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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

Maria Inula

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
)
)
BARTOW WHITE VAN VOORHIS,)
)
)
Respondent(s) .)
_____)

No. H-6747 SF

OAH N-41269

DECISION

The Proposed Decision dated January 28, 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 17, 1993.

IT IS SO ORDERED February 24, 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 of)
)
 BARTOW WHITE VAN VOORHIS,)
)
 Respondent.)
_____)

NO. H-6747 SF
OAH NO. N41269

PROPOSED DECISION

Jerry Mitchell, Administrative Law Judge of the State of California, Office of Administrative Hearings, heard this matter on December 3, 1992, in San Francisco, California. The Department of Real Estate was represented by David B. Seals, Staff Counsel. The respondent was present and represented by Paul J. Fitzpatric, Attorney at Law. The record was held open for briefs. The Department's brief was received on December 28, 1992, and marked Exhibit 9 for identification. Respondent's brief was received on December 31, 1992, and marked Exhibit D for identification. Thereafter, the record was closed and the matter deemed submitted.

FINDINGS OF FACT

I

The accusation was made by Edward V. Chiolo in his official capacity as a Deputy Real Estate Commissioner of the State of California, and not otherwise.

II

The accusation was orally amended by striking the words "Brade the" on line 23 of page 2 and inserting the name "Bradette" in their place.

III

At all times relevant hereto, respondent was licensed as a real estate broker. At no time was he authorized to use the fictitious business name "Silvercloud."

IV

In or about September 1990, respondent, doing business under the fictitious business name "Silvercloud," obtained from the developers of North Steet Condominiums in Sonoma County,

California, listings to sell six of the condominium's units, which the developers had either retained or transferred to themselves after the property was converted from apartments to condominiums in 1982.

Prior to obtaining said listings, respondent had applied to the Department of Real Estate to use the fictitious business name "Silver Cloud Enterprises; however, he had not filed with his application a certified copy of his fictitious business name statement filed with the county clerk, as required by Section 1059.5 of the Business and Professions Code.

V

Between September 21 and October 16, 1990, respondent offered for sale and/or negotiated the sale of five of the aforementioned condominium units. Unbeknownst to him or the developers, the public report which had been issued for said condominium units had expired. As soon as respondent learned that the public report had expired, he advised the developers to obtain a new report.

DETERMINATION OF ISSUES

I

The facts set forth in Findings III and IV constitute a violation of Section 10159.5 of the Business and Professions Code and establish cause under Section 10177(d) of that code to suspend or revoke respondent's license.

II

The authorities cited by respondent do not support his contention that Section 11018.2 of the Business and Professions Code does not apply to a person acting in the capacity of a broker or agent, as in this case. The facts set forth in Finding V constitute a violation of Section 11018.2 of the Business and Professions Code and establish separate cause under Section 10177(d) of that code to suspend or revoke respondent's license.

III

Giving due consideration to all competent evidence of mitigation and rehabilitation, the following order is appropriate.

ORDER

All licenses and licensing rights of respondent Bartow White Van Voorhis under the Real Estate Law are revoked; pro-

vided, however, that a restricted real estate broker license shall be issued to him pursuant to Section 10156.6 of the Business and Professions Code, if he satisfies the following conditions within six (6) months from the date of this Order:

1. Submittal of a completed application and payment of the fee for a real estate broker license.
2. The restricted license 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 the Code.
3. The 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 is substantially related to respondent's fitness or capacity as a real estate licensee.
4. The restricted license 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.
5. 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.
6. Respondent shall, within six (6) 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: 28 JAN 1993



JERRY MITCHELL
Administrative Law Judge
Office of Administrative Hearings

JM:wc

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

JUL 31 1992

DEPARTMENT OF REAL ESTATE

By Marie J. Jule

In the Matter of the Accusation of

BARTOW WHITE VAN VOORHIS,

Case No. H-6747 SF

OAH No. N-41269

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

OFFICE OF ADMINISTRATIVE HEARINGS, STATE BUILDING,

455 Golden Gate Avenue, Room 2248, S.F., CA 94102

on December 3, 1992 ($\frac{1}{2}$ day), at the hour of 9:00 a.m.,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. 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: July 31, 1992

By

David B. Seals
DAVID B. SEALS, ml Counsel

Shay

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JUN 30 1992

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770

DEPARTMENT OF REAL ESTATE

By *Maria L. L. L.*

5 Telephone: (415) 904-5917

6
7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BARTOW WHITE VAN VOORHIS,)
13 Respondent.)

No. H-6747 SF

ACCUSATION

14
15 The Complainant, EDWARD V. CHIOLO, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against BARTOW WHITE VAN VOORHIS (hereinafter Respondent), is
18 informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (hereinafter Code) as a real estate
23 broker.

24 II

25 That the Complainant, EDWARD V. CHIOLO, a Deputy Real
26 Estate Commissioner of the State of California, acting in his

27 / / / / /

1 official capacity and not otherwise, makes this Accusation against
2 Respondent.

3 III

4 In or about September, 1990 Respondent obtained listings
5 on at least six units owned by James Ratto alone or with Dennis
6 Hunter at the North Street Condominiums.

7 IV

8 The listings were obtained by Respondent as Silvercloud.
9 However, Respondent did not hold a real estate license bearing the
10 fictitious name Silvercloud.

11 V

12 James Ratto and Dennis Hunter were at all times
13 mentioned herein the principals of North Investments, the
14 developers of North Street Condominiums.

15 VI

16 The public report for North Street Condominiums expired
17 in 1987 and remained expired at all times mentioned herein.

18 VII

19 On or about the following dates Respondent negotiated
20 for sale or offered for sale to the respective individuals
21 properties listed by Respondent at the North Street Condominium
22 units but had not obtained a public report from the Commissioner:

23 October 16, 1990	Paul William Bigham & Brade the Dawn Bigham
24 September 26, 1990	Hanna Bisharat
25 September 27, 1990	Christopher L. & Tomann Coughtry
26 September 21, 1990	Mary DeRose

27

1 October 8, 1990

Cherie Balliett

2 VIII

3 By reason of the facts as alleged in Paragraphs III
4 through VII above, Respondent violated Section 11018.2 of the Code
5 and said acts and/or omissions constitute grounds for disciplinary
6 action under the provisions of Section 10177(d) of the Code.

7 IX

8 By reason of the facts as alleged in Paragraph IV above,
9 Respondent violated Section 10159.5 of the Code and Section 2731,
10 Title 10, California Code of Regulations and said acts and/or
11 omissions constitute grounds for disciplinary action under the
12 provisions of Section 10177(d) of the Code.

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

Edward V. Chio

20 EDWARD V. CHIOLO
21 Deputy Real Estate Commissioner

22 Dated at San Francisco, California
23 this 30th day of JUNE, 19 92.