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FILED
JAN 12 1995
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JERRY WAYNE ELLIS,) NO. H-1189 FRESNO
Respondent.) OAH NO. N-9405112

DECISION AFTER REJECTION

The matter came on for hearing before Jonathan Lew, Administrative Law Judge of the Office of Administrative Hearings, in Fresno, California, on July 20, 1994.

David B. Seals, Counsel, represented the Complainant.

Respondent JERRY WAYNE ELLIS was present and represented by William S. Walter, Esq., Walter & Bornholdt, 679 Monterey Street, Post Office Box 960, San Luis Obispo, California 93401.

Evidence was received, the hearing was closed and the matter was submitted.

On August 2, 1994, the Administrative Law Judge submitted a Proposed Decision which I declined to adopt as my Decision herein. Pursuant to Section 11517(c) of the Government

1 Code of the State of California, Respondent was served with notice
2 of my determination not to adopt the Proposed Decision of the
3 Administrative Law Judge along with a copy of said Proposed
4 Decision. Respondent was notified that the case would be decided
5 by me upon the record, the transcript of proceedings held on
6 July 20, 1994, and upon written argument offered by Respondent.

7 I have received written argument submitted on behalf of
8 Respondent JERRY WAYNE ELLIS.

9 I have given careful consideration to the record in this
10 case including the transcript of proceedings of July 20, 1994.

11 The following shall constitute the Decision of the Real
12 Estate Commissioner in this proceeding:

13 FINDINGS OF FACT

14 I

15 Complainant, Jerry E. Fiscus, a Deputy Real Estate
16 Commissioner of the State of California, made and filed the
17 Accusation in his official capacity.

18 II

19 Respondent is presently licensed and has license rights
20 under the Real Estate Law, Part 1 of Division 4 of the Business
21 and Professions Code as a real estate broker.

22 III

23 On August 17, 1992, in the United States District Court,
24 Eastern District of California (CR. No. F-91-166 REC), Respondent
25 was convicted upon his plea of guilty of violation of Title 18
26 United States Code, section 371 (Conspiracy to Defraud the United
27 States) and Title 18 United States Code, section 1344 (Bank Fraud

1 and Aiding and Abetting). These are felony crimes involving moral
2 turpitude, and offenses which are substantially related to the
3 qualifications, functions or duties of a real estate licensee.
4 (Title 10 California Code of Regulations (CCR) section 2910.)

5 Respondent was sentenced to two years prison for each of
6 two counts, sentences to run concurrently, ordered to make
7 restitution in the amount of \$460,000.00 to the U.S. Government
8 and to Westport Savings Bank, and it was recommended that he
9 participate in a correctional treatment program to obtain
10 assistance for drug or alcohol abuse. Respondent was incarcerated
11 at Lompoc Prison on May 18, 1993, and remained there until his
12 release in June 1994.

13 IV

14 On August 17, 1992, Respondent and his attorney, Tom De
15 Santos, executed a memorandum of plea agreement pursuant to Rule
16 11(e) of the Federal rules of Criminal Procedure (Exhibit 3) in
17 which he agreed to the following relating to the convictions:

18 "5. Factual Basis.

19 The defendant will plead guilty because he is in fact
20 guilty of the crimes set forth in the indictment. The defendant
21 also agrees that the following are the facts of this case,
22 although he acknowledges that, as to other facts, the parties may
23 disagree:

24 COUNT ONE:

25 Kings Harvest Savings and Loan was a savings and
26 loan located in Hanford, California. Kings Harvest
Savings and Loan accounts were insured by Federal
Savings and Loan Insurance Corporation.

27

1 Defendant JERRY WAYNE ELLIS was an officer and
2 one-third owner of Kings County Construction, Inc.
3 On or about 1986 defendant Jerry Wayne Ellis
4 became sole owner of Kings County Construction,
5 Inc.

