownland maintained a bank account at Silicon Valley Bank, Santa Clara, California, Account No. 0330983570, in the name of Crownland Funding, and that said bank account was not a trust account.

XXXIII

It was ascertained by the audit that the above account was used by Crownland and Hargrove for the receipt and disbursement of trust monies received from borrowers for credit reports and appraisal fees. The account was also used for the receipt and disbursement of corporate operating monies, commingled with the above trust funds.

XXXIV

As of November 30, 1989, Crownland and Hargrove maintained columnar records for the receipt and disbursement of trust funds, which records failed to set forth the daily balance of the account and other material information required by Section 2831 of Title 10 of the California Code of Regulations. As of said date, Crownland and Hargrove failed or omitted to maintain any subsidiary records for all separate beneficiaries or transactions, and failed or omitted to reconcile said records.

XXXV

As of November 30, 1989, the above account had an adjusted bank balance of \$4,552.39. By reason of the inadequate records of Crownland as set forth in Finding XXXIV above, the Department was unable to ascertain the accountability of Crownland for trust funds belonging to others as of that date.

XXXVI

It was further ascertained by the audit that as of November 30, 1989, Crownland failed to deliver mortgage loan disclosure statements to borrowers and/or to retain copies of said disclosure statements with its records for four years.

XXXVII

Crownland paid real estate commissions to Pham for services he rendered in connection with the real estate transac-

tions set forth in Finding XVI from September, 1988 through November, 1989 at a time when Pham was not duly in the employ of Crownland.

XXXVIII

Hargrove was the designated officer of Crownland commencing January 12, 1989 and was responsible under section 10159.2 of the Business and Professions Code for the supervision and control of the activities conducted by the corporation, its officers and employees to secure full compliance with the Real Estate Law, including the supervision of real estate salespersons in the performance of acts for which a real estate license is required. Hargrove was negligent or incompetent in the performance of these responsibilities and failed to exercise reasonable supervision and control of the activities of Crownland, in that he knew or should have known all of the facts found in Findings XXVI through XXXIX and could have and should have taken steps to assure Crownland's compliance.

XXXIX

Van was at all times mentioned herein the president of Crownland and the owner of 100% of the shares of stock of the corporation, and directed and controlled its activities, including but not limited to the mortgage loan brokerage activities described herein. Van personally hired Pham and personally opened the bank account referred to in Finding XXXII, on which he was the sole signatory. Van knew or should have known that Pham was already employed by Silbernagel and knew or should have known that the bank account was not a trust account. Van knew or should have known all the facts found in Findings XXVI through XXXIX and could have and should have taken steps as an officer and the owner of the corporation to assure Crownland's compliance with the Real Estate Law. Van willfully disregarded the same statutes and regulations which Crownland disregarded or violated.

DETERMINATION OF ISSUES

I

Complainant's motion to amend the accusation as set forth in Finding III is granted.

FIRST CAUSE OF ACTION (Pham only)

II

Cause for license discipline of Pham was established pursuant to Business and Professions Code section 10177(j).

III

Cause for license discipline of Pham was established pursuant to Business and Professions Code section 10137.

SECOND CAUSE OF ACTION
(Pham and Silbernagel)

IV

Cause for license discipline of Silbernagel was established pursuant to Business and Professions Code section 10137.

V

Cause for license discipline of Pham was established pursuant to Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10130.

THIRD CAUSE OF ACTION
(Pham and Crownland)

VI

Crownland stipulated that cause for discipline of its license was established pursuant to Business and Professions Code section 10137.

VII

Cause for license discipline of Pham was established pursuant to Business and Professions Code section 10177(d) by reason of a violation of Business and Professions Code section 10130.

FOURTH CAUSE OF ACTION
(Crownland, Van and Hargrove)

Crownland, Van and Hargrove stipulated to the following determinations:

VIII

Crownland violated Business and Professions Code section 10211 and section 2740 of Title 10 of the California Code of Regulations by reason of the facts set forth in Finding XXX. Cause for license discipline therefore exists pursuant to Business and Professions Code section 10177(d).

IX

Crownland violated Business and Professions Code section 10159.5 and section 2731 of Title 10 of the California

Code of Regulations by reason of the facts set forth in Finding XXXI. Cause for license discipline therefore exists pursuant to Business and Professions Code section 10177(d).

