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DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of) NO. H-1532 FRESNO  
GLENN ALLEN HAMMERBURG, )  
Respondent. ) OAH NO. N-2002070653

DECISION AFTER REJECTION

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on October 7, 2002.

Larry A. Alamao, Assistant Chief Counsel, represented the Department of Real Estate, State of California.

J. Anne Rawlins, Attorney at Law, represented Glenn Allen Hammerburg, who appeared.

The matter was submitted on October 7, 2002.

In a Proposed Decision dated October 24, 2002, the Administrative Law Judge recommended the revocation of Respondent's real estate broker license and the granting of a right to obtain a restricted real estate broker license upon

1 terms and conditions. On November 21, 2002, I declined to adopt  
2 the Proposed Decision. Pursuant to Section 11517(c) of the  
3 Government Code of the State of California, Respondent was served  
4 with notice of my determination not to adopt the Proposed  
5 Decision of the Administrative Law Judge along with a copy of  
6 said Proposed Decision. Respondent was notified that the case  
7 would be decided by me upon the record, the transcript of  
8 proceedings held on October 7, 2002, and upon any written  
9 argument offered by Respondent and Complainant.

10 Complainant and Respondent have submitted written  
11 argument.

12 I have given careful consideration to the record in  
13 this case including the transcript of proceedings held on  
14 October 7, 2002 and the written arguments from Complainant and  
15 from Respondent.

16 The following shall constitute the Decision of the  
17 Real Estate Commissioner in this proceeding:

18 FACTUAL FINDINGS

19 1. John Sweeney, acting in his official capacity only  
20 as a Deputy Real Estate Commissioner, Department of Real Estate  
21 (hereafter "the Department"), State of California, made the  
22 charges and allegations contained in the Accusation and caused it  
23 to be filed on April 29, 2002. The Department has jurisdiction  
24 to suspend or revoke any real estate license issued in the State  
25 of California upon satisfactory proof that factual and legal  
26 cause exists for the action (Business and Professions Code  
27 section 10175).

1           2. Glenn Allen Hammerburg timely filed a Notice of  
2 Defense to the Accusation. The matter was set for an evidentiary  
3 hearing before an Administrative Law Judge of the Office of  
4 Administrative Hearings.

5           3. Mr. Hammerburg is currently licensed by the  
6 Department and has licensing rights as a real estate broker.  
7 The Department issued the real estate broker license on  
8 September 29, 1993. Mr. Hammerburg was previously licensed  
9 by the Department as a real estate salesperson. The Department  
10 issued the original real estate salesperson license to  
11 Mr. Hammerburg on July 31, 1982. Mr. Hammerburg's real estate  
12 broker license has been continuously renewed since issuance, is  
13 in full force and effect and is due to expire on September 28,  
14 2005. There is no history of any previous disciplinary action  
15 against Mr. Hammerburg, either as a real estate salesperson or  
16 as a real estate broker.

17           4. Mr. Hammerburg was convicted upon his plea of no  
18 contest in the Municipal Court, County of Fresno, State of  
19 California on June 2, 1998 of the crime of a violation of  
20 Penal Code section 476a(a), knowingly issuing checks with  
21 insufficient funds, a misdemeanor. The plea was conditional,  
22 and the charges were to be reduced, from the felony charged to  
23 a misdemeanor, upon condition that during the imposition of a  
24 two year probationary period, Mr. Hammerburg make full  
25 restitution, pay fines and attend after care and Narcotics  
26 Anonymous and/or Alcoholics Anonymous meetings in accordance  
27 with the provisions of his sentence for the drug conviction set

1 forth below. Mr. Hammerburg did meet and satisfy the conditions  
2 of the plea agreement, and the conviction was made a misdemeanor.

3 5. The facts and circumstances leading to the criminal  
4 conviction for insufficient funds checks were that Mr. Hammerburg  
5 issued several checks to grocery stores in the Fresno area in  
6 May 1997 without having sufficient funds in his bank account to  
7 pay the checks when the merchants presented them to his bank for  
8 payment. The total amount of the insufficient funds checks Mr.  
9 Hammerburg issued and that were alleged in the criminal complaint  
10 against him was \$257.54. Mr. Hammerburg testified that he was  
11 addicted to "primarily cocaine" at the time he wrote the  
12 insufficient funds checks, and due to his addiction, he does not  
13 recall much about the circumstances. He was unable to recall  
14 the exact number of the checks he wrote, did recall that he wrote  
15 the checks to grocery stores and that he was probably under the  
16 influence when he wrote them. He testified that he "probably"  
17 knew the checks were insufficient at the time he wrote them.