6 THE SCHEME TO DEFRAUD

7 Defendant JERRY WAYNE ELLIS, between on or about
8 September 1, 1986, and on or about November 30,
9 1986, did aid and abet with others to devise a
10 scheme and artifice to defraud Kings Harvest
11 Savings and Loan by means of false and fraudulent
12 representations and promises, for the purpose of
13 causing others to obtain loans from Kings Harvest
14 Savings and Loan and to overvalue property which
15 defendant JERRY WAYNE ELLIS owned or had an
16 interest in. The scheme and artifice to defraud
17 was in substance as follows:

- 18 a. Defendant JERRY WAYNE ELLIS, through Kings
19 County Construction, purchased and caused to be
20 purchased from individuals, property located at
21 330 Porter Street in Hanford, California.
- 22 b. Defendant JERRY WAYNE ELLIS paid approximately
23 one hundred and ninety-two thousand dollars
24 (\$192,000.00) for the property located at 330
25 Porter Street, which property was actually
26 encumbered at approximately \$110,000.00. (Such
27 property was returned to the seller at the
conclusion of the scheme for no additional
consideration.) The price was paid in order to
create approximately eighty thousand dollars
(\$80,000.00) of equity in the above-described
property.
- c. The funds utilized for the down payment on the
property located at 330 Porter Street were
provided from an account in the name of Jerry
and Barbara Ellis.
- d. At the time defendant JERRY WAYNE ELLIS
purchased the property at 330 Porter Street, he
knew that such property was worth substantially
less than the purchase price and one of the
reasons for paying the purchase price was to
create equity to utilize in the fraudulent
scheme.
- e. As a result of the fraudulent equity described
in paragraph (b) above, the aforementioned
individuals were made to appear to have

1 obtained funds from King County Construction of
2 approximately \$52,000.00 and \$26,000.00.
(\$26,000.00 per unit)

- 3 f. Defendant JERRY WAYNE ELLIS caused the
4 aforementioned individuals to utilize the
5 equity that was created in the 330 Porter
6 Street transaction as the down payment on the
three properties located at 350 Brooks Court,
370 Brooks Court, and 390 Brooks Court,
Lemoore, California.
- 7 g. Defendant JERRY WAYNE ELLIS caused the
8 aforementioned individuals to prepare loan
9 applications which were fraudulent in that the
10 application included the equity created in the
11 Porter Street transaction as true and actual
12 assets of the individuals who were submitting
13 the loan applications. These assets, as listed
14 on the loan applications, amounted to the 20
percent down payment requirement by Kings
Harvest Savings and Loan to obtain the loans
from that bank for the purchase of the
properties located at 350 Brooks Court, 370
Brooks Court, and 390 Brooks Court, Lemoore,
California.
- 15 h. As a result of the fraudulent loan applications
16 described above, Kings Harvest was fraudulently
17 induced to loan money to the aforementioned
18 individuals for the purpose of purchasing the
properties located at 350 Brooks Court, 370
Brooks Court, and 390 Brooks Court, Lemoore,
California.
- 19 i. After the above-named individuals obtained the
20 funds described in paragraph (h) above,
21 defendant JERRY WAYNE ELLIS caused them to
22 purchase the properties located at 350 Brooks
23 Court, 370 Brooks Court, and 390 Brooks Court,
Lemoore, California. Such properties were
24 purchased from another, financed in part with
25 loans from Kings Harvest Savings and Loan of
26 \$91,200.00 from each property purchased.
- 27 j. After the properties were sold, defendant JERRY
WAYNE ELLIS caused approximately \$80,000.00 of
the proceeds due the seller from the sale of
the said properties to be transferred to
himself, thereby repaying himself the funds
described in paragraph (b).

1 This scheme and artifice to defraud had the effect
2 of defrauding the Kings Harvest Savings and Loan, a
3 federally insured institution, and allowed
4 defendant JERRY WAYNE ELLIS to obtain and attempt
5 to obtain assets owned by or under the custody and
6 control of Kings Harvest Savings and Loan by means
7 of false and fraudulent pretenses, representations
8 and promises.

