(Securities Exchange Act Release No. 9137)

ADMINISTRATIVE PROCEEDING
FILE NO. 3-2623

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
April 8, 1971

In the Matter of

MAJOR REALTY CORPORATION
65 N. Orange Avenue
Orlando, Florida

(0—1748)

Securities Exchange Act of 1934
Section 15(c) (4)

FINDINGS, OPINION AND ORDER OF THE COMMISSION

REPORTING COMPLIANCE PROCEEDING

Annual reports filed under Securities Exchange Act of 1934, held, materially misleading and deficient, where they improperly reflected agreement to sell land as representing sales income, thus resulting in overstatement of net income and understatement of deficit in retained earnings, and where description of mortgage note receivable in connection with the agreement failed to disclose all circumstances relating to right to rescind agreement.

APPEARANCES:

Richard H. Rowe, John S. Bernas, Richard B. Nesson and Theodore Doremus, Jr., for the Division of Corporation Finance of the Commission.

Alan S. Kramer of Shea, Gallop, Climenko & Gould, and Joel R. Wells, Jr., of Maguire, Voorhis and Wells, for Major Realty Corporation.

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This is a proceeding instituted pursuant to Section 15(c) (4) of the Securities Exchange Act of 1934 ("Exchange Act"), to determine whether Major Realty Corporation ("registrant") failed to comply with Section 13 of the Exchange Act by filing annual reports on Form 10-K for the fiscal years ended May 31, 1968 and 1969 which included untrue statements of material facts and omitted to state material facts required to be stated therein. Registrant, a Delaware corporation with its principal offices in Orlando, Florida, registered its common stock pursuant to Section 12(g) of the Exchange Act on November 27, 1965. Registrant reported that it had $12,718,581 in total assets as of May 31, 1970 and 8,342 stockholders of record as of June 8, 1970.

Registrant submitted an offer of settlement, pursuant to which it entered into a stipulation of facts, waived a hearing and post-hearing procedures, and, solely for the purposes of this proceeding, consented to findings consistent with the allegations in the Statement of Matters filed by our Division of Corporation Finance that the annual reports were misleading and deficient. Registrant, among other things, also agreed to file correcting amendments to such reports and to provide all its shareholders prior to its next annual meeting with a copy of our Findings and Opinion herein.

Upon consideration of all the circumstances, including the recommendation of the Division, we determined to accept the offer of settlement.

We find that registrant's 1968 10-K report included untrue statements of material facts and omitted material information required to be stated therein or necessary to make the statements therein not misleading, with respect to the accounting treatment of an agreement regarding a parcel of land.

During the year ended May 31, 1968, registrant entered into a contract to sell the land which provided, among other terms, that registrant had the right to rescind the sale if the buyer failed to commence construction of a regional shopping mall by June 1, 1969, but that if prior to June 1, 1969, the buyer furnished evidence of a lease or letter of intent to lease from at least one major department store, the date for commencement of construction could be extended to a date not later than June 1, 1970.

Pursuant to the contract, the buyer assigned its obligations under the contract to a wholly-owned subsidiary to which title to the land was transferred in April 1968, and registrant received a $25,000 cash down payment and a promissory note of the subsidiary in the amount of $3,475,000 secured by a first mortgage lien on the property. The note bore interest at 6% per annum commencing February 1, 1970 and the principal was payable in three equal annual installments beginning February 1, 1971.

Registrant's consolidated statements of income and deficit for the fiscal year ended May 31, 1968 which were filed as part of its 1968 10-K report reflected a recognition of income derived from the land transaction in the amount of $3,152,170 and a reduction in its Retained Earnings deficit by the same amount, and the note in the amount of $3,475,000 was included in the Mortgage Notes Receivable assets account in its consolidated balance sheet as of May 31, 1968. In these respects registrant improperly treated the land transaction as a reportable sale and thereby overstated income from sales of property with a resultant overstatement of net income in its income statements, and an understatement of the deficit in Retained Earnings in both the income statements and its balance sheet, in view of the facts that:

1. Registrant received a down-payment representing less than one percent of the purchase price;

2. Registrant retained the right, under certain conditions, to rescind the sale subsequent to closing, and no interest or principal payments were to be made until such right to rescind was no longer extant; and

3. The buyer's subsidiary which had assumed the buyer's obligation with respect to the transaction had assets of only a nominal amount, and the note given registrant by such subsidiary was a non-recourse note.

Under these circumstances, the transaction must be accounted for in a manner which follows its substance rather than its legal form. Registrant had obtained nothing more from the buyer than a deposit in exchange for an option to purchase the property if it was able to fulfill certain conditions. The purchaser at the date of signing the agreement, and for a long period thereafter, had so little economic interest in the property that the transaction could not be deemed a sale for accounting purposes.

The Commission in Accounting Series Release No. 95, dated December 26, 1962, stated that, "In some situations coming before us it appears from the attendant circumstances that the sale of property is a mere fiction designed to create the illusion of profits or value as a basis for sale of securities. Moreover, even in bona fide transactions the degree of uncertainty as to ultimate realization of profit may be so great that business prudence, as well as generally accepted accounting principles, would preclude the recognition of gain at the time of sale." The publication of this release should have been notice to registrant that the transaction should not have been recorded as a sale and that no profit should have been recorded on the transaction.

We also find that registrant's 1969 10-K report included untrue statements of material fact and omitted to state material facts required to be stated therein. As a result of the improper treatment of the land transaction in the 1968 report, the balance sheet in the 1969 report continued the understatement of the deficit in Retained Earnings. 1/ The description of the mortgage note receivable with respect to the land transaction, was materially misleading in that it omitted to state that the underlying sale contract provided that registrant may elect to rescind the transaction if the buyer failed to start construction by June 1, 1969, that such date could be extended to June 1, 1970 if prior to June 1, 1969 the buyer furnished evidence of a lease or a letter of intent to lease from one major department store, and that the buyer failed to furnish such evidence and was not granted an extension to June 1, 1970. 2/ On or about June 30, 1969, three months prior to filing the 1969 10-K report, in response to a request by the buyer for a 12 month extension of the terms of the contract relating to the start of construction, registrant notified the buyer of its willingness to grant an extension only until October 1, 1969, and further stated that registrant had elected to exercise its right to rescission under the contract unless the buyer agreed in writing by August 15, 1969 to accept the extension. No written agreement was ever given by the buyer. 3/

In view of the foregoing, we deem it appropriate in the public interest to accept the offer of settlement and to impose the conditions agreed to by registrant.

Accordingly, IT IS ORDERED, pursuant to the undertakings in registrant's stipulation, that registrant file correcting amendments to its reports and that it send copies of these Findings, Opinion and Order to all of its shareholders.

By the Commission (Commissioners OWENS, SMITH and NEEDHAM), Commissioner HERLONG not participating.

Rosalie F. Schneider
Recording Secretary

1/ That balance sheet for the fiscal year ended May 31, 1969, reflected $5,895,437 in Mortgage Notes Receivable and a $3,901,628 deficit in Retained Earnings.

2/ The balance sheet incorrectly recited that mortgage notes receivables included

"a note for $3,475,000 arising from the sale of land from which the Company recognized $3,152,170 in income during the year ended May 31, 1968. The Company may rescind the sale if the buyer fails to commence construction for a regional shopping mall on or before June 1, 1970. As of the date of this report, no construction has started."

3/ Registrant has reported that during the year ended May 31, 1970, it rescinded the sale and returned the $25,000 cash down payment and the promissory note, and that the buyer reconveyed the land to registrant.