18 6. The criminal offense of knowingly writing  
19 insufficient funds checks is a crime involving moral turpitude  
20 and is substantially related to the qualifications, functions,  
21 and duties of a real estate broker (Title 10, California Code of  
22 Regulations section 2910). Mr. Hammerburg's conduct leading to  
23 the conviction involved the misuse of negotiable instruments to  
24 unlawfully confer a financial benefit upon himself, a form of  
25 theft.

26 7. Mr. Hammerburg was still selling and working in  
27 real estate at the time he wrote the bad checks, but on a very

1 limited basis due to his addiction. In 1997, Mr. Hammerburg was  
2 operating Burgess Realty, a real estate brokerage in Fresno, with  
3 a non-licensed partner who ran the business side of the firm.  
4 The real estate market was quite soft and Mr. Hammerburg and the  
5 firm were experiencing significant financial stress. In the  
6 late spring of that year, Mr. Hammerburg's business partner was  
7 required to step in and remove Mr. Hammerburg as broker of record  
8 because of Mr. Hammerburg's inconsistent work patterns and the  
9 suspicion that he was abusing drugs and alcohol. The partner was  
10 concerned that Mr. Hammerburg's acts or omissions or excessive  
11 absences could harm clients of the firm, so he obtained the  
12 services of another real estate broker to come into the firm and  
13 take it over.

14 8. Mr. Hammerburg was convicted upon his plea of no  
15 contest in the Municipal Court, County of Fresno, State of  
16 California on June 7, 1998 of the crime of a violation of Health  
17 and Safety Code section 11366, knowingly maintaining a home where  
18 rock cocaine was being sold or given away, and using a controlled  
19 substance, rock cocaine. The plea was again conditional, and the  
20 charges were to be reduced from the felony charged to a  
21 misdemeanor, upon condition that during the imposition of a two  
22 year probationary period, Mr. Hammerburg was required to attend  
23 and complete an alcohol and drug treatment program and after  
24 care, including Narcotics Anonymous and/or Alcoholics Anonymous  
25 meetings in accordance with the instructions of the program.  
26 Part of the court's sentencing order required Mr. Hammerburg to  
27 submit himself to drug and alcohol random bodily fluids testing.

1 Mr. Hammerburg did meet and satisfy the conditions of the plea  
2 agreement, and the conviction was made a misdemeanor.

3 9. In June 1997, Mr. Hammerburg owned and lived in a  
4 single family home located at 1122 E. Bremmer, Fresno. Mr.  
5 Hammerburg was contacted by officers of the Fresno Police joint  
6 narcotics suppression task force at the home on June 2, 1997  
7 regarding citizen and neighbor complaints about drug activity  
8 taking place at the home. Mr. Hammerburg admitted officers to  
9 the home, which they searched. A pipe used for smoking rock  
10 cocaine was located in the downstairs bedroom, occupied by an  
11 unrelated woman. Mr. Hammerburg admitted to officers during the  
12 search that he used cocaine but denied selling cocaine or having  
13 it in the residence.

14 10. Officers returned with a search warrant for Mr.  
15 Hammerburg's residence on July 9, 1997. Mr. Hammerburg was not  
16 present. He rented the home shortly before this date to two  
17 acquaintances he admitted were persons with whom he had shared  
18 and used drugs. A few of Mr. Hammerburg's belongings were in an  
19 upstairs room but the tenants confirmed Mr. Hammerburg was living  
20 with his mother at another home on the date of the search. The  
21 search confirmed the resident tenants were using cocaine at the  
22 home, and cocaine use paraphernalia was found. No drugs were  
23 located and seized. Mr. Hammerburg could not be located, so a  
24 warrant for his arrest was issued.

25 11. Mr. Hammerburg's conduct and the facts and  
26 circumstances surrounding and leading to the conviction for  
27 maintaining a house where drugs are used or sold reveal that the

1 offense is a crime involving moral turpitude and is substantially  
2 related to the qualifications, functions, and duties of a real  
3 estate broker. The facts and circumstances leading to this  
4 conviction reveal that this offense represents more than just a  
5 personal drug use problem. Mr. Hammerburg was not entirely  
6 forthright and credible when he described what was actually  
7 taking place in and around his home that led to the Drug  
8 Suppression Unit's front door contact with him in June 1997 and  
9 later the obtaining and service of a search warrant on his  
10 property. Moving out and renting the house to tenants he  
11 admitted were involved with him in drug use and who had  
12 "possibly" furnished him cocaine does not resolve the problem.  
13 Mr. Hammerburg was using his real estate to try to shield and  
14 protect his own and his tenant's drug use. Moreover, Mr.  
15 Hammerburg's denial that he was involved in moving drugs in and  
16 out of the house and/or selling drugs, at least to these tenants,  
17 was neither credible nor persuasive and was impeached by the  
18 tenants' hearsay statements to the police at the time the search  
19 warrant was served and his home searched. The evidence reveals  
20 a "readiness to do wrong" that is the hallmark of a crime  
21 involving moral turpitude.