X

Crownland and Hargrove violated Business and Professions Code section 10145 and sections 2831, 2831.1 and 2831.2 of Title 10 of the California Code of Regulations by reason of the facts set forth in Findings XXXII through XXXV. Cause for license discipline therefore exists pursuant to Business and Professions Code section 10177(d). Cause for license discipline also exists pursuant to Business and Professions Code section 10176(e).

XI

Crownland violated Business and Professions Code section 10240 by reason of the facts set forth in Finding XXXVI. Cause for license discipline therefore exists pursuant to Business and Professions Code section 10177(d).

XII

Cause for license discipline of Crownland exists pursuant to Business and Professions Code section 10137 by reason of the facts set forth in Finding XXXVII.

XIII

Cause for license discipline of Hargrove exists pursuant to Business and Professions Code sections 10177(g) and 10177(h) by reason of the facts set forth in Finding XXXVIII.

XIV

Cause for license discipline of Van exists pursuant to Business and Professions Code sections 10177(d) and 10177(f) by reason of the facts set forth in Finding XXXIX.

ORDER

I

PHAM

All real estate licenses and licensing rights issued to respondent Tong Ngoc Anh Pham, also known as Tony Pham, by the Department of Real Estate are revoked pursuant to Determination of Issues II, III, V and VII separately and for all of them.

II

CROWNLAND & VAN

Crownland Corporation and Benedict Hung Van stipulated to the following order:

1. All real estate licenses and licensing rights issued to respondent Crownland Corporation by the Department of Real Estate are revoked pursuant to Determination of Issues VI and VIII through XII separately and for all of them.

2. All real estate licenses and licensing rights issued to respondent Benedict Hung Van by the Department of Real Estate are revoked pursuant to Determination of Issues XIV.

3. A restricted real estate corporate broker license and a restricted salesperson license shall be issued to respondents Crownland Corporation and Benedict Hung Van, respectively, pursuant to Business and Professions Code section 10156.5 if respondents make application therefor and pay to the Department the appropriate fee for said license within thirty (30) days from the effective date of the Decision.

- a. The restricted licenses of each respondent issued pursuant to the Decision shall be suspended for ninety (90) days from the date of issuance of said restricted licenses.
- b. Fifty (50) days of said suspension are stayed for each respondent for one year provided that no cause for disciplinary action against that respondent occurs within one year from the effective date of issuance of the restricted license.
- c. The remaining forty (40) days of said suspension shall be stayed at respondents' sole options upon condition that respondents, jointly or severally, pay to the Department a monetary penalty in lieu of suspension in the total sum of \$7,000 pursuant to Business and Professions Code section 10175.2, measured at the rate of \$175.00 per day. Said payment shall be applied jointly and severally to stay the remaining forty (40) days of suspension of each respondent.
- d. Said payment shall be in the form of cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check(s) must be delivered to the Department prior to the effective date of the Decision in this matter.

- e. If respondent fails to pay the total monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the remaining suspension in which event the respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for any money paid to the Department under the terms of the Decision.
- f. If respondent pays the monetary penalty and if no further cause for disciplinary action against the license and license rights of respondent occurs within one (1) year from the effective date of the Decision, the remaining stay hereby granted shall become permanent.

4. The restricted licenses issued to respondents Crownland Corporation and Benedict Hung Van shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following conditions imposed under the authority of Business and Professions Code section 10156.5:

- a. Each 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. Each restricted license may be suspended prior to hearing by Order of the 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 Commissioner or conditions attaching to this restricted license.
- c. Respondents 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 one (1) year has elapsed from the date of issuance of the restricted license to respondents.
- d. Respondent Van shall submit with his application for license under an employing broker, or his application for transfer to a new employing broker, a statement signed by the prospective employing broker which shall certify:
 - (i) That he/she has read the Decision of the Commissioner which granted the right to a restricted license; and

- (ii) That he/she will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.
- e. Respondent Van shall within six (6) 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 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.

III

HARGROVE

Robert Alfred Hargrove stipulated to the following
order:

1. All real estate licenses and licensing rights issued to respondent Robert Alfred Hargrove by the Department of Real Estate are revoked pursuant to Determination of Issues X and XIII separately and for both of them.

