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FILED
JAN - 6 2004

DEPARTMENT OF REAL ESTATE

Kathleen Conners

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-6708 SF
WILLIAM RICHARD HESS,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

On November 5, 2003, an Order Denying Reinstatement of License was rendered in the above-entitled matter to become effective January 7, 2004.

On November 21, 2003, Respondent petitioned for reconsideration of the Order of November 5, 2003.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Order of November 5, 2003 and reconsideration is hereby denied.

IT IS HEREBY ORDERED January 6, 2004.

Real Estate Commissioner

John R. Liberato

BY: John R. Liberato
Chief Deputy Commissioner

1 The burden of proving rehabilitation rests with the
2 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541). A
3 petitioner is required to show greater proof of honesty and
4 integrity than an applicant for first time licensure. The proof
5 must be sufficient to overcome the prior adverse judgment on the
6 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

7 The Department has developed criteria to assist in
8 evaluating the rehabilitation of an applicant for reinstatement
9 of a license. Among the criteria relevant in this proceeding
10 are:

11 (j) Discharge of, or bona fide efforts toward
12 discharging, adjudicated debts or monetary obligations to others.
13 Respondent has failed to discharge debts in excess of \$70,000
14 owed to the Internal Revenue Service and \$32,000 owed to the
15 State of California Franchise Tax Board.

16 (k) Correction of business practices resulting in
17 injury to others or with the potential to cause such injury.
18 Respondent has not worked as a salesperson in the operation of
19 a real estate brokerage business or otherwise acted in a
20 licensed fiduciary capacity. Consequently, Respondent has not
21 demonstrated that he has changed his business practices resulting
22 in disciplinary action.

23 Given the fact that Respondent has not established that
24 he has complied with Sections 2911 (j) and (k) of Title 10,
25 California Code of Regulations, I am not satisfied that
26 Respondent is sufficiently rehabilitated to receive a real estate
27 salesperson license.

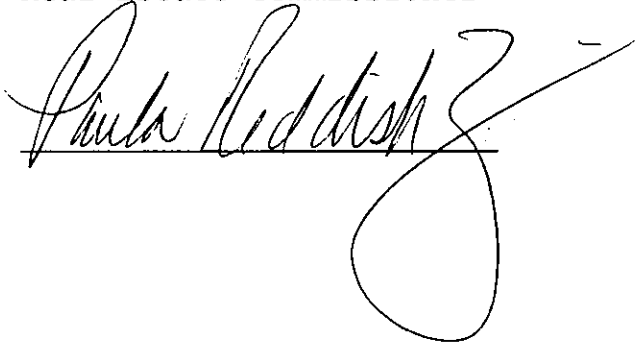
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NOW, THEREFORE, IT IS ORDERED that Respondent's
petition for reinstatement of his real estate salesperson
license is denied.

This Order shall be effective at 12 o'clock noon on
December 8, 2003.

DATED: November 5, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



COPY

FILED
SEP 15 1993

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By Lynda Montiel
Lynda Montiel

* * *

In the Matter of the Accusation of)
)
WILLIAM RICHARD HESS,)
ALAN JO ANISGARD,)
LINDA FARNAM JOHNSON and)
EARL THOMAS SHUTTLEWORTH,)
)
Respondent (s).)

No. H-6708 SF

OAH N 40999

DECISION AFTER RECONSIDERATION
AS TO RESPONDENTS LINDA FARNAM JOHNSON
AND ALAN JO ANISGARD ONLY

The Proposed Decision on Remand dated August 19, 1993,
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 October 5th, 1993.

IT IS SO ORDERED September 9, 1993.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
) No. H-6708 SF
WILLIAM RICHARD HESS,)
ALAN JO ANISGARD,) OAH No. 40999
LINDA FARNAM JOHNSON and)
EARL THOMAS SHUTTLEWORTH,)
)
Respondents.)
_____)

PROPOSED DECISION ON REMAND
RE: RESPONDENTS ANISGARD AND JOHNSON ONLY

This matter was originally heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Francisco, California on December 7, 1992.

Complainant was represented by David B. Seals, Counsel.

Respondents William Richard Hess, Alan Jo Anisgard and Linda Farnam Johnson each represented themselves.

No appearance was made by or on behalf of respondent Earl Thomas Shuttleworth, with whom, counsel for complainant represented, a settlement had been reached. The allegations against Shuttleworth set forth in the Accusation were stricken on motion of complainant.

Following the hearing, the record was held open in order to allow the parties to submit additional evidence. The administrative law judge subsequently issued a proposed decision on February 10, 1993.

On February 23, 1993 the Real Estate Commissioner adopted the decision of the administrative law judge revoking the licenses of respondents Hess, Anisgard and Johnson. The effective date of that decision, originally March 29, 1993, was later extended to permit the Commissioner to consider a petition for reconsideration filed by respondents Anisgard and Johnson. On May 7, 1993 the Commissioner granted the petition for reconsideration as to respondents Anisgard and Johnson only and ordered that the matter be remanded to the administrative law judge for the taking of further evidence which was "limited solely to the taking of testimony from Lee (sic) Oken, the loan officer mentioned in Respondents' petition."