22           12. Secondly, there is little doubt Mr. Hammerburg  
23 continued to practice real estate professionally under the aegis  
24 of his license from the Department, despite being anywhere from  
25 modestly to significantly impaired by cocaine addiction  
26 throughout this period of time. This impairment was so  
27 significant and evident to others that his partner feared a

1 serious liability to real estate clients could occur if he  
2 permitted Mr. Hammerburg to continue to function as a real  
3 estate professional and failed to remove Mr. Hammerburg from his  
4 position with Burgess Realty as broker of record. A criminal  
5 conviction with surrounding facts and circumstances that reveal  
6 the broker is practicing real estate when substantially impaired  
7 with a significant substance addiction is a conviction that is  
8 substantially related to the qualifications, functions, and  
9 duties of a licensed broker. Mr. Hammerburg pointed out that no  
10 clients suffered any harm as a result of his addiction and there  
11 is no evidence of any financial loss to his clients or his firm.  
12 There is no evidence that rebuts his contentions, but the cause  
13 could be as likely fortuitous as the product of a conscious  
14 effort to keep his financial burdens and drug activities out of  
15 his professional life and that of his clients. The contention  
16 overlooks the significant potential for serious error created  
17 when an impaired professional attempts to continue to practice  
18 under the burden of a serious addiction to a powerful narcotic.  
19 Mr. Hammerburg was very fortunate to not have made a serious  
20 mistake and caused any significant harm in any client's real  
21 estate affairs during the period of time he was significantly  
22 impaired due to his cocaine addiction. To Mr. Hammerburg's  
23 credit, he did not contest his partner's efforts to remove him  
24 from his position as broker of record, and there is no evidence  
25 of financial irregularity or misfeasance during a period of time  
26 that was financially stressful in the general real estate market  
27 and with the added burden of an expensive cocaine habit. The



1 money for the drugs came from somewhere not apparent in this  
2 evidence, but did not apparently come from Burgess Realty or  
3 any of Mr. Hammerburg's real estate clients. These are factors  
4 in mitigation, however, and not facts that disconnect the  
5 conviction from its substantial relationship to the  
6 qualifications, functions, and duties of a real estate broker.

7           13. Mr. Hammerburg suffered a driving under the  
8 influence conviction in 1995 where his driver's license was  
9 revoked or suspended. He continued driving until 1998, at which  
10 time, as part of his rehabilitation, he sought the services of a  
11 lawyer to get his license reinstated. The lawyer researched the  
12 matter and discovered two active warrants for Mr. Hammerburg's  
13 arrest, for the bad check charges and the charges for allowing  
14 his home to be a place where drugs were used or sold. Mr.  
15 Hammerburg's attorney arranged for Mr. Hammerburg to surrender  
16 and to resolve the charges by pleas as set forth above.

17           14. Mr. Hammerburg entered and completed a six-month  
18 outpatient substance abuse and treatment program offered by New  
19 Connections through the Alcoholism and Drug Abuse Council of  
20 Fresno. He testified that he enrolled in the program "upon the  
21 advice of my attorney and because I had a desire to make  
22 changes." He neglected to mention until asked that attendance  
23 and completion of such a program was required to satisfy the  
24 conditions of his probation. The program involved drug and  
25 alcohol abuse group counseling and attendance at Narcotics  
26 Anonymous ("NA") meetings once per week for a year. Mr.  
27 Hammerburg successfully completed the program on June 30, 1998.