9 COUNT TWO:

10 Not later than November 19, 1984, and continuing
11 thereafter until on or about October 28, 1986, in
12 the State and Eastern District of California and
13 elsewhere, defendant JERRY WAYNE ELLIS conspired
14 with others to commit offenses against the United
15 States as follows:

16 (a) To defraud the United States by impairing,
17 impeding, obstructing, and defeating the lawful
18 government functions of the Department of Housing
19 and Urban Development, in administering the Federal
20 Housing Administration (FHA) and the Single-Family
21 Mortgage Insurance Program (the "Program").

22 OVERT ACTS

- 23 1. Defendant JERRY WAYNE ELLIS knowingly obtained
24 individuals to purchase the following
25 properties, located in Lemoore, California,
26 from him or for him and thereby avoid HUD
27 financing regulations in order to obtain
greater financing than defendant would
otherwise be entitled to:

	<u>PROPERTY</u>	<u>DATE</u> <u>PURCHASED</u>	<u>PURCHASER</u>
28	320 Brooks Court	04/12/85	Richard Jacques
29	410 Brooks Drive	08/02/85	Keith Crane
30	425 Brooks Drive	01/21/85	Richard Jacques
31	435 Brooks Drive	01/30/85	Keith Crane
32	455 Brooks Drive	10/21/85	Wilbert Tolliver
33	465 Brooks Drive	10/21/85	Wilbert Tolliver

34 Each of the above properties is a tri-plex and
35 therefore contains three separate dwelling
36 units. Further, all eight of the above
37 properties are located within the same
subdivision.

- 38 2. Defendant JERRY WAYNE ELLIS made and prepared
39 and induced others to make and prepare

1 materially false, fraudulent and fictitious FHA
2 applications and supporting documentation to be
3 submitted to lenders and HUD, in order to
obtain mortgages and FHA Insurance to purchase
certain properties.

4 3. Defendant JERRY WAYNE ELLIS caused the
5 aforementioned material false, fraudulent and
6 fictitious representations to be submitted to
HUD.

7 4. On or about October 28, 1986, defendant JERRY
8 WAYNE ELLIS caused the purchasers to transfer
9 title on the aforementioned properties to an
individual in order to avoid further liability on
the outstanding loans which were insured by HUD."

10 IV

11 Respondent testified that he believes all transactions
12 between parties were done in good faith, but acknowledges that the
13 structuring of the transactions was improper, and that the means
14 used to circumvent HUD regulations were technically wrong.

15 V

16 Respondent is age 52. He entered real estate in 1960,
17 and was licensed as a broker three to four years later. In 1983
18 he purchased a Century 21 franchise in Hanford, and over time his
19 business sponsored up to 25 agents under his broker's license. He
20 estimates that he has been involved in up to 3,000 real estate
21 transactions, directly or indirectly as a broker or through one of
22 his agents. He has had no prior history of disciplinary action
23 before the Department.

24 At the height of his involvement in the Lemoore triplex
25 transactions, Respondent avers that he was already overextending
26 himself in his business, when other demands were placed upon his
27 time; specifically the illness and passing of his mother. After

1 his indictment in 1991, he closed down his business and ceased
2 work in real estate. He currently works at a cabinet shop in
3 Visalia doing office/clerical work, and assisting the owner with a
4 business restructuring plan.

5 Over twenty reference letters (Exhibit B) and the
6 testimony of seven character witnesses attest to their belief and
7 confidence of those closest to him that he is on the road to
8 rehabilitation.

9 VI

10 The Department's Criteria of Rehabilitation which can be
11 found at Section 2912 of the Regulations has not been satisfied by
12 the Respondent as follows:

13 Section 2912(a) - The passage of not less than
14 two years since the most recent criminal conviction
15 that is "substantially related" to the qualifications,
16 functions or duties of a licensee of the Department.