On remand, the matter was heard before the undersigned administrative law judge on July 20, 1993 in San Francisco, California. Complainant was again represented by David B. Seals, Counsel. Respondents Anisgard and Johnson were present and were represented by Elizabeth Insko Reifler, Attorney at Law, 1748 Lincoln Avenue, San Rafael, California 94901. Evidence taken at the hearing was limited to the testimony of Lou Oken and receipt of a declaration executed by him on July 19, 1993. Respondents' request that they be permitted to testify was denied. The parties were afforded the opportunity for oral argument.

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

Respondents Alan Jo Anisgard and Linda Farnam Johnson are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).

Anisgard was first issued a conditional real estate license on September 10, 1990. That conditional license expired on March 10, 1992 and his salesperson license was automatically suspended indefinitely pursuant to Business and Professions Code section 10153.4(c) on March 11, 1992. Anisgard's license is scheduled to expire on September 9, 1994.

Johnson was first issued a conditional real estate license on April 8, 1991. That conditional license was scheduled to expire on October 8, 1992. No evidence was presented to show whether Johnson complied with the requirements of Business and Professions Code section 10153.4(a) or whether her license was automatically suspended pursuant to subsection (c). Johnson's real estate salesperson license is scheduled to expire on April 7, 1995.

III

At all times relevant, William Richard Hess was licensed by the Department of Real Estate as a real estate salesperson and acted as manager of the TRI Realtors office in Petaluma. On March 12, 1989 Arnold Falk signed a listing agreement with Hess and TRI to sell a single family residence he owned at 1560 Adobe Road, Petaluma ("the property") for \$375,000.

IV

On April 10, 1989 Falk accepted an offer to buy the property made by Anisgard and Johnson, neither of whom was yet licensed. The Residential Purchase Agreement and Deposit Receipt was prepared by Hess, who was acting as agent for Anisgard and Johnson. Anisgard and Johnson offered to purchase the property for \$400,000, with the seller to credit the buyers \$25,000 for closing costs and a landscaping allowance. The Purchase Agreement also provided, "The parties to this agreement each agree that this transaction must qualify as a tax deferred exchange pursuant to section 1031 of the IRC..." The Purchase Agreement further provided that TRI Realtors would receive a commission of \$22,500 (6% of \$375,000).

V

Anisgard and Johnson submitted separate loan applications to 1st Nationwide Bank. Each indicated on their applications that none of the down payment was borrowed and that they intended to occupy the property as their primary residence. 1st Nationwide Bank subsequently approved the applications and made the loan at an owner-occupied rate lower than a nonowner-occupied rate. Had 1st Nationwide Bank known the true circumstances of the sale of the property as set forth below, it would not have made the loan to Anisgard and Johnson at an owner-occupied rate.

VI

Anisgard and Johnson never intended to occupy the property. Rather, the occupant was to be Hess, who joined with Anisgard and Johnson to purchase the property as part of an "equity sharing" arrangement. At some time prior to this transaction, Anisgard and Hess, who had been involved in an earlier transaction, together attended a seminar on equity sharing. As described by Anisgard, equity sharing is an arrangement whereby someone with good credit and income but no down payment joins with an investor with a down payment in order to close title.

When Hess first showed Anisgard and Johnson the property they told him they were not interested in moving from their home in Mill Valley and did not want to buy the property and rent it out because of tenant problems they were having at another property they owned. Anisgard and Johnson told Hess they wanted to invest with people who had found a house they wanted but needed the down payment. Hess essentially told them, "I'm your man and this is the house." Hess' testimony that he did not form an intent to be an "equity partner" in the property until shortly before escrow closed is found to be wholly incredible.

VII

The verbal agreement reached between Hess and Anisgard and Johnson was that Hess would be a 50% owner of the property and would reside there. In addition, he would be responsible for all principal, interest, taxes and insurance payments, with Anisgard and Johnson having no negative cash flow. Hess was to be fully responsible for the property and its maintenance.

VIII

TRI Realtors has a program whereby TRI credits to an employee the company's portion of the commission on a transaction in which the employee purchases property for his or her own use, either residential or investment. Under that program, TRI Realtors credited Hess with \$8,659.94, the company's share of the commission on sale of the property.

Escrow on the transaction closed on May 16, 1989. Hess subsequently assigned his entire commission check of approximately \$22,000, including the amount credited to him by TRI Realtors, to Anisgard and Johnson as a portion of the down payment on the property.

IX

The evidence is clear that at the time they made their loan applications to 1st Nationwide Bank, Anisgard and Johnson knew they would not occupy the property and that Hess was to be a 50% partner in the purchase. They intentionally withheld this information during the application process because they believed, based upon what Hess told them, that because of a divorce Hess had a bad credit history which would jeopardize their ability to purchase the property. Anisgard and Johnson believed Hess would "come on title" after the loan was approved.