1 Mr. Hammerburg produced sign-in sheets evidencing attendance at  
2 NA meetings between July 10, 1998 through June 4, 1999. Mr.  
3 Hammerburg acknowledged he is not in a rehabilitation program or  
4 support group for recovery at present. He mentioned that he has  
5 "several contacts" he can call if he is thinking about using  
6 drugs. He denied having a problem with alcohol but acknowledged  
7 that maybe he did have such a problem in 1995 "because I got  
8 arrested". He does not use alcohol presently. Mr. Hammerburg  
9 testified that he has not had a problem with alcohol or drugs  
10 since he attended the programs. He did not mention in his  
11 testimony when the last time he used drugs was, whether he had  
12 been subjected to random bodily fluids testing any time recently,  
13 or if he still attends NA meetings, and, if so, the frequency of  
14 that attendance.

15           15. Mr. Hammerburg was the broker of record of Burgess  
16 Realty in Fresno at the time of the criminal offenses. He went  
17 to work for James Burgess, the owner of the firm, in 1988, and  
18 purchased the brokerage in 1994 with a partner. Mr. Hammerburg  
19 became the broker of record for Burgess Realty according to the  
20 Department's records on July 12, 1994. As set forth above, Mr.  
21 Hammerburg's partner was required to remove Mr. Hammerburg as  
22 broker of record due to his substance abuse. However, Mr.  
23 Hammerburg continued to be associated with the firm until 1998,  
24 at which time he associated with Voyagin Realty in Fresno. Mr.  
25 Hammerburg joined Realty Unlimited Group in October 2001, where  
26 he continues to date. He serves as a salesperson, manages the  
27 property management side of the firm and manages escrows. He is

1 not the broker of record with Realty Unlimited, but is an  
2 associated broker.

3           16. Mr. Hammerburg obtained relief from the Fresno  
4 County Superior Court on June 21, 2002, from the disabilities of  
5 both criminal convictions set forth above. Mr. Hammerburg filed  
6 Petitions pursuant to Penal Code section 1203.4 on that date  
7 seeking expungements in both cases. The Court granted both  
8 Petitions and entered Orders expunging both convictions and  
9 dismissing the charges.

10           17. Mr. Hammerburg presented some evidence of  
11 rehabilitation in the form of testimony of his former partner at  
12 Burgess Realty and persons of good character and reputation who  
13 have worked with Mr. Hammerburg or been represented by him in  
14 real estate transactions. Each testified they were aware  
15 generally that Mr. Hammerburg had suffered from a drug problem  
16 and had sustained drug and bad check convictions, but were  
17 nevertheless of the opinion that Mr. Hammerburg is honest,  
18 trustworthy, and a person of good character. All expressed a  
19 high level of satisfaction with his trustworthiness and  
20 reliability in handling real estate transactions professionally  
21 and honestly. Mr. Hammerburg pointed out that despite his  
22 addiction and the bad check charges, there has never been any  
23 evidence of any harm to any real estate client relying upon him,  
24 or any problem with any real estate transaction that he has  
25 handled due to his substance abuse or any incident involving  
26 dishonesty with negotiable instruments.

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1           18. Mr. Hammerburg is partially rehabilitated and  
2 meets some of the Department's criteria for weighing and  
3 assessing rehabilitation. However, Mr. Hammerburg's testimony  
4 regarding the criminal offenses, particularly the drug charges,  
5 was often vague, and sometimes unpersuasive and lacking in  
6 credibility. His denial that he was involved with the sales of  
7 cocaine was particularly lacking in credibility and unpersuasive.  
8 His substance abuse recovery program is similarly vague. It does  
9 not appear that he has any firmly structured accountability and  
10 support program in place at the present time, a potentially  
11 slippery proposition for one once addicted to such a pervasive  
12 narcotic as rock cocaine. The fact that Mr. Hammerburg did not  
13 appear to be very concerned about the possibility for relapse by  
14 structuring for himself an organized relapse prevention program  
15 with checks and supports outside himself is cause for concern.  
16 Yet he did complete the New Connections treatment program, was  
17 faithful in attending NA meetings for at least a couple of years,  
18 evidently passed random drug screenings and successfully  
19 completed both conditional probations. His claims of continuing  
20 sobriety since completing the programs are not refuted by any  
21 real evidence, and it is strongly hoped that he never has a  
22 relapse for the remainder of his life. But in light of his  
23 lack of credibility regarding the extent and level of his  
24 involvement in drugs in the first place, the level of confidence  
25 that can be attributed to such statements standing alone, without  
26 any sort of outside accountability, such as the continuation of  
27 clean random bodily fluids screenings and regular support group

1 attendance, is lower than it might be in the presence of such  
2 external checks.