17 *At the time of hearing the conviction was less*
18 *than two years old.*

19 Section 2912(b) - Restitution to any person
20 who has suffered monetary losses through
21 "substantially related" acts or omissions of the
22 licensee.

23 *At page 53 of the transcript at line 8, in*
24 *answer to the question whether Respondent had paid off*
25 *the restitution he responded, "No."*

26 ///

27 ///

1 Section 2912(c) - Expungement of the
2 conviction or convictions which culminated in the
3 administrative proceeding to take disciplinary action.

4 *Parole has not even been completed.*

5 Section 2912(d) - Successful completion or
6 early discharge from probation or parole.

7 *Parole has not been completed.*

8 Section 2912(e) - Abstinence from the use of
9 controlled substances or alcohol for not less than two
10 years.

11 *Respondent indicates at page 54 of the*
12 *transcript at lines 3 through 9 that he has stopped*
13 *using controlled substances and alcohol only since*
14 *1993 when he was incarcerated.*

15 Section 2912(k) - Involvement in community
16 activities.

17 *Respondent indicates at page 52 of the*
18 *transcript at lines 15 through 25 and at page 53 lines*
19 *1 through 5 that he has stopped such activity since*
20 *1991.*

21 DETERMINATION OF ISSUES

22 Cause for discipline of Respondent's license for
23 violation of Business and Professions Code sections 490 and
24 10177(b) was established by Finding III.

25 The crimes of which Respondent was convicted are ones of
26 fundamental dishonesty which reflect negatively on Respondent's
27 fitness to act as an unsupervised real estate licensee.

1 Respondent has not shown he is rehabilitated in the "real world".
2 He has not been out of prison long enough for anyone to make a
3 realistic assessment of his rehabilitation. Nor has he been
4 rehabilitated based on the criteria of section 2912. Therefore
5 protection of the public requires that Respondent be supervised.

6 ORDER

7 All licenses and licensing rights of respondent JERRY
8 WAYNE ELLIS under the Real Estate Law are revoked; provided,
9 however, a restricted real estate salesperson license shall be
10 issued to Respondent pursuant to Section 10156.6 of the Business
11 and Professions Code, if Respondent makes application therefor and
12 pays to the Department of Real Estate the appropriate fee for the
13 restricted license within 90 days from the effective date of this
14 Order. The restricted license issued to Respondent shall be
15 subject to all of the provisions of Section 10156.7 of the
16 Business and Professions Code and to the following limitations,
17 conditions and restrictions imposed under authority of Section
18 10156.6 of the Code:

19 A. The restricted license issued to Respondent may be
20 suspended prior to hearing by Order of the Real Estate
21 Commissioner in the event of Respondent's conviction or plea of
22 nolo contendere to a crime which is substantially related to
23 Respondent's fitness or capacity as a real estate licensee.

24 B. The restricted license issued to Respondent may be
25 suspended prior to hearing by Order of the Real Estate
26 Commissioner on evidence satisfactory to the Commissioner that
27 Respondent has violated provisions of the California Real Estate

1 Law, the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner or conditions attaching to the restricted license.

3 C. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions of a
6 restricted license until the later of: (1) one year has elapsed
7 from the effective date of this Order; or, (2) payment of the
8 entire \$460,000 restitution specified in United States of America
9 v. Jerry Ellis, Case #CR-91-166-REC, United States District Court,
10 Eastern District of California, and successful completion of
11 parole.

12 D. Respondent shall, within nine (9) months from the
13 effective date of this Order, present evidence satisfactory to the
14 Real Estate Commissioner that Respondent has, since the most
15 recent issuance of an original or renewal real estate license,
16 taken and successfully completed the continuing education
17 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
18 for renewal of a real estate license. If Respondent fails to
19 satisfy this condition, the Commissioner may order the suspension
20 of the restricted license until the Respondent presents such
21 evidence. The Commissioner shall afford Respondent the
22 opportunity for a hearing pursuant to the Administrative Procedure
23 Act to present such evidence.