X

Anisgard and Johnson both acted fraudulently and dishonestly and made substantial misrepresentations by intentionally engaging in a plan, with Hess, to mislead the lender, either through direct misstatements or through omission, about the true circumstances of the purchase of the property. Hess knew he was to be a 50% owner of the property yet never disclosed this to the lender because, as he admitted, he was concerned about his credit record and where he would get his share of the down payment. In fact, Hess specifically told Johnson not to disclose to the lender that he was to be a part owner in the transaction. Anisgard and Johnson knew Hess was to be a part owner and would provide part of the down payment yet intentionally withheld this information on their loan applications.

The Residential Purchase Agreement and Deposit Receipt, which is normally submitted to the lender with the loan applications, showed the transaction was part of a 1031 exchange, a fact which should have put the lender on notice that the transaction dealt with investment property. In addition, the evidence presented indicates that the loan officer, Lou Oken, knew that Hess, not Anisgard and Johnson, was to occupy the property. Oken testified that it was at sometime during the loan process that questions were raised, apparently by a loan processor at 1st Nationwide Bank, concerning occupancy of the property. Oken's testimony that he then discussed these questions with his manager lacked credibility. The more credible evidence presented showed that after the loan was approved, and Anisgard became upset because the rate was higher than he had expected, a meeting was held between Anisgard, Johnson, Hess, Oken and the bank manager in an attempt to get a lower rate. Oken advised the principals not to tell the bank manager of the true circumstances of the transaction. As a result, the manager was not advised of Hess' participation in the deal.

While it is therefore true that the lender did have some indication that Anisgard and Johnson were not actually going to occupy the property, this in no way minimizes the dishonesty of Anisgard and Johnson in failing to reveal how the purchase of the property was to be consummated.

XI

Anisgard and Johnson, who are now married, obtained their licenses primarily because of their frequent real estate dealings. Neither has any present intention of using their license.

DETERMINATION OF ISSUES

I

Cause for disciplinary action against respondent Anisgard exists pursuant to Business and Professions Code sections 10177(d), (f) and (j) in that Anisgard engaged in fraud and dishonest dealing, conduct which would have warranted the denial of his application for a real estate license.

II

Cause for disciplinary action against respondent Johnson exists pursuant to Business and Professions Code sections 10177(d), (f) and (j) in that Johnson engaged in fraud and dishonest dealing, conduct which would have warranted the denial of her application for a real estate license.

III

The conduct engaged in by Anisgard and Johnson was both serious and blatant and warrants severe discipline. Although the actions of Anisgard and Johnson were influenced to an extent by their reliance upon Hess, neither that fact nor the fact Anisgard and Johnson may not have been fully conversant with real estate law at the time of the transaction should insulate them from discipline. Anisgard and Johnson were relatively sophisticated real estate investors and knew full well they were engaging in dishonest conduct.

ORDER

1. All licenses and licensing rights of respondent Alan Jo Anisgard under the Real Estate Law are revoked pursuant to Determination I.

2. All licenses and licensing rights of respondent Linda Farnam Johnson under the Real Estate Law are revoked pursuant to Determination II.

DATED: August 19, 1993

Michael C. Cohn
MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

Flag BAE

FILED
MAY 14 1993

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

Maria J. ...

In the Matter of the Accusation of

ALAN JO ANISGARD and
LINDA FARNAM JOHNSON, et al.

}

Case No. H-6708 SF

OAH No. N-40999

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, S.F., CA 94102

on July 20, 1993 (2 hrs.), at the hour of 1:30 p.m.
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. 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: May 14, 1993

By David B. Seals
DAVID B. SEALS Counsel

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Additional time was needed to evaluate the merits of the petition, and therefore a further stay, until May 7, 1993, was granted. I find that there is good cause to reconsider said Decision.

Reconsideration is hereby granted and pursuant to Section 11521(b) of the Government Code the matter is reassigned to the Administrative Law Judge of the Office of Administrative Hearings who previously heard this matter for the taking of further evidence. Such evidence shall be limited solely to the taking of testimony from Lee Oken, the loan officer mentioned in Respondents' petition.

IT IS SO ORDERED May 7, 1993, 1993.

CLARK WALLACE
Real Estate Commissioner

By: Robin T. Wilson
ROBIN T. WILSON
Chief Legal Officer

Hay

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APR 28 1993
DEPARTMENT OF REAL ESTATE

By *Emily J. Kido*

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	
)	
WILLIAM RICHARD HESS,)	NO. H-6708 SF
ALAN JO ANISGARD,)	
LINDA FARNAM JOHNSON)	
and EARL THOMAS SHUTTLEWORTH,)	
)	
Respondents.)	
)	
)	

ORDER FURTHER STAYING EFFECTIVE DATE
AS TO RESPONDENTS ALAN JO ANISGARD
AND LINDA FARNAM JOHNSON ONLY

On February 23, 1993, a Decision was rendered in the above-entitled matter to become effective March 29, 1993.

On March 29, 1993, Respondents ANISGARD and JOHNSON petitioned for reconsideration of the Decision of February 23, 1993. Pursuant to said petition, a thirty (30) stay of the decision was granted to expire April 28, 1993.

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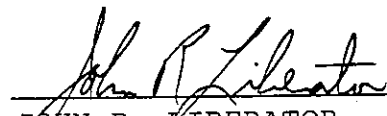
Additional time is needed to evaluate the petition,
which was timely filed, and therefore I am granting a further stay
of the effective date of the February 23, 1993 decision solely for
the purpose of considering the petition.