2. A restricted real estate broker license shall be issued to respondent Robert Alfred Hargrove pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department the appropriate fee for said license within thirty (30) days from the effective date of the Decision.

a. The restricted license of respondent issued pursuant to the Decision shall be suspended for ninety (90) from the date of issuance of said restricted license.

b. Sixty (60) days of said suspension are stayed for one year provided that no cause for disciplinary action against respondent occurs within one year from the effective date of issuance of the restricted license.

c. The remaining thirty (30) days of said suspension shall be stayed at respondent's sole option if

respondent pays to the Department as a monetary penalty in lieu of suspension the sum of \$3,000 pursuant to Business and Professions Code section 10175.2, measured at the rate of \$100 per day.

- d. Said payment shall be in the form of cashier's checks or certified check made payable to the Recovery Account of the Real Estate Fund. Said check(s) must be delivered to the Department prior to the effective date of the Decision in this matter.
- e. If respondent fails to pay the total monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the remaining suspension in which event the respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for any money paid to the Department under the terms of the Decision.
- f. If respondent pays the monetary penalty and if no further cause for disciplinary action against the license and license rights of respondent occurs within one (1) year from the effective date of the Decision, the remaining stay hereby granted shall become permanent.

3. The restricted license issued to respondent Robert Alfred Hargrove shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following conditions imposed under the authority of Business and Professions Code section 10156.5:

- 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 provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the 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 conditions of a restricted license until one (1) year has elapsed from the date of issuance of the restricted license to respondent.

- d. Respondent shall within nine (9) months from the effective date of this Decision, present satisfactory evidence to the 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, 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.

IV

SILBERNAGEL

All licenses and licensing rights of respondent Alvin Clair Silbernagel under the Real Estate Law are revoked pursuant to Determination of Issues IV; 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 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, 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 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.

DATED: April 15, 1992

Nancy L. Rasmussen
NANCY L. RASMUSSEN
Administrative Law Judge

NLR:wc

Flag

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FILED

DEC 16 1991

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Maria Tuleala

In the Matter of the Accusation of
TONG NGOC ANH PHAM aka TONY PHAM,
CROWNLAND CORPORATION,
BENEDICT HUNG VAN,
ROBERT ALFRED HARGROVE and
ALVIN CLAIR SILBERNAGEL,
Respondent(s)

Case No. H-6539 SF
OAH No. N-39331

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 _____
DEPARTMENT OF HEALTH SERVICES, ROOM 122
2151 Berkeley Way, Berkeley, California 94704

on the 20 & 21 day of February, 1992, at the hour of 9:30 am, 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: December 16, 1991

By Deidre L. Johnson, MD
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

FILED
AUG 20 1991

DEPARTMENT OF REAL ESTATE

By Lynnda Montiel
Lynnda Montiel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
TONG NGOC ANH PHAM)	NO. H-6539 SF
aka TONY PHAM;)	
CROWNLAND CORPORATION;)	<u>ACCUSATION</u>
BENEDICT HUNG VAN;)	
ROBERT ALFRED HARGROVE;)	
and ALVIN CLAIR SILBERNAGEL,)	
Respondents.)	

The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TONG NGOC ANH PHAM aka TONY PHAM, CROWNLAND CORPORATION, BENEDICT HUNG VAN, ROBERT ALFRED HARGROVE, and ALVIN CLAIR SILBERNAGEL (hereafter Respondents) is informed and alleges as follows:

I

PRELIMINARY ALLEGATIONS

1

Respondents TONG NGOC ANH PHAM, CROWNLAND CORPORATION, BENEDICT HUNG VAN, ROBERT ALFRED HARGROVE, and ALVIN CLAIR

1 SILBERNAGEL are presently licensed and/or have license rights
2 under the Real Estate Law (Part 1 of Division 4 of the Business
3 and Professions Code, hereafter the Code).

4 2

5 The Complainant, EDWARD V. CHIOLO, a Deputy Real
6 Estate Commissioner of the State of California, makes this
7 Accusation against the above named Respondents in his official
8 capacity and not otherwise.