24 E. Respondent shall, within six months from the
25 effective date of this Order, take and pass the Professional
26 Responsibility Examination administered by the Department
27 including the payment of the appropriate examination fee. If

1 Respondent fails to satisfy this condition, the Commissioner may
2 order suspension of Respondent's license until Respondent passes
3 the examination.

4 F. Respondent shall submit with any application for
5 license under an employing broker, or any application to transfer
6 to a new employing broker, a statement signed by the prospective
7 employing real estate broker on a form approved by the Department
8 of Real Estate which shall certify:

9 (1) That the employing broker has read the Order of
10 the Commissioner which granted the right to a
11 restricted license; and,

12 (2) That the employing broker will exercise close
13 supervision over the performance by the
14 restricted licensee relating to activities for
15 which a real estate license is required.

16 This Decision shall become effective at 12 o'clock noon
17 on February 1, 1995.

18 IT IS SO ORDERED December 27⁴, 1995.

19 JOHN R. LIBERATOR
20 Interim Commissioner

21 by: Betty R. Ludeman
22 BETTY R. LUDEMAN
23 Assistant Commissioner,
24 Enforcement
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26
27

FILED
AUG 18 1994
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
JERRY WAYNE ELLIS,)
Respondent.)

NO. 1189 FRESNO
N-9405112

NOTICE

TO: JERRY WAYNE ELLIS, Respondent
and
WILLIAM S. WALTER, his Counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated August 2, 1994, of the Administrative Law Judge is
not adopted as the Decision of the Real Estate Commissioner. A
copy of the Proposed Decision dated August 2, 1994, is attached
for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein
including the transcript of the proceedings held on July 20,
1994, and any written argument hereafter submitted on behalf of

1 respondent and complainant.

2 Written argument of respondent to be considered by me
3 must be submitted within 15 days after receipt of the transcript
4 of the proceedings of July 20, 1994, at the Sacramento office of
5 the Department of Real Estate unless an extension of the time is
6 granted for good cause shown.

7 Written argument of complainant to be considered by me
8 must be submitted within 15 days after receipt of the argument of
9 respondent at the Sacramento office of the Department of Real
10 Estate unless an extension of the time is granted for good cause
11 shown.

12 DATED: August 15, 1994

13 JOHN R. LIBERATOR
14 Interim Commissioner

15 John R. Liberator
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
of:	)	Case No. H-1189 FRESNO
	)	
JERRY WAYNE ELLIS,	)	OAH No. N 9405112
	)	
Respondent.	)	

PROPOSED DECISION

This matter was heard before Jonathan Lew, Administrative Law Judge, State of California, Office of Administrative Hearings on July 20, 1994, in Fresno, California.

The Department of Real Estate was represented by David B. Seals, Counsel.

Respondent Jerry Wayne Ellis was present and represented by William S. Walter, Esq., Walter & Bornholdt, 679 Monterey Street, Post Office Box 960, San Luis Obispo, California 93401.

FINDINGS OF FACT

I

Complainant Jerry E. Fiscus, a Deputy Real Estate Commissioner of the State of California, made and issued the accusation in his official capacity only, and not otherwise.

II

Jerry Wayne Ellis (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 broker. His broker license will expire on September 6, 1996, unless renewed.

III

On August 17, 1992, in the United States District Court, Eastern District of California (CR. No. F-91-166 REC), Respondent was convicted upon his plea of guilty of violation

of Title 18 United States Code, section 371 (Conspiracy to Defraud the United States) and Title 18 United States Code, section 1344 (Bank Fraud and Aiding and Abetting). These are felony crimes involving moral turpitude, and offenses which are substantially related to the qualifications, functions or duties of a real estate licensee. (Title 10 California Code of Regulations (CCR) section 2910.)

Respondent was sentenced to two years prison for each of two counts, sentences to run concurrently, ordered to make restitution in the amount of \$460,000.00 to the U.S. Government and to Westport Savings Bank, and it was recommended that he participate in a correctional treatment program to obtain assistance for drug or alcohol abuse. Respondent was incarcerated at Lompoc Prison on May 18, 1993 and remained there until his release in June 1994. He is presently at a half way house in Visalia, and will be fully release on parole on October 21, 1994.