IT IS HEREBY ORDERED that the effective date of the
Decision of the Commissioner of February 23, 1993, is stayed for
an additional nine (9) days.

The Decision of the Commissioner of February 23, 1993,
shall become effective at 12 o'clock noon on May 7, 1993.

DATED: April 28, 1993

CLARK WALLACE
Real Estate Commissioner

By: 
JOHN R. LIBERATOR
Chief Deputy Commissioner

Flay

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FILED
MAR 29 1993

DEPARTMENT OF REAL ESTATE

By *Lynda Montiel*
Lynda Montiel

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-6708 SF
)	
WILLIAM RICHARD HESS,)	OAH N 40999
ALAN JO ANISGARD,)	
LINDA FARNAM JOHNSON and)	
EARL THOMAS SHUTTLEWORTH,)	
)	
Respondents.)	

ORDER STAYING EFFECTIVE DATE

On February 23, 1993, a Decision was rendered in the above-entitled matter to become effective March 29, 1993.

IT IS HEREBY ORDERED that the effective date of the Decision of February 23, 1993, as to ALAN JO ANISGARD and LINDA FARNAM JOHNSON only, is stayed for a period of thirty (30) days.

The Decision of February 23, 1993, shall become effective at 12 o'clock noon on April 28, 1993.

DATED: March 29, 1993.

CLARK WALLACE
Real Estate Commissioner
Edward V. Chio

By: EDWARD V. CHIOLO
Deputy Real Estate Commissioner

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FILED
FEB 26 1993

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

By *Maria Tuleala*

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
 WILLIAM RICHARD HESS,)
 ALAN JO ANISGARD,)
 LINDA FARNAM JOHNSON and)
 EARL THOMAS SHUTTLEWORTH,)
)
 Respondent (s).)
)

No. H-6708 SF

OAH N-40999

DECISION

The Proposed Decision dated February 10, 1993

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 March 29, 19 93.

IT IS SO ORDERED

2/23, 19 93.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Maria J. J. J.

In the Matter of the Accusation)
Against:)
)
WILLIAM RICHARD HESS,)
ALAN JO ANISGARD,)
LINDA FARNAM JOHNSON and)
EARL THOMAS SHUTTLEWORTH)
)
Respondents.)

No. H-6708 SF
OAH No. N 40999

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 December 7, 1992.

Complainant was represented by David B. Seals, Counsel.

Respondents William Richard Hess, Alan Jo Anisgard and Linda Farnam Johnson each represented themselves.

No appearance was made by or on behalf of respondent Earl Thomas Shuttleworth, with whom, counsel for complainant represented, a settlement had been reached. The allegations against Shuttleworth set forth in the Accusation were stricken on motion of complainant.

The record was held open for 15 days in order to allow the parties to submit additional materials. Respondent Anisgard was to submit a promissory note showing the interest rate paid as well as documents to be obtained from 1st Nationwide Bank showing what the bank's owner-occupied rates were at the time of the transaction in question. Respondent Hess was to submit a letter of character reference from his present broker. Complainant was to submit the language for potential probationary terms.

A letter from Hess' broker was received on December 14, 1992 and was marked as Exhibit B in evidence. A letter from Anisgard received on December 21, 1992 was marked as Exhibit C in evidence. In that letter, Anisgard stated he had "been unable to locate loan rates from the period of May 1989," but included hearsay statements purportedly made by his former loan officer.

On December 23, 1992 the administrative law judge notified the parties that the material submitted by Anisgard did not contain any of the information for which the record had been held open and that nothing had been received from counsel for complainant. The record was therefore held open for an additional 15 days in order to permit them to submit these materials. In response, another letter from Anisgard was received on December 30, 1992. In that letter, marked as Exhibit D in evidence, Anisgard again indicated an inability to obtain loan rates from the bank. No mention was made of the promissory note. On January 6, 1993 a third letter from Anisgard was received. Anisgard complained of the Department's handling of the investigation and urged the administrative law judge to convene a new hearing "to examine all the facts." This letter, having no evidentiary value, was marked as Exhibit E for identification only. On the same day, counsel for complainant submitted the language of a potential probationary condition. That document was marked as Exhibit 10 for identification. The matter was thereupon deemed submitted.

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

Respondents William Richard Hess, Alan Jo Anisgard and Linda Farnam Johnson are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code.)

At all times relevant, Hess was licensed by the Department of Real Estate ("Department") as a real estate salesperson and acted as manager of the TRI Realtors office in Petaluma. His license is scheduled to expire on April 26, 1994.

Anisgard was first issued a conditional real estate license on September 10, 1990. That conditional license expired on March 10, 1992 and his salesperson license was automatically suspended indefinitely pursuant to Business and Professions Code section 10153.4(c) on March 11, 1992. Anisgard's license is scheduled to expire on September 9, 1994.

Johnson was first issued a conditional real estate license on April 8, 1991. That conditional license was scheduled to expire on October 8, 1992. No evidence was presented to show whether Johnson complied with the requirements of Business and

Professions Code section 10153.4(a) or whether her license was automatically suspended pursuant to subsection (c). Johnson's real estate salesperson license is scheduled to expire on April 7, 1995.