9 3

10 Respondent TONG NGOC ANH PHAM, also known as TONY PHAM
11 (hereafter PHAM) was and is licensed by the Department of Real
12 Estate of the State of California (hereafter Department) as a
13 real estate salesperson, and the license will expire on May 10,
14 1994. Respondent was licensed as a real estate salesperson at
15 all times herein mentioned until July 5, 1989, when said license
16 expired. At no time between July 5, 1989 and May 11, 1990 was
17 Respondent licensed by the Department as either a real estate
18 salesperson or broker.

19 4

20 At all times herein mentioned, Respondent CROWNLAND
21 CORPORATION was and is licensed as a corporate real estate
22 broker, and the license will expire on May 10, 1992. Prior to
23 November 17, 1988, CROWNLAND CORPORATION (hereafter CROWNLAND)
24 was so licensed by and through MONG TRINH THI PHAM as its
25 designated officer. Commencing January 12, 1989, CROWNLAND was
26 and is so licensed through ROBERT ALFRED HARGROVE as its
27 designated officer.

At all times herein mentioned, Respondent BENEDICT HUNG VAN (hereafter VAN) was and is licensed by the Department as a real estate salesperson, and the license expired on August 2, 1991 with the right to late renewal thereof. At all times herein mentioned, VAN was the President of CROWNLAND and the sole owner of the shares of the corporation.

At all times herein mentioned, Respondent ROBERT ALFRED HARGROVE (hereafter HARGROVE) was and is licensed as a real estate broker, and the license will expire on December 22, 1992. At all times herein mentioned on and after January 12, 1989, Respondent was and is licensed as the designated officer of CROWNLAND, and the license will expire on May 10, 1992.

At all times herein mentioned, Respondent ALVIN CLAIR SILBERNAGEL (hereafter SILBERNAGEL) was and is licensed by the Department as a real estate broker, individually and doing business as ATLAS REALTY, and the license will expire on September 28, 1991.

At all times herein mentioned, CROWNLAND engaged in the business of, acted in the capacity of, advertised and assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or

1 collaterally by liens on real property, and such loans were
2 arranged, negotiated, processed and consummated on behalf of
3 others, for or in expectation of compensation.

4 II

5 FIRST CAUSE OF ACTION

6 (Respondent PHAM only)

7 9

8 Commencing on or about May 23, 1988, Respondent PHAM
9 was hired as a real estate salesperson and employee of
10 SILBERNAGEL, doing business as ATLAS REALTY, and they entered
11 into a written broker-salesperson contract. SILBERNAGEL
12 notified the Department of the association and became PHAM's
13 real estate broker of record from May 23, 1988 to July 5, 1989
14 when PHAM's license expired.

15 10

16 From about July of 1986, Respondent was employed as a
17 real estate salesperson with real estate broker Von T. Hoge
18 under a written broker-salesperson contract. On or about
19 November 11, 1988, Respondent PHAM terminated the relationship.

20 11

21 At no time prior to November 11, 1988, did PHAM
22 inform and disclose to Hoge that he was employed by ATLAS REALTY
23 and engaged in activities with ATLAS REALTY for which a real
24 estate license was required and for or in expectation of
25 compensation. PHAM's activities with ATLAS REALTY primarily
26 involved the listing, sale and purchase of residential real
27 property, including but not limited to the sale of 741 Delaware

1 Avenue, Santa Clara, California, on September 29, 1988.

2 12

3 At no time prior to November 11, 1988 did PHAM inform
4 and disclose to SILBERNAGEL that he was employed by Hoge as the
5 designated officer of Foothill Mortgage Corporation and engaged
6 in activities with Hoge for which a real estate license was
7 required and for or in expectation of compensation. PHAM's
8 activities for Hoge primarily included the solicitation,
9 negotiation and processing of loans to be secured by deeds of
10 trust to real property, including but not limited to the
11 following:

12	<u>Property</u>	<u>Close of Escrow</u>
13	174 Checkers Drive	October 8, 1988
14	331 Greenpark Way	October 27, 1988
15	3072 Via Del Sol	October 27, 1988

16 13

17 Commencing on or about August 28, 1988, PHAM was hired
18 as a real estate salesperson and loan agent with CROWNLAND
19 CORPORATION. At no time herein mentioned after August 28, 1988,
20 did PHAM inform and disclose to CROWNLAND that he was already
21 employed by SILBERNAGEL as alleged in Paragraph 9 above; or that
22 he was already employed by Hoge as alleged in Paragraph 10
23 above.