3 19. Counsel for the Department pointed out that  
4 issuing insufficient funds checks is a particular problem for a  
5 person working in a profession where honesty and reliability  
6 regarding the use of negotiable instruments is absolutely  
7 essential. Mr. Hammerburg made full restitution for the checks  
8 but did not appear to appreciate the import of counsel's comments  
9 and did not address this issue in his testimony. The casual  
10 manner in which Mr. Hammerburg addressed the issue of his writing  
11 the bad checks is a legitimate concern. In mitigation of these  
12 concerns, Mr. Hammerburg enjoys a good reputation for honesty  
13 and trustworthiness with those who have dealt with him as a real  
14 estate professional. He obtained expungement of the conviction  
15 as well.

16 20. There is enough rehabilitation present that Mr.  
17 Hammerburg should be allowed to continue as a restricted real  
18 estate salesperson licensee, under the supervision of a fully  
19 informed broker. A broker license, even a restricted broker  
20 license would permit Mr. Hammerburg to work completely  
21 unsupervised, if he chooses to do so. The evidence Mr.  
22 Hammerburg presented does not support allowing that to continue  
23 without a significantly longer period of crime and drug free  
24 rehabilitation.

25 LEGAL CONCLUSIONS

26 1. "A board may suspend or revoke a license on the  
27 ground that the licensee has been convicted of a crime, if the

1 crime is substantially related to the qualifications, functions,  
2 or duties of the business or profession for which the license was  
3 issued. A conviction within the meaning of this section means a  
4 plea or verdict of guilty or a conviction following a plea of  
5 nolo contendere. Any action which a board is permitted to take  
6 following the establishment of a conviction may be taken when the  
7 time for appeal has elapsed, or the judgment of conviction has  
8 been affirmed on appeal, or when an order granting probation is  
9 made suspending the imposition of sentence, irrespective of a  
10 subsequent order under the provisions of Section 1203.4 of the  
11 Penal Code (Business and Professions Code section 490).

12           2. Mr. Hammerburg violated section 490, as set forth  
13 in the Factual Findings. Mr. Hammerburg was convicted in 1998 of  
14 the crimes of writing checks knowing he did not have sufficient  
15 funds to cover them when they were presented for payment, and for  
16 maintaining a house where drugs were sold or used. As set forth  
17 in the Factual Findings, both crimes involve moral turpitude.  
18 "Moral turpitude" means a general "readiness to do evil" (People  
19 v. Castro (1985) 38 Cal. 3d 301, 314). "We recently summarized  
20 the moral character requirement this way: "Good moral character  
21 includes traits of 'honesty, fairness, candor, trustworthiness,  
22 observance of fiduciary responsibility, respect for and obedience  
23 to the laws of the state and the nation and respect for the  
24 rights of others and for the judicial process.' [Citation omitted  
25 in original.] Persons of good character also do not commit acts  
26 or crimes involving moral turpitude—a concept that embraces a  
27 wide range of deceitful and depraved behavior. [Citations omitted

1 in original.]” (In re Lesansky (2001) 25 Cal.4th 11, 16, In re  
2 Gossage (2000) 23 Cal.4th 1080, 10950). Conviction of a crime  
3 involving theft necessarily involves moral turpitude (People v.  
4 Castro (1985) 38 Cal.3d 301, 315-316, In re Rothrock (1940) 16  
5 Cal.2d 449, 454). Writing knowingly insufficient funds checks is  
6 a form of theft. As set forth in the Factual Findings, the  
7 circumstances of the conviction for maintaining a house where  
8 drugs are used or sold in this instance is a crime involving  
9 moral turpitude.

10 3. “(a) When considering whether a license should be  
11 denied, suspended or revoked on the basis of the conviction of a  
12 crime, or on the basis of an act described in Section 480(a)(2)  
13 or 480(a)(3) of the Code, the crime or act shall be deemed to be  
14 substantially related to the qualifications, functions or duties  
15 of a licensee of the Department within the meaning of Sections  
16 480 and 490 of the Code if it involves:

17 (1) The fraudulent taking, obtaining, appropriating or  
18 retaining of funds or property belonging to another person.

19 (2) Counterfeiting, forging or altering on an instrument  
20 or the uttering of a false statement.”

21 (c) If the crime or act is substantially related to the  
22 qualifications, functions or duties of a licensee of the  
23 department, the context in which the crime or acts were committed  
24 shall go only to the question of the weight to be accorded to the  
25 crime or acts in considering the action to be taken with respect  
26 to the applicant or licensee.” (Title 10, California Code of  
27 Regulations section 2910, in pertinent part).