III

On March 12, 1989 Arnold Falk signed a listing agreement with Hess and TRI Realtors to sell a single family residence he owned at 1560 Adobe Road, Petaluma ("the property") for \$375,000.

IV

On April 10, 1989 Falk accepted an offer to buy the property made by Anisgard and Johnson, neither of whom was yet licensed. The Residential Purchase Agreement and Deposit Receipt was prepared by Hess, who was acting as agent for Anisgard and Johnson. Anisgard and Johnson offered to purchase the property for \$400,000, with the seller to credit the buyers \$25,000 for closing costs and a landscaping allowance. The Purchase Agreement also provided, "The parties to this agreement each agree that this transaction must qualify as a tax deferred exchange pursuant to section 1031 of the IRC..." The Purchase Agreement further provided that TRI Realtors would receive a commission of \$22,500 (6% of \$375,000).

V

Anisgard and Johnson submitted separate loan applications to 1st Nationwide Bank. Each indicated on their applications that none of the down payment was borrowed and that they intended to occupy the property as their primary residence. 1st Nationwide Bank subsequently approved the applications and made the loan at an owner-occupied rate lower than a nonowner-occupied rate. Had 1st Nationwide Bank known the true circumstances of the sale of the property as set forth below, it would not have made the loan to Anisgard and Johnson at an owner-occupied rate.

VI

Anisgard and Johnson never intended to occupy the property. Rather, the occupant was to be Hess, who joined with Anisgard and Johnson to purchase the property as part of an "equity sharing" arrangement. At some time prior to this transaction, Anisgard and Hess, who had been involved in an earlier transaction, together attended a seminar on equity sharing. As described by Anisgard, equity sharing is an arrangement whereby someone with good credit and income but no down payment joins with an investor with a down payment in order to close title.

When Hess first showed Anisgard and Johnson the property they told him they were not interested in moving from their home in Mill Valley and did not want to buy the property and rent it out because of tenant problems they were having at another property they owned. Anisgard and Johnson told Hess they wanted to invest with people who had found a house they wanted but needed the down payment. Hess essentially told them, "I'm your man and this is the house." Hess' testimony that he did not form an intent to be an "equity partner" in the property until shortly before escrow closed is found to be wholly incredible.

VII

The verbal agreement reached between Hess and Anisgard and Johnson was that Hess would be a 50% owner of the property and would reside there. In addition, he would be responsible for all principal, interest, taxes and insurance payments, with Anisgard and Johnson having no negative cash flow. Hess was to be fully responsible for the property and its maintenance.

VIII

TRI Realtors has a program whereby TRI credits to an employee the company's portion of the commission on a transaction in which the employee purchases property for his or her own use, either residential or investment. Under that program, TRI Realtors credited Hess with \$8,659.94, the company's share of the commission on sale of the property.

Escrow on the transaction closed on May 16, 1989. Hess subsequently assigned his entire commission check of approximately \$22,000, including the amount credited to him by TRI Realtors, to Anisgard and Johnson as a portion of the down payment on the property.

IX

At no time during the course of the transaction did Hess disclose to the seller of the property that he was acquiring an interest in the property or that he was assigning his commission check to Anisgard and Johnson. Hess' testimony that he told Falk near the close of escrow that he was participating in the deal is found to be wholly incredible.

X

The evidence is clear that at the time they made their loan applications to 1st Nationwide Bank, Anisgard and Johnson knew they would not occupy the property and that Hess was to be a

50% partner in the purchase. They intentionally withheld this information during the application process because they believed, based upon what Hess had told them, that because of a divorce Hess had a bad credit history which would jeopardize their ability to purchase the property. Anisgard and Johnson believed Hess would "come on title" after the loan was approved.

XI

Hess, Anisgard and Johnson each acted fraudulently and dishonestly and made substantial misrepresentations by intentionally engaging in a plan to mislead the lender, either through direct misstatements or through omission, about the true circumstances of the purchase of the property. Hess knew he was to be a 50% owner of the property yet never disclosed this to the lender because, as he admitted, he was concerned about his credit record and where he would get his share of the down payment. Hess specifically told Johnson not to disclose to the lender that he was to be a part owner in the transaction. Anisgard and Johnson knew Hess was to be a part owner and would provide part of the down payment yet intentionally withheld this information on their loan applications.

The Residential Purchase Agreement and Deposit Receipt, which normally would be submitted to the lender with the loan applications, showed the transaction was part of a 1031 exchange, a fact which should have put the lender on notice that the transaction dealt with investment property. In addition, the uncontradicted evidence indicates that the loan officer knew that Hess, not Anisgard and Johnson, was to occupy the property. Although it is not clear whether the loan officer learned of this fact before the loan was approved, it is clear that he never informed his superiors. In fact, after the loan was approved, and Anisgard became upset because the rate was higher than he had expected, a meeting was held between Anisgard, Johnson, Hess, the loan officer and the bank manager in an attempt to get a lower rate. The loan officer advised the principals not to tell the bank manager of the true circumstances of the transaction. As a result, the manager was not advised of Hess' participation in the deal. While it is therefore true that the lender did have some indication that Anisgard and Johnson were not actually going to occupy the property, this in no way minimizes the dishonesty of Hess, Anisgard and Johnson in failing to reveal how the purchase of the property was to be consummated.