24 14

25 Thereafter, and while legally licensed in the employ
26 of SILBERNAGEL, PHAM performed activities for CROWNLAND for
27 which a real estate is required and for or in expectation of

1 compensation. PHAM acted as a loan agent and solicited,
2 negotiated and processed loans to be secured by deeds of trust
3 to real property in various transactions, including but not
4 limited to the following:

<u>Property</u>	<u>Loan File Opened</u>
2921 Valhalla	September 3, 1988
3776 Masters Court	September 12, 1988
2681 Camino Ecco	September 14, 1988
387 Lassen Park Circle	October 20, 1988
2148 Carob Wood Lane	October 25, 1988
1746 Hillsdale	November 25, 1988
6920 Session Drive	November 29, 1988
3326 Desertwood Lane	December 2, 1988
33037 Grebe Court	December 7, 1988

15

16 At no time herein mentioned after August 28, 1988, and
17 to July 5, 1989, did PHAM inform and disclose to SILBERNAGEL
18 that he was employed by CROWNLAND and engaged in activities for
19 which a real estate license is required on behalf of CROWNLAND,
20 including but not limited to the transactions alleged in
21 Paragraph 14 above.

16

23 At no time herein mentioned after August 28, 1988 and
24 to November 11, 1988, did PHAM inform and disclose to Hoge that
25 he was employed by CROWNLAND and engaged in activities for which
26 a real estate license is required on behalf of CROWNLAND,
27 including but not limited to the transactions alleged in

1 Paragraph 14 above.

2 17

3 PHAM's association or employment by more than one real
4 estate broker at the same time as above alleged involved a
5 course of fraud, misrepresentation and dishonest dealing as to
6 each respective real estate broker, and as to each respective
7 real estate sale or loan transaction in which PHAM engaged, as
8 alleged above.

9 18

10 The above acts and/or omissions of PHAM, as to each
11 real estate broker and each transaction, jointly and severally,
12 constitute grounds for disciplinary action under the provisions
13 of Section 10177(j) of the Code.

14 19

15 The above acts and/or omissions of PHAM in being
16 employed by and/or accepting compensation from real estate
17 brokers other than SILBERNAGEL, constitute grounds for
18 disciplinary action under the provisions of Section 10137 of the
19 Code.

20 III

21 SECOND CAUSE OF ACTION

22 (Respondents PHAM & SILBERNAGEL only)

23 20

24 Subsequent to the expiration of PHAM's license on July
25 5, 1989 PHAM continued to engage in activities for which a
26 license is required on behalf of SILBERNAGEL, doing business as
27 ATLAS REALTY, and for or in expectation of compensation,

1 including but not limited to the following transactions:

2 <u>Property</u>	<u>Date</u>	<u>Close of Escrow</u>
3 444 Bataan Court	September 22, 1989	No Sale
4 1655 Ridgetree Way	August 20, 1989	October 17, 1989
5 2663 Mignon Drive	August 3, 1989	October 11, 1989

6 21

7 SILBERNAGEL paid PHAM commissions for services PHAM
8 rendered for which a real estate license is required subsequent
9 to July 5, 1989, including but not limited to commissions on the
10 above transactions as to the Ridgetree Way and Mignon Drive
11 properties.

12 22

13 The above acts and/or omissions of SILBERNAGEL in
14 employing and/or compensating PHAM at a time when PHAM did not
15 have a real estate license constitutes grounds for disciplinary
16 action under the provisions of Section 10137 of the Code.

17 23

18 The above acts and/or omissions of PHAM in being
19 employed and/or compensated by SILBERNAGEL at a time when PHAM
20 did not hold a real estate license constitute grounds for
21 disciplinary action under the provisions of Section 10130 and
22 10177(d) of the Code.

