

1 Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
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7

FILED

FEB 15 2002

DEPARTMENT OF REAL ESTATE

By Jean Arunoto

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 TO:

12 HOFMANN CONSTRUCTION CO.,
13 a California Corporation,
14 THOMAS ALOYSIUS WHALEN, JR.,
15 MARGERY IRENE HAYWORTH,
16 BETTY LOU MANN, and
17 DEBORAH DANESE GERMAN,

)
) No. H-8050 SF
)

) ORDER MODIFYING ORDER TO
) DESIST AND REFRAIN
)
)
)
)
)
)

18 RE: SUBDIVISION 8167
19 DISCOVERY BAY WEST VILLAGE I - UNIT 4
20 "KENSINGTON"
21 Contra Costa County, California
22 DRE File No. 103207 SA F00

23 On January 30, 2002, the Real Estate Commissioner
24 issued an Order prohibiting the further selling or leasing or
25 the offering for sale or leasing of lots, units or parcels
26 within the above entitled subdivision until such time as you
27 have:

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///

1 1. Complied with Sections 11013.1, 11013.2, 11013.4,
2 11012 and 11018.1(a) of the Code and Sections 2791, 2795.1,
3 2800(c), 2800(d), and 2800(e) of the Regulations;

4 2. Obtained a conditional public report authorizing
5 you to sell or lease lots or units in the Subdivision; and

6 3. Submitted proof acceptable to the Commissioner
7 demonstrating that you have provided a copy of the conditional
8 public report and a reasonable opportunity for rescission to
9 each person who purchased or contracted to purchase a lot or
10 unit in the Subdivision prior to the issuance of the conditional
11 public report.

12 On February 14, 2002, the aforesaid subdivider
13 petitioned the Real Estate Commissioner to modify said Desist and
14 Refrain Order.

15 The Real Estate Commissioner has considered said
16 petition and all evidence and argument in support thereof and has
17 determined it would not be against the public interest to modify
18 the above-entitled Desist and Refrain Order as follows:

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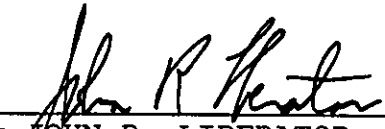
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1 NOW, THEREFORE, YOU, HOFMANN CONSTRUCTION CO., a
2 California corporation, THOMAS ALOYSIUS WHALEN, JR., MARGERY
3 IRENE HAYWORTH, BETTY LOU MANN and DEBORAH DANESE GERMAN, AND
4 YOUR AGENTS AND EMPLOYEES, ARE HEREBY ORDERED TO DESIST AND
5 REFRAIN from selling, exchanging or leasing, offering for sale,
6 exchange or lease, soliciting purchasers or lessees, or
7 negotiating for sale, exchange or lease, lots or units in the
8 Subdivision until such time as you have provided proof
9 satisfactory to the Commissioner that you have complied with
10 Sections 11013.1, 11013.2, 11013.4, and 11012 of the Code and
11 Sections 2791, 2800(c), 2800(d), and 2800(e) of the Regulations.

12 DATED: February 14, 2002

13 PAULA REDDISH ZINNEMANN
14 Real Estate Commissioner

15 
16 By JOHN R. LIBERATOR
17 Chief Deputy Real Estate Commissioner

18 cc: THOMAS ALOYSIUS, JR.
19 HOFMANN CONSTRUCTION CO.
20 P. O. BOX 907
21 CONCORD, CA 94522

THOMAS ALOYSIUS, JR.
HOFMANN CONSTRUCTION CO.
110 DISCOVERY BAY BLVD.
BYRON, CA 94514

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FEB - 7 2002

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 TO:

)
) No. H-8050 SF
)

12 HOFMANN CONSTRUCTION CO.,
13 a California Corporation,
14 THOMAS ALOYSIUS WHALEN, JR.,
15 MARGERY IRENE HAYWORTH,
16 BETTY LOU MANN, and
17 DEBORAH DANESE GERMAN,

)
) ORDER TO DESIST AND REFRAIN
) (B&P Code Section 11019)
)
)
)
)
)

18 RE: SUBDIVISION 8167
19 DISCOVERY BAY WEST VILLAGE I - UNIT 4
20 "KENSINGTON"
21 Contra Costa County, California
22 DRE File No. 103207 SA F00

23 The Real Estate Commissioner of the State of
24 California (hereinafter "the Commissioner") has caused an
25 investigation to be made of your activities selling or offering
26 to sell lots or units in a subdivision as defined in Section
27 11000 of the California Business and Professions Code
(hereinafter "the Code"), and based upon the findings of that
investigation, as set forth below, has determined that you,
HOFMANN CONSTRUCTION CO., a California corporation, THOMAS

1 ALOYSIUS WHALEN, JR., MARGERY IRENE HAYWORTH, BETTY LOU MANN and
2 DEBORAH DANESE GERMAN, (hereinafter collectively "you"), have:

3 (a) Violated and/or or willfully disregarded Sections
4 11013.1, 11013.2, and/or 11013.4 of the Code, Sections 11012 and
5 11018.1(a) of the Code and Sections 2791, 2795.1, 2800(c),
6 2800(d), and 2800(e) of Chapter 6, Title 10, California Code of
7 Regulations (hereinafter "the Regulations");

8 (b) Failed to fulfill agreements and assurances to
9 purchasers of subdivision interests given by you to the
10 Department in the application for a final public report;

11 (c) Failed to report in writing to the Department any
12 information concerning material changes in the offering of
13 interests in a subdivision which caused a public report to be
14 misleading or inaccurate or which would have caused the
15 Department to deny a public report if the conditions had existed
16 at the time of issuance of the public report; and

17 (d) After the setup of the offering of interests was
18 submitted to the Department in an application for a final public
19 report, violated Section 11012 of the Code by knowingly changing
20 the setup of the offering of interests in the subdivision
21 without first notifying the Department in writing of such
22 intended change.

23 I

24 At all times mentioned herein, you, and each of you,
25 were the owners and/or subdividers and/or the agents of the
26 owners and/or subdividers of subdivided lands as defined in
27 Section 11000 of the Code.

1 II

2 Said subdivided lands, known as or commonly called
3 Subdivision 8167, Discovery Bay West Village I - Unit 4
4 "Kensington" (hereinafter "the Subdivision") contains 71 lots on
5 approximately 16.35 acres at Point of Timber Road and Bixler
6 Road, in Contra Costa County, California, approximately four
7 miles east of Brentwood, and is identified in the records of the
8 Department under the Department's File Number 103207 SA.

9 III

10 From on or about October 24, 2000 through on or about
11 January 24, 2001, in File Number 103207 SA F00, you, HOFMANN
12 CONSTRUCTION CO. (hereinafter "HOFMANN"), and you, THOMAS
13 ALOYSIUS WHALEN, JR. (hereinafter "WHALEN") applied to the
14 Department for a final subdivision public report (hereinafter
15 "the final public report") authorizing you to offer for sale,
16 negotiate the sale and sell lots in the Subdivision, and, in
17 support of this application for a final public report, you,
18 HOFMANN and WHALEN submitted a public report questionnaire and
19 additional supporting documents and information.

20 IV

21 In course of said application, in order to induce the
22 Department to issue the final public report, you, HOFMANN and
23 WHALEN:

24 (a) Submitted a proposed purchase and sale agreement
25 in exemplar form (hereinafter "the exemplar sales agreement"),
26 and represented to the Department that the written agreements
27 used by you in each and every sale by you of lots in the

1 Subdivision under authority of the final public report would
2 conform in all material respects to the exemplar sales
3 agreement; and

4 (b) Represented that the entire sum of funds paid or
5 advanced by or on behalf of any purchaser of any lot being sold
6 under authority of the final public report would be deposited
7 and retained in a neutral escrow depository, in compliance with
8 Section 11013.4(a) of the Code, at the Concord, California,
9 branch of First American Title Guaranty Company until the entire
10 sum of money is released to the purchaser or until fee title to
11 the lots is conveyed to the purchaser free and clear of any
12 blanket encumbrances.

13 V

14 On or about January 24, 2001, in File Number 103207 SA
15 F00, in reliance upon the representations and assurances
16 described in Paragraph IV, above, the Department issued the
17 final public report to you, HOFMANN and WHALEN. At no time
18 mentioned herein was the final public report amended, renewed or
19 otherwise superseded. The final public report states in part:

20 "Purchase Money Handling: The subdivider must
21 deposit and retain all funds (purchase money)
22 received from you in an escrow depository until
23 legal title is delivered to you [Business and
Professions Code Sections 11013 and
11013.4(a)]"

24 VI

25 Between on or about March 16, 2001 and on or
26 about November 5, 2001, in each of the transactions tabulated
27 below, you, and each of you, offered for sale, negotiated for

1 sale, and/or sold lots in the Subdivision under authority of the
2 final public report, and in the course of each such transaction
3 you:

4 (a) Solicited and obtained the execution by
5 purchasers of written agreements for the purchase of lots in the
6 Subdivision which differed materially from the exemplar sales
7 agreement described in Paragraph IV(a), above, and failed to
8 comply with the requirements of Sections 2791(a) of the
9 Regulations; and

10 (b) Caused the portion, tabulated below, of the funds
11 paid or advanced by purchasers of lots in the subdivision to be
12 deposited into a bank account maintained by HOFMANN at Wells
13 Fargo Bank, and failed to deposit such funds into a neutral
14 escrow depository at the Concord, California, branch of First
15 American Title Guaranty Company, or any other neutral escrow
16 depository.