XII

Hess is currently employed as a residential salesperson at First Choice Realty in Rohnert Park. Anisgard and Johnson, who are now married, obtained their licenses primarily because of their frequent real estate dealings. Neither has any present intention of using their license.

DETERMINATION OF ISSUES

I

Respondent Hess contends the action against him should be barred by the three-year statute of limitations. Business and Professions Code section 10101 provides that an accusation must be filed "not later than three years from the occurrence of the alleged grounds for disciplinary action" In this case, the accusation was filed on May 15, 1992. Since respondent's fraud was not fully consummated until escrow closed on May 16, 1989, the accusation was filed within the required three year time limit.

II

Cause for disciplinary action against respondent Hess exists pursuant to Business and Professions Code sections 10176(a) for making substantial misrepresentations; 10176(i) for engaging in fraud and dishonest dealing; and 10177(d) for violating the provisions of Title 10, California Code of Regulations section 2785(a)(17) by failing to disclose to the seller of the property his ownership interest in it.

III

No cause for disciplinary action against respondent Hess was established pursuant to Business and Professions Code section 10176(g) in that it was not shown Hess claimed a secret compensation or commission.

IV

Cause for disciplinary action against respondent Anisgard exists pursuant to Business and Professions Code sections 10177(d), (f) and (j) in that Anisgard engaged in fraud and dishonest dealing, conduct which would have warranted the denial of his application for a real estate license.

V

Cause for disciplinary action against respondent Johnson exists pursuant to Business and Professions Code sections 10177(d), (f) and (j) in that Johnson engaged in fraud and dishonest dealing, conduct which would have warranted the denial of her application for a real estate license.

VI

The conduct engaged in by Hess, Anisgard and Johnson was both serious and blatant and warrants severe discipline. Although the actions of Anisgard and Johnson were influenced to an extent by their reliance upon Hess, neither that fact nor the fact Anisgard and Johnson may not have been fully conversant with real estate law at the time of the transaction should insulate them from discipline. Anisgard and Johnson were relatively sophisticated real estate investors and knew full well they were engaging in dishonest conduct.

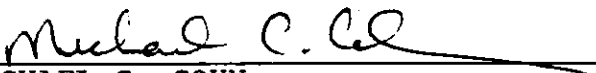
ORDER

1. All licenses and licensing rights of respondent William Richard Hess under the Real Estate Law are revoked pursuant to Determination II.

2. All licenses and licensing rights of respondent Alan Jo Anisgard under the Real Estate Law are revoked pursuant to Determination IV.

3. All licenses and licensing rights of respondent Linda Farnam Johnson under the Real Estate Law are revoked pursuant to Determination V.

Dated: February 10, 1993


MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

MCC:wc

Fly

COPY

Department of Real Estate
185 Berry Street, Room 3400
San Francisco, CA 94107-1770

FILED
MAR 24 1993

Telephone: (415) 904-5917

DEPARTMENT OF REAL ESTATE

By *Maureen Dulala*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-6708 SF
WILLIAM RICHARD HESS,)	<u>STIPULATION & AGREEMENT</u>
ALAN JO ANISGARD,)	<u>IN SETTLEMENT & ORDER</u>
LINDA FARNAM JOHNSON &)	As To EARL THOMAS
EARL THOMAS SHUTTLEWORTH,)	SHUTTLEWORTH only.
Respondents.)	

It is hereby stipulated by and between EARL THOMAS SHUTTLEWORTH (sometimes referred to as SHUTTLEWORTH) and his attorney of record, James B. McKenney, and the Complainant, acting by and through David B. Seals, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation (as to Shuttleworth only) filed on May 15, 1992 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Shuttleworth as to Shuttleworth at a formal hearing on the Accusation, which
/ / / / /

1 hearing was to be held in accordance with the provisions of the
2 Administrative Procedure Act (APA), shall instead and in place
3 thereof be submitted solely on the basis of the provisions of this
4 Stipulation and Agreement in Settlement.

5 2. Shuttleworth has received, read and understand(s)
6 the Statement to Respondent, the Discovery Provisions of the APA
7 and the Accusation filed by the Department of Real Estate in this
8 proceeding.

9 3. On June 3, 1992, Shuttleworth filed a Notice of
10 Defense pursuant to Section 11505 of the Government Code for the
11 purpose of requesting a hearing on the allegations in the
12 Accusation. Shuttleworth hereby freely and voluntarily withdraws
13 said Notice of Defense. Shuttleworth acknowledges that he
14 understands that by withdrawing said Notice of Defense he will
15 thereby waive his right to require the Commissioner to prove the
16 allegations in the Accusation at a contested hearing held in
17 accordance with the provisions of the APA and that he will waive
18 other rights afforded to him in connection with the hearing such
19 as the right to present evidence in defense of the allegations in
20 the Accusation and the right to cross-examine witnesses.