IV

On August 17, 1992, Respondent and his attorney, Tom De Santos, executed a memorandum of plea agreement pursuant to Rule 11(e) of the Federal rules of Criminal Procedure (Exhibit 3) in which he agreed to the following statement of facts relating to the scheme to defraud:

"Defendant Jerry Wayne Ellis, between on or about September 1, 1986, and on or about November 30, 1986, did aid and abet with others to devise a scheme and artifice to defraud Kings Harvest Savings and Loan by means of false and fraudulent representations and promises, for the purpose of causing others to obtain loans from Kings Harvest Savings and Loan and to overvalue property which defendant Jerry Wayne Ellis owned or had an interest in."

Respondent became sole owner of Kings County Construction, Inc. in 1986, and through this company purchased property in Hanford, California from individuals for approximately \$192,000. The price paid generated approximately \$80,000 of equity, which the sellers then used as a down payment for three triplexes located in Lemoore, California. The loans for the Lemoore properties were through Kings Harvest Savings, a federally insured institution, which institution relied upon statements made in applications respecting equity from the Hanford sale. The Hanford sales price was substantially inflated to create the equity used for the subsequent down payment on the Lemoore properties.

Respondent had an interest in the Lemoore properties, and after these properties were purchased, \$80,000 of the proceeds due the sellers in the transaction were transferred to

him, thereby repaying him for the initial \$80,000 he used to purchase the Hanford property. Respondent also returned and transferred title for the Hanford properties back to the original sellers/owners at the conclusion of the scheme for no additional consideration. Respondent acknowledges in the memorandum of plea agreement that:

"This scheme and artifice to defraud had the effect of defrauding the Kings Harvest Savings and Loan, a federally insured institution, and allowed defendant JERRY WAYNE ELLIS to obtain and attempt to obtain assets owned by or under the custody and control of Kings Harvest Savings and Loan by means of false and fraudulent pretences, representations and promises."

(Exhibit 3, p. 5.)

V

As to the conspiracy to defraud the United States, Respondent acknowledges having "knowingly obtained individuals to purchase the following properties in Lemoore, California, from him or for him and thereby avoid HUD financing regulations in order to obtain greater financing than defendant would otherwise be entitled to:

<u>PROPERTY</u>	<u>DATE PURCHASED</u>	<u>PURCHASER</u>
320 Brooks Court	04/12/85	Richard Jacques
410 Brooks Drive	08/02/85	Keith Crane
425 Brooks Drive	01/21/85	Richard Jacques
435 Brooks Drive	01/30/85	Keith Crane
455 Brooks Drive	10/21/85	Wilbert Tolliver
465 Brooks Drive	10/21/85	Wilbert Tolliver

Each of the above properties is a triplex and therefore contains three separate dwelling units. Further, all eight of the above properties are located within the same subdivision."

Respondent was aware of HUD regulations which prohibited individuals from having more than two triplexes (six units) in the same person's name, and attempted to circumvent this requirement by placing properties in his name jointly with another, or in the name of a partner, so as never to have more than two properties in his name at any one time.

Respondent further acknowledges having made and prepared and induced others to make and prepare materially false, fraudulent and fictitious FHA applications and supporting documentation to be submitted to lenders and HUD, in order to obtain mortgages and FHA insurance to purchase certain properties; and on October 28, 1986, causing purchasers to

transfer title on certain properties to an individual in order to avoid further liability on outstanding loans which were insured by HUD. (Exhibit 3, pp. 6-7.)

VI

The above transactions were all part of an overall effort by a number of investors to first purchase all the Lemoore triplexes and then to rehabilitate/improve them for use as low to modest income rental units. Initially these investor actions were unified, but over time dissension over property management issues and frustration among investors led to sell offs, and Respondent was caught trying first to unify efforts respecting all the triplexes, and then to terminate his own involvement in the Lemoore investments.