23 IV

24 THIRD CAUSE OF ACTION

25 (Respondents PHAM & CROWNLAND only)

26 24

27 Subsequent to the expiration of PHAM's license on July

1 5, 1989, PHAM continued to engage in activities for which a real
2 estate license is required on behalf of CROWNLAND, and for or in
3 expectation of compensation, including but not limited to the
4 following transactions:

<u>Property</u>	<u>Date</u>
720 Salt Lake Drive	August 3, 1989
7913 Daffodil Way	August 9, 1989
890 Coventry	August 14, 1989
2504 Roslyn Court	August 18, 1989
4178 Rosenbaum Avenue	October 12, 1989

11 25

12 CROWNLAND paid PHAM commissions for services PHAM
13 rendered for which a license is required subsequent to July 5,
14 1989, including but not limited to commissions on the above
15 transactions.

16 26

17 The above acts and/or omissions of CROWNLAND in
18 employing and/or compensating PHAM at a time when PHAM did not
19 have a real estate license constitute grounds for disciplinary
20 action under the provisions of Section 10137 of the Code.

21 27

22 The above acts and/or omissions of PHAM in being
23 employed and/or compensated by CROWNLAND at a time when PHAM did
24 not have a real estate license constitute grounds for
25 disciplinary action under the provisions of Section 10130 and
26 10177(d) of the Code.

27 / / / / /

FOURTH CAUSE OF ACTION

(Respondents CROWNLAND, VAN, & HARGROVE only)

28

When CROWNLAND hired or retained the services of PHAM as a real estate salesperson, CROWNLAND failed or omitted to enter into a written broker-salesperson contract with PHAM covering material aspects of the relationship between the parties, including but not limited to supervision, duties and compensation.

29

Mong Trinh Tai Pham resigned as the designated officer of CROWNLAND effective November 17, 1988. HARGROVE became the designated officer of CROWNLAND on January 12, 1989. Between November 17, 1988 and January 12, 1989, CROWNLAND did not have any designated broker officer through whom to operate and was therefore not validly licensed as a real estate broker corporation, and was not entitled to conduct any business for which a real estate license is required.

30

Between November 17, 1988 and January 12, 1989, CROWNLAND continued to engage in the solicitation, negotiation, processing and brokering of applications from borrowers for loans to be secured by deeds of trust to real property, without a duly licensed designated officer through whom to operate and by whom to be supervised, including but not limited to the

/ / / / /

1 following transactions:

2 <u>Property</u>	<u>Loan File Opened</u>
3 1746 Hillsdale	November 25, 1988
4 6920 Session Drive	November 29, 1988
5 3326 Desertwood Lane	December 2, 1988
6 33037 Grebe Court	December 7, 1988

7 31

8 By at least about September 3, 1988, CROWNLAND
9 conducted its mortgage loan brokerage activities under the
10 fictitious business name of CROWNLAND FUNDING as a "subsidiary"
11 of CROWNLAND CORPORATION. At no time thereafter through at
12 least November 30, 1989 did CROWNLAND obtain a fictitious
13 business name license from the Department as required by Section
14 10159.5 of the Code and Section 2731 of the Title 10 of the
15 California Code of Regulations (hereafter the Regulations).

16 32

17 Commencing in November of 1989 the Department
18 conducted an audit of the books and records of CROWNLAND
19 relating to its mortgage loan brokerage business only. It was
20 ascertained that from at least September of 1988, CROWNLAND
21 maintained a bank account at Silicon Valley Bank, Santa Clara,
22 California, Account No. 0330983570, in the name of CROWNLAND
23 FUNDING, and that said bank account was not a trust account.

24 33

25 It was ascertained by the audit that the above account
26 was used by CROWNLAND and HARGROVE for the receipt and
27 disbursement of trust monies received from borrowers for credit

1 reports and appraisal fees. The account was also used for the
2 receipt and disbursement of corporate operating monies,
3 commingled with the above trust funds.

4 34

5 As of November 30, 1989, CROWNLAND and HARGROVE
6 maintained columnar records for the receipt and disbursement of
7 trust funds, which records failed to set forth the daily balance
8 of the account and other material information required by
9 Section 2831 of the Regulations. As of said date, CROWNLAND and
10 HARGROVE failed or omitted to maintain any subsidiary records
11 for all separate beneficiaries or transactions as required by
12 Section 2831.1 of the Regulations, and failed or omitted to
13 reconcile said records as required by Section 2831.2 of the
14 Regulations.