21 4. Shuttleworth, pursuant to the limitations set forth
22 below, hereby admits that the factual allegations (or findings of
23 fact as set forth below) in Paragraphs I, II and VI through XIII
24 of the Accusation filed in this proceeding are true and correct
25 and the Real Estate Commissioner shall not be required to provide
26 further evidence of such allegations.

27 / / / / / /

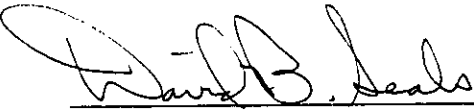
1 licenses and license rights of Shuttleworth under the provision of
2 Section 10177(h) of the Business and Professions Code.

3 ORDER

4 I

5 All real estate broker licenses and license rights of
6 Respondent EARL THOMAS SHUTTLEWORTH are suspended for thirty (30)
7 days from the effective date of this Decision, provided however
8 that said suspension shall be stayed for a period of one (1) year
9 from the effective date of the Decision on the condition that no
10 further cause for disciplinary action against Respondent EARL
11 THOMAS SHUTTLEWORTH occurs within the period of the stay. If no
12 further cause for disciplinary action against the license and
13 license rights of said Respondent occurs within one (1) year, the
14 stay here by granted shall become permanent.

15
16 DATED: Dec. 4, 1992

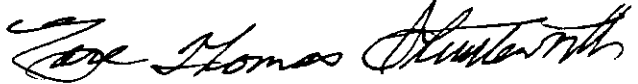

17 DAVID B. SEALS
18 Counsel for Complainant

19 * * *

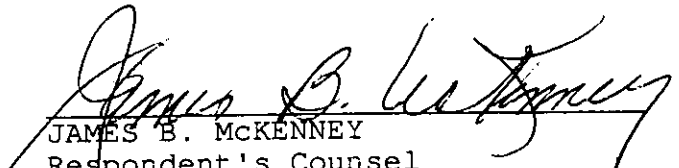
20 I have read the Stipulation and Agreement in Settlement,
21 have discussed it with my counsel, and its terms are understood by
22 me and are agreeable and acceptable to me. I understand that I am
23 waiving rights given to me by the California Administrative
24 Procedure Act (including but not limited to Sections 11506, 11508,
25 11509 and 11513 of the Government Code), and I willingly,
26 intelligently and voluntarily waive those rights, including the
27 right of requiring the Commissioner to prove the allegations in
the Accusation at a hearing at which I would have the right to

1 cross-examine witnesses against me and to present evidence in
2 defense and mitigation of the charges.

3
4 DATED: 11/16/92


EARL THOMAS SHUTTLEWORTH
Respondent

6
7
8 DATED: Dec. 2, 1992

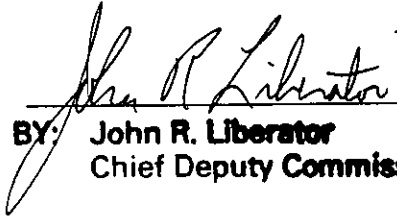

JAMES B. MCKENNEY
Respondent's Counsel

9
10 * * *

11
12 The foregoing Stipulation and Agreement in Settlement is
13 hereby adopted as my Decision and Order and shall become effective
14 at 12 o'clock noon on April 13, 1993.

15 IT IS SO ORDERED March 23, 1993.

16 CLARK WALLACE
17 Real Estate Commissioner

18 
19 BY: **John R. Liberator**
20 Chief Deputy Commissioner

Flag

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BEFORE THE DEPARTMENT OF REAL ESTATE JUN 23 1992
STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

By *Marie Zwick*

In the Matter of the Accusation of
WILLIAM RICHARD HESS,
ALAN JO ANISGARD,
LINDA FARNAM JOHNSON and
EARL THOMAS SHUTTLEWORTH,

}

Case No. H-6708 SF
OAH No. N-40999

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, S.F., CA 94102

on December 7, 1992 (1 day), at the hour of 9:00 am,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. 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: June 23, 1992

By *David B. Seals*
DAVID B. SEALS, Counsel *(m)*

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FILED
MAY 15 1992

DEPARTMENT OF REAL ESTATE

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770
5 Telephone: (415) 904-5917

By *Laurie A. Zier*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)
12 WILLIAM RICHARD HESS,)
13 ALAN JO ANISGARD,)
14 LINDA FARNAM JOHNSON and)
15 EARL THOMAS SHUTTLEWORTH,)
Respondents.)

No. H-6708 SF

ACCUSATION

16 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against WILLIAM RICHARD HESS (HESS), ALAN JO ANISGARD (ANISGARD),
19 LINDA FARNAM JOHNSON (JOHNSON) and EARL THOMAS SHUTTLEWORTH
20 (SHUTTLEWORTH) (hereinafter Respondents) is informed and alleges
21 as follows:

I

23 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation in
25 his official capacity and not otherwise.

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II

HESS, ANISGARD, JOHNSON and SHUTTLEWORTH are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

III

HESS at all times mentioned herein was licensed by the Department as a real estate salesperson in the employ of TRI Realtors. HESS is presently in the employ of First Choice Realty, Inc.