He believes all transactions between parties were done in good faith, but acknowledges that the structuring of same were improper, and that the means used to circumvent HUD regulations were technically wrong. He regrets very much the whole episode and now characterizes his actions as being stupid. He notes that he intends to stay completely clear of grey areas in future real estate transactions, and would prefer to proceed only where there is no doubt how a particular transaction should lawfully be handled.

VII

Respondent is age 52. He entered real estate in 1960, and was licensed as a broker three to four years later. In 1983 he purchased a Century 21 franchise in Hanford, and over time his business sponsored up to 25 agents under his broker's license. He estimates that he has been involved in up to 3,000 real estate transactions, directly or indirectly as a broker or through one of his agents. He has had no prior history of disciplinary action before the Department.

At the height of his involvement in the Lemoore triplex transactions, Respondent avers that he was already overextending himself in his business, when other demands were placed upon his time; specifically the illness and passing of his mother. After his indictment in 1991, he closed down his business and ceased work in real estate. He currently works at a cabinet shop in Visalia doing office/clerical work, and assisting the owner with a business restructuring plan.

Respondent has undergone a change in his attitude towards business and family. He is resolved not to become so committed or over extended as he was in the past, and to make his four children (two adult) and other family a priority. He has no desire to supervise the substantial number of agents as he did previous, and would like to work for another broker in Hanford, T.S. Spurlock. Spurlock has known Respondent and his

family for roughly thirty years, has ten agents and promises to sponsor Respondent carefully.

VIII

In the past, Respondent's community involvement includes working with the school board process for hiring new teachers, sponsorship of soccer through the YMCA and donation of time to assist non-profit agencies manage properties for investors to offer to low income families. He attended a drug/alcohol education program at Lompoc and denies use of either since his 1993 incarceration. In the past, Respondent had used alcohol and prescription medications (tranquilizers) but denies any problems currently.

Respondent has longstanding ties to the Hanford business community and has a family that is extremely supportive of his efforts toward rehabilitation. Over twenty reference letters (Exhibit B) and the testimony of seven character witnesses attest to the belief and confidence of those closest to him that he is well on the road to rehabilitation. Real estate practice would provide him added stability within a community where his ties already run deep. Considered as well is the fact that his crime did not involve the defrauding of any client or party to a transaction.

The defrauding of a financial institution and the U.S. government of major sums of money is obviously a major concern, and he has expressed remorse over his actions. It is likely that the best chance of Respondent making any substantial payment towards the \$460,000 restitution imposed by the United States District Court is to allow him to practice as a broker in some restricted capacity. The Department expresses concern over the relatively short time that has transpired from his conviction, but this can be addressed by an actual suspension through the period of his complete release on parole and his final transition back into the Hanford community. It is recommended that his broker's license be suspended through the balance of 1994 to serve these purposes.

IX

By all indications, the criminal sentence imposed and Respondent's experience in the criminal justice system have served the intended purposes of punishing him and setting the stage for his rehabilitation and eventual return to productive involvement within his home community. Those closest to him testified convincingly to his change in attitude, and Respondent himself presents as one who is sincerely committed to never straying again down paths leading to transactions that are even remotely questionable.

For all these reasons it would not be contrary to the public interest for the Department to issue Respondent a restricted license at this time, one of the conditions of which would be the actual suspension of his real estate broker's license through December 1994, and thereafter compliance with all other terms of his criminal judgement, including the \$460,000 restitution payment imposed by the United States District Court.

DETERMINATION OF ISSUES

I

Cause for disciplinary action exists under Business and Professions Code sections 490 and 10177(b) and Title 10 California Code of Regulations section 2910, by reason of the matters set forth in Findings III through V. Respondent was convicted of crimes involving moral turpitude, and which are substantially related to the qualifications, functions or duties of a real estate licensee.