15 35

16 As of November 30, 1989 the above account had an
17 adjusted bank balance of about \$4,552.39. By reason of the
18 inadequate records of CROWNLAND as alleged in Paragraph 34
19 above, the Department was unable to ascertain the accountability
20 of CROWNLAND for trust funds belonging to others as of said
21 date.

22 36

23 It was further ascertained by the audit that as of
24 November 30, 1989, CROWNLAND failed to deliver mortgage loan
25 disclosure statements to borrowers and/or to retain copies of
26 said disclosure statements with its records for four years as
27 required by Section 10240 of the Code.

CROWNLAND paid real estate commissions to PHAM for services rendered by PHAM in connection with the real estate transactions set forth in Paragraph 14 in the First Cause of Action above from September of 1988 through November of 1988 at a time when PHAM was not duly in the employ of CROWNLAND.

HARGROVE was the designated officer of CROWNLAND commencing January 12, 1989 and was responsible under Section 10159.2 of the Code for the supervision and control of the activities conducted by the corporation, its officers and employees to secure full compliance with the Real Estate Law, including the supervision of real estate salespersons in the performance of acts for which a real estate license is required. HARGROVE was negligent or incompetent in the performance of the above responsibilities and failed to exercise reasonable supervision and control of the activities of CROWNLAND, in that he knew or should have known all of the facts alleged in the Third and Fourth Causes of Action herein, and could have and should have taken steps to assure CROWNLAND's compliance.

VAN was at all times herein mentioned the President of CROWNLAND and the owner of 100% of the shares of stock of the corporation, and directed and controlled its activities, including but not limited to the mortgage loan brokerage activities herein described. VAN personally hired PHAM, and personally opened the bank account referred to in Paragraph 32

1 above, and was the sole signatory on said account. VAN knew or
2 should have known PHAM was already employed by SILBERNAGEL and
3 knew or should have known the above bank account was not a trust
4 account. VAN knew or should have known all the facts alleged in
5 the Third and Fourth Causes of Action alleged herein, and could
6 have and should have taken steps as an officer and the owner of
7 the corporation to assure CROWNLAND's compliance with the Real
8 Estate Law, and willfully disregarded the statutes and
9 regulations charged herein against CROWNLAND.

10 40

11 The acts and/or omissions of CROWNLAND as alleged in
12 Paragraph 30 above were in violation of Section 10211 of the
13 Code and Section 2740 of the Regulations, and constitute grounds
14 for disciplinary action under the provisions of Section
15 10177(d).

16 41

17 The acts and/or omissions of CROWNLAND as alleged in
18 Paragraph 31 above are in violation of Section 10159.5 of the
19 Code and Section 2731 of the Regulations and constitute grounds
20 for disciplinary action under the provisions of Section
21 10177(d).

22 42

23 The acts and/or omissions of CROWNLAND and HARGROVE as
24 alleged in Paragraphs 32 through 35 above were in violation of
25 Section 10145 of the Code and Sections 2831, 2831.1, and 2831.2
26 of the Regulations and constitute grounds for disciplinary
27 action under the provisions of Section 10177(d) of the Code.

1 Said conduct also constitutes grounds for disciplinary action
2 under the provisions of Section 10176(e) of the Code.

3 43

4 The acts and/or omissions of CROWNLAND as alleged in
5 Paragraph 36 above are in violation of Section 10240 of the Code
6 and constitute grounds for disciplinary action under the
7 provisions of Section 10177(d) of the Code.

8 44

9 The acts and/or omissions of CROWNLAND as set forth in
10 Paragraph 37 above constitute grounds for disciplinary action
11 under the provisions of Section 10137 of the Code.

12 45

13 The acts and/or omissions of HARGROVE as alleged in
14 Paragraph 38 above constitute grounds for disciplinary action
15 under the provisions of Sections 10177(g) and 10177(h) of the
16 Code.

17 46

18 The acts and/or omissions of VAN as alleged in
19 Paragraph 39 above constitute grounds for disciplinary action
20 under the provisions of Sections 10177(d) and 10177(f) of the
21 Code.

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

1 may be proper under other applicable provisions of law.

2
3 *Edward V. Chio*

4 EDWARD V. CHIOLO
5 Deputy Real Estate Commissioner

6 Dated at San Francisco, California

7 this 13th day of August, 1971.