IV

ANISGARD was unlicensed at all times mentioned herein. However, ANISGARD obtained a real estate salesperson license on September 10, 1990.

V

JOHNSON was unlicensed at all times mentioned herein. However, JOHNSON obtained a real estate salesperson license on April 8, 1991.

VI

SHUTTLEWORTH at all times mentioned herein was and is licensed by the Department as a real estate broker and as the designated officer of TRI Realtors.

VII

As the designated officer of TRI Realtors during the times specified herein, Respondent SHUTTLEWORTH was responsible for the supervision and control of the activities conducted on behalf of TRI Realtors by its officers and employees as necessary

1 to secure full compliance with the provisions of the Real Estate
2 Law.

3 VIII

4 On or about March 12, 1989 Arnold Falk (Falk), the owner
5 of the property located at 1560 Adobe Road, Petaluma, California
6 (hereinafter "the Property"), signed an exclusive multiple listing
7 form regarding the Property with HESS.

8 IX

9 On or about April 10, 1989 Falk accepted the April 8,
10 1989 offer of Respondents ANISGARD and JOHNSON to purchase the
11 Property. The accepted offer included language that the
12 transaction must qualify as a tax deferred exchange pursuant to
13 Section 1031 of the IRC.

14 X

15 Prior to close of escrow on the sale of the Property,
16 HESS entered into an agreement with ANISGARD and JOHNSON that:
17 (1) HESS would be a part owner of the Property; (2) he would pay
18 all principal, interest, taxes and insurance on the Property; and
19 (3) JOHNSON and ANISGARD would have no negative cash flow on the
20 Property.

21 XI

22 It was further agreed between HESS, ANISGARD and JOHNSON
23 that HESS would be a 50% owner of the property, that he would live
24 on the Property and act as manager of the Property. As partial
25 compensation for his interest in the Property HESS assigned his
26 entire commission check which he had received from the sale of the
27 Property to ANISGARD and JOHNSON to Johnson.

XII

1
2 HESS failed to disclose to Falk any interest he expected
3 to acquire in the Property, his relationship or proposed
4 relationship with ANISGARD and JOHNSON regarding the Property, or
5 his intention to give the commission to the buyers. SHUTTLEWORTH
6 also failed to so inform Falk of said material facts.

XIII

7
8 SHUTTLEWORTH failed to supervise the actions of HESS in
9 regard to the Property, and failed to insure that HESS disclosed
10 to Falk prior to and through the close of escrow the material
11 facts described in Paragraph XII.

XIV

12
13 ANISGARD and JOHNSON submitted a loan application to
14 First Nationwide Bank for the purpose of financing the Property.
15 The loan was applied for as an owner occupied home with ANISGARD
16 and JOHNSON as the only borrowers - not as a corporation or
17 partnership entity.

XV

18
19 ANISGARD and JOHNSON failed to disclose the following
20 facts to First Nationwide Bank when applying for the above loan on
21 the Property:

- 22 (a) that neither ANISGARD or JOHNSON intended to live
- 23 in the Property;
- 24 (b) that HESS was to be a part owner of the Property
- 25 (e.g. 50%);

26 / / / / /

27 / / / / /

1 (c) that ANISGARD, JOHNSON and HESS were involved in an
2 equity sharing agreement with regard to the
3 Property;

4 (d) that HESS was to manage and live in the Property;
5 or

6 (e) that they intended to make the transaction qualify
7 as a Section 1031 exchange.

8 XVI

9 The acts or failure to act or disclose as outlined
10 immediately above in Paragraphs XIV and XV constituted a plan
11 and/or scheme by ANISGARD, JOHNSON and HESS, to deceive and make
12 misrepresentations with the intent to obtain a lower rate loan.

13 XVII

14 First Nationwide Bank approved the loan application of
15 ANISGARD and JOHNSON on the basis of the incomplete or incorrect
16 information in Paragraphs XIV and XV. Had First Nationwide Bank
17 known the true facts they would not have made an owner occupied
18 loan to JOHNSON and ANISGARD.

19 XVIII

20 By reason of the acts and/or omissions as alleged in
21 Paragraphs X through XII, Respondent HESS constitute grounds for
22 disciplinary action under Section 10176(a) and (i) and 10176(g)
23 of the Code and Section 2785(a)(17), Title 10, California Code of
24 Regulations in conjunction with 10177(d) of the Code.

25 XIX

26 By reason of the acts and/or omissions as alleged in
27 Paragraphs X through XIII, Respondent SHUTTLEWORTH constitute

1 grounds for disciplinary action pursuant to Sections 10177(a) and
2 10177(h) of the Code.

3 XX

4 By reason of the acts and/or omissions as alleged in
5 Paragraphs XIV through XVII, Respondents ANISGARD and JOHNSON are
6 in violation of Sections 10177(f) and (j) of the Code through
7 Sections 10177(d) and 10152 of the Code and said acts and/or
8 omissions constitute grounds for disciplinary action pursuant to
9 Section 10177(f) of the Code.

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

17
18
19 
20 EDWARD V. CHIOLO
Deputy Real Estate Commissioner

21 Dated at San Francisco, California

22 this 15th day of May, 1992
23
24
25
26
27