

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 05 2003

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
ERIC CHARLES FOLLESTAD,)
Respondent.)

NO. H-8480 SF Shelly Ely
N2003080634

DECISION

The Proposed Decision dated November 5, 2003 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.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon
on December 26, 2003.

IT IS SO ORDERED November 24, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ERIC CHARLES FOLLESTAD,

Respondent.

Case No. H-8480 SF

OAH No. N2003080634

PROPOSED DECISION

This matter was consolidated for hearing with the statement of issues against Eric Charles Follestad (Case No. H-8479 SF; OAH Case No. N2003080633). Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard these matters in Oakland, California on October 1, 2003.

Michael B. Rich, Counsel, represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner of the State of California.

George Silvestre, Jr., Esq., 250 Bel Marin Keys Boulevard, Suite F-200, Novato, California 94949, represented respondent Eric Charles Follestad who was present.

The matter was submitted on October 1, 2003.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made and filed the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California, Department of Real Estate (Department).

2. Respondent Eric Charles Follestad (respondent) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson. Respondent has been licensed by the Department since 1999.

3. On or about October 24, 1996, respondent was convicted in the Municipal Court of the State of California, County of San Diego, on his plea of nolo contendere to a violation of Vehicle Code section 23103(a), reckless driving, and Vehicle Code section

20002(a), leaving the scene of an accident causing property damage without providing identity to the owner. Each offense is a misdemeanor.

Respondent was sentenced to 90 days in jail. Execution of sentence was suspended and respondent was placed on summary probation for three years. He was ordered to complete a first offenders' program and to pay various fines and assessments. Respondent complied with all terms of probation and probation was completed.

4. In August of 1999, respondent filed an application with the Secretary of State for the State of California for an appointment as a notary public. The Secretary of State filed a statement of issues on November 13, 2001, to which respondent did not file a notice of defense. On April 19, 2002, in Agency No. 2000-02045AD, the Secretary of State issued a default decision denying respondent's application for a notary public commission.

Respondent's application was denied for two reasons. A violation of Government Code section 8214.1(a) was found for a substantial and material misstatement or omission in the application. The second basis for the denial was a violation of Government Code section 8214(b), the conviction of lesser offenses involving moral turpitude or of a nature incompatible with the duties of a notary public.

5. The application for a notary commission asks the applicant whether he or she has ever been convicted by any court of a felony or a misdemeanor. Respondent answered the question "no," thereby failing to disclose his 1996 misdemeanor convictions set forth in Factual Finding 3. Respondent answered no because the application said he could omit a traffic infraction and that is what he thought he had – traffic infractions. Respondent did not take any steps to confirm the nature of his conviction before completing the application.

Respondent elected not to contest the statement of issues because he did not have the resources to do so and he determined that he would not be able to use a notary commission to sign his own documents. In short, it was not worth it to fight it.

6. It was not established that the manner in which respondent completed his application for a notary public commission amounted to fraud or dishonest dealing.

7. Respondent was not required to disclose the convictions on his application for licensure as a real estate salesperson.

8. Respondent has been licensed as a life agent by the Department of Insurance since 1996. The license has never been disciplined. Respondent also holds a number of licenses (series 7, 24, 63, 65, 9 and 10) through the National Association of Securities Dealers (NASD). None of these licenses has ever been disciplined.

9. Respondent is 30 years old and is recently married.

Respondent is currently employed as an Investment Advisor with AIG Valic. Previously he worked as a Trading Associate with Bank of America Securities (January 2000 to December 2003), a Financial Associate with Citigroup (January 1999 to December 2000), and as a Financial Representative with WMA Securities (June 1996 to May 1998).

Respondent is in his second year of an MBA program at the University of San Francisco. He expects to complete the program in March 2004.

10. Harold Dean Valceshini has been a licensee of the Department for approximately 48 years. He has known respondent for approximately 15 years. In his opinion respondent is forthright, professional and ethical.

11. Respondent is not currently using his real estate salesperson license.

LEGAL CONCLUSIONS

1. Under subdivision (f) of Business and Professions Code section 10177, the Commissioner may suspend or revoke the license and licensing rights of a licensee who has had a license denied by another agency of this state for acts that if done by a real estate licensee would be grounds for suspension or revocation of a California real estate license. The making of a material omission on an application for licensure as a real estate licensee is grounds to suspend or revoke a real estate license under subdivision (a) of section 10177. Cause therefore exists to suspend or revoke respondent's real estate salesperson license under Business and Professions Code section 10177, subdivision (f).

2. Under subdivision (j) of Business and Professions Code section 10177 the Commissioner may suspend or revoke the license and licensing rights of a licensee who has engaged in any conduct that constitutes fraud or dishonest dealing. By reason of the matters set forth in Factual Finding 10, it was not established that respondent committed an act of fraud or dishonest dealing. Cause does not exist to suspend or revoke respondent's license and licensing rights under subdivision (j) of Business and Professions Code section 10177.

3. All relevant criteria set forth in section 2912 of title 10 of the California Code of Regulations have been considered in making the determination that the protection of the public does not require revocation of respondent's salesperson license. The manner in which respondent completed the Secretary of State application is of concern, as full disclosure is the heart of the real estate business. But in this case, it does not appear that respondent acted with the intent of hiding information from the Secretary of State. Respondent's conduct occurred four years ago. Nothing respondent has done

since that time evidences that he lacks the honesty or integrity required of real estate licensees. The public will be adequately protected by the following order.

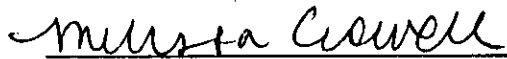
ORDER

All licenses and licensing rights of respondent Eric Charles Follestad under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.6 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 the Business and Professions 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 two years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
 - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and
 - (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within 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 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: November 5, 2003



MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings

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

FILED
AUG 27 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ERIC CHARLES FOLLESTAD,

} Case No. H-8480 SF
(Consolidated With H-8479 SF)

OAH No.

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 **THE OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **WEDNESDAY--OCTOBER 1, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 27, 2003

By Michael B. Rich
MICHAEL B. RICH, Counsel

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED

JUL 31 2003

DEPARTMENT OF REAL ESTATE

By Juan R. Rios

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ERIC CHARLES FOLLESTAD,)
13 Respondent.)

No. H- 8480 SF

ACCUSATION

14
15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 accusation against ERIC CHARLES FOLLESTAD is informed and
18 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 California Business and Professions Code) (hereinafter the
23 "Code") as a real estate salesperson.

24 II

25 The Complainant, LES R. BETTENCOURT, a Deputy Real
26 Estate Commissioner of the State of California, makes this
27 Accusation against Respondent in his official capacity.

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III

On April 19, 2002, before the Secretary of State for the State of California, Agency No. 2000-02045AD, Respondent's application for a notary public license was denied for violations of Government Code Section 8214.1(a) (Substantial and material misstatement or omission in the application submitted) and Section 8214(b) (Conviction of a lesser offenses involving moral turpitude or of a nature incompatible with the duties of a notary public).

IV

The denial of Respondent's application for a notary public license, as described in Paragraph III above, constitutes cause for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law under Section 10177(f) and (j) of the Business and Professions Code of the State of California.

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


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 18th day of July, 2003