II

The matters set forth in Findings VI through IX were considered in making the following order. It would not be contrary to issue Respondent a restricted license at this time, with actual suspension through the balance of 1994.

ORDER

not adopted { All licenses and licensing rights of Respondent under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to section 10156.5 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 that Code:

1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended through December 31, 1994.
2. 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 failure to comply with any of the

terms or conditions of parole respecting United States of America v. Jerry Wayne Ellis (CR. No. F-91-166 REC, United States District Court for the Eastern District of California.) Respondent shall advise the Department of all such conditions, including any plan and schedule for payments in restitution of all outstanding amounts under the Judgment in that case.

3. 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.
4. 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.
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 three (3) years have elapsed from the effective date of this Decision.
6. Respondent shall, within nine (9) 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.

*not
adopted*

*not
adopted*

7. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.
8. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Such reports may include, but shall not be limited to period summaries of salient information concerning each real estate transaction in which Respondent engaged during the period covered by the report, and statements signed by employing companies certifying that management has read the Decision of the Commissioner which granted the right to a restricted license.

DATED: August 2, 1994



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

FILED
JUN 28 1994

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

By Kathleen Contreras

In the Matter of the Accusation of

JERRY WAYNE ELLIS,

Case No. H-1189 FRESNO

OAH No. N-9405112

Respondent

SECOND AMENDED
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

State Building, 2550 Mariposa Mall, Room 1027, Fresno, CA 93721

on Wednesday -- July 20, 1994, at the hour of 1:30 PM,
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.

Dated: June 27, 1994

DEPARTMENT OF REAL ESTATE

By David B. Seals
DAVID B. SEALS *Counsel*

FILED
MAY 18 1994

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

DEPARTMENT OF REAL ESTATE

By Laurie A. Zian

In the Matter of the Accusation of

JERRY WAYNE ELLIS,

Case No. H-1189 FRESNO

OAH No. _____

Respondent

**FIRST AMENDED
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, 501 J Street, Suite 220 (Second
Floor Hearing Rooms), Sacramento, CA 95814

on Tuesday, July 19, 1994, at the hour of 1:30 PM,
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 18, 1994

By

David B. Seals
DAVID B. SEALS

Counsel

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

FILED
DEC 17 1993
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

JERRY WAYNE ELLIS,

Case No. H-1189 FRESNO

OAH No. L-61774

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 _____

LOMPOC FEDERAL CORRECTIONAL INSTITUTION, 3600 Guard Road,

Lompoc, CA 93436

on Friday -- March 11, 1994, at the hour of 9:30 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.

Dated: December 17, 1993

DEPARTMENT OF REAL ESTATE

By

DAVID B. SEALS

Counsel

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
AUG 17 1993
DEPARTMENT OF REAL ESTATE

6 By Kathleen Contreras

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 JERRY WAYNE ELLIS,)
14 Respondent.)

NO. H-1189 FRESNO

ACCUSATION

15 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
16 Commissioner of the State of California for cause of Accusation
17 against JERRY WAYNE ELLIS (hereinafter "Respondent") is informed
18 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
23 estate broker.

24 II

25 The Complainant, Jerry E. Fiscus, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation in
27 his official capacity.

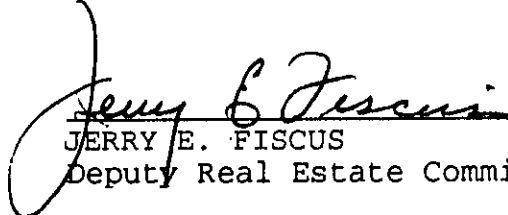
III

On or about February 1, 1991, in the United States District Court, Eastern District of California, Respondent was convicted of violation of 18 USC 371 (Conspiracy to Defraud the United States) and 18 USC 1344 and 2 (Bank Fraud and Aiding and Abetting), felonies and crimes involving moral turpitude which are substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The facts alleged above constitute cause under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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.


JERRY E. FISCUS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 5th day of August, 1993.