17 **TRANSACTIONS**

	PURCHASER'S NAME(S)	LOT	DEPOSITED AT WELLS FARGO	DEPOSITED IN ESCROW
18				
19				
20	(1) Samuel Corbin Deborah Corbin	46	\$13,050.00	\$5,000.00
21	(2) Richard Robinson Deborah Hope	57	\$15,250.00	\$5,000.00
22				
23	(3) Donald Baptista Michele Baptista	55	\$9,850.00	\$5,000.00
24	(4) Paul Sparks	52	\$17,800.00	\$5,000.00
25	(5) William Yearman Karin Alexander	54	\$18,130.00	\$5,000.00
26				
27	(6) Jeff Smits Cynthia Smits	62/5	\$4,505.00	\$5,000.00

VII

In committing the acts and omissions described in Paragraph VI, above:

(a) You effected a material change within the meaning of Section 2800(c) of the Regulations in purchase money handling procedures, and a material change within the meaning of Sections 2800(d) and 2800(d)(1) in the methods of marketing interests in the Subdivision;

(b) You, HOFMANN, as subdivider of the Subdivision, failed, within the meaning of subsection (e) of Section 2800 of the Regulations, to fulfill agreements and assurances to purchasers of subdivision interests given by you, HOFMANN, to the Department in the application for the final public report;

(c) You failed to report in writing to the Department any information concerning material changes in the offering of interests in a subdivision which caused a public report to be misleading or inaccurate or which would have caused the Department to deny a public report if the conditions had existed at the time of issuance of the public report;

(d) You, after the setup of the offering of interests was submitted to the Department in the applications for the final public report, violated Section 11012 of the Code by knowingly changing the setup of the offering of interests in the Subdivision without first notifying the Department in writing of such intended change;

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///

1 (e) You, and each of you, willfully disregarded and
2 you, HOFMANN, violated the provisions of Sections 2791, 2800(c),
3 2800(d) and 2800(e) of the Regulations; and

4 (f) You violated the provisions of Sections 11013.1,
5 11013.2 and/or 11013.4 of the Code.

6 VIII

7 In course of each of the transactions described in
8 Paragraph VI, above, you violated Section 11018.1(a) of the Code
9 in conjunction with Section 2795.1 of the Regulations in that:

10 (a) You, HOFMANN, MANN and GERMAN failed to provide
11 the purchasers with a copy of the final public report prior to
12 the execution of a binding contract for the sale of a lot and/or
13 to obtain a receipt from the purchaser for the final public
14 report in a form and manner as set forth in Section 2795.1 of
15 the Regulations; and

16 (b) You, HOFMANN failed to retain such receipt for a
17 period of three years; and/or to make such receipt available for
18 inspection by the designated representative of the Commissioner.

19 NOW, THEREFORE, YOU, HOFMANN CONSTRUCTION CO., a
20 California corporation, THOMAS ALOYSIUS WHALEN, JR., MARGERY
21 IRENE HAYWORTH, BETTY LOU MANN and DEBORAH DANESE GERMAN, AND
22 YOUR AGENTS AND EMPLOYEES, ARE HEREBY ORDERED TO DESIST AND
23 REFRAIN from selling, exchanging or leasing, offering for sale,
24 exchange or lease, soliciting purchasers or lessees, or
25 negotiating for sale, exchange or lease, lots or units in the
26 Subdivision until such time as you have:

27 ///

1 1. Complied with Sections 11013.1, 11013.2, 11013.4,
2 11012 and 11018.1(a) of the Code and Sections 2791, 2795.1,
3 2800(c), 2800(d), and 2800(e) of the Regulations;

4 2. Obtained a conditional public report authorizing
5 you to sell or lease lots or units in the Subdivision; and

6 3. Submitted proof acceptable to the Commissioner
7 demonstrating that you have provided a copy of the conditional
8 public report and a reasonable opportunity for rescission to
9 each person who purchased or contracted to purchase a lot or
10 unit in the Subdivision prior to the issuance of the conditional
11 public report.

12 DATED:

January 30, 2002

13 PAULA REDDISH ZINNEBANN
14 Real Estate Commissioner

Paula Reddish Zinnemann

17 cc: THOMAS ALOYSIUS, JR.
18 HOFMANN CONSTRUCTION CO.
19 P. O. BOX 907
 CONCORD, CA 94522

THOMAS ALOYSIUS, JR.
HOFMANN CONSTRUCTION CO.
110 DISCOVERY BAY BLVD.
BYRON, CA 94514

20 MARGERY IRENE HAYWORTH
21 1730 SURFSIDE PLACE
 DISCOVERY BAY, CA 94514

BETTY LOU MANN
2875 CHERRY HILLS DRIVE
BYRON, CA 94514

22 DEBORAH DANESE GERMAN
23 c/o THE HOFMANN COMPANY
 P. O. BOX 907
 CONCORD, CA 94522