1           4. Both convictions involve conduct that is  
2 substantially related to the qualifications, functions, and  
3 duties of a real estate broker, as set forth in the Factual  
4 Findings. The theft nature and the involvement of negotiable  
5 instruments of the insufficient funds checks conviction fits  
6 squarely within the meaning of the Department's regulatory  
7 criteria for substantially related convictions (Id.). The drug  
8 conviction is less clear, but under the facts and circumstances  
9 of this case, the conviction reflects a licensed broker's misuse  
10 of real estate as a shield for his own and his tenants' drug  
11 activities, as well reflecting the continuation of real estate  
12 practice while suffering from a significant impairment due to  
13 substance abuse, an impairment Mr. Hammerburg acknowledged. In  
14 these senses, the drug conviction was for a criminal offense that  
15 does reflect a substantial relationship to the qualifications,  
16 functions, and duties of a real estate broker, as set forth in  
17 detail in the Factual Findings. Legal cause therefore exists to  
18 revoke or suspend Mr. Hammerburg's real estate broker's license  
19 for the drug conviction as well.

20           5. "The commissioner may suspend or revoke the  
21 license of a real estate licensee, or may deny the issuance of a  
22 license to an applicant, who has done any of the following, or  
23 may suspend or revoke the license of a corporation, or deny the  
24 issuance of a license to a corporation, if an officer, director,  
25 or person owning or controlling 10 percent or more of the  
26 corporation's stock has done any of the following:

27 ///



1           "(b) Entered a plea of guilty or no contendere to, or  
2 been found guilty of, or been convicted of, a felony or a crime  
3 involving moral turpitude, and the time for appeal has elapsed or  
4 the judgment of conviction has been affirmed on appeal,  
5 irrespective of an order granting probation following that  
6 conviction, suspending the imposition of sentence, or of a  
7 subsequent order under Section 1203.4 of the Penal Code allowing  
8 that licensee to withdraw his or her plea of guilty and to enter  
9 a plea of not guilty, or dismissing the accusation or  
10 information." (Business and Professions Code section 10177(b)).

11           6. Separate legal cause exists pursuant to section  
12 10177(b) for the revocation or suspension of Mr. Hammerburg's  
13 real estate broker's license. As set forth above, he has been  
14 convicted of two separate misdemeanor criminal offenses, each of  
15 which involves moral turpitude and each of which is substantially  
16 related to the qualifications, functions, and duties of a real  
17 estate broker. Both convictions have been expunged pursuant to  
18 Penal Code section 1203.4, but that fact is one of mitigation and  
19 not a defense to a revocation or suspension action.

20           7. "The following criteria have been developed by the  
21 department pursuant to Section 482(b) of the Business and  
22 Professions Code for the purpose of evaluating the rehabilitation  
23 of a licensee against whom an administrative disciplinary  
24 proceeding for revocation or suspension of the license has been  
25 initiated on account of a crime committed by the licensee.

26           (a) The passage of not less than two years from the  
27 most recent criminal conviction that is "substantially

1 related" to the qualifications, functions or duties of  
2 a licensee of the department. (A longer period will be  
3 required if there is a history of criminal convictions  
4 or acts substantially rebated to the qualifications,  
5 functions or duties of a licensee of the department.)

6 (b) Restitution to any person who has suffered  
7 monetary losses through "substantially rebated" acts or  
8 omissions of the licensee.

9 (c) Expungement of the conviction or convictions which  
10 culminated in the administrative proceeding to take  
11 disciplinary action.

12 (d) Expungement or discontinuance of a requirement of  
13 registration pursuant to the provisions of Section 290  
14 of the Penal Code.

15 (e) Successful completion or early discharge from  
16 probation or parole.

17 (f) Abstinance from the use of controlled substances  
18 or alcohol for not less than two years if the criminal  
19 conviction was attributable in part to the use of a  
20 controlled substance or alcohol.

21 (g) Payment of any fine imposed in connection with the  
22 criminal conviction that is the basis for revocation or  
23 suspension of the license.

24 (h) Correction of business practices responsible in  
25 some degree for the crime or crimes of which the  
26 licensee was convicted.

27 ///

1 (i) New and different social and business  
2 relationships from those which existed at the time of  
3 the commission of the acts that led to the criminal  
4 conviction or convictions in question.

5 (j) Stability of family life and fulfillment of  
6 parental and familial responsibilities subsequent to  
7 the criminal conviction.

8 (k) Completion of, or sustained enrollment in, formal  
9 educational or vocational training courses for economic  
10 self-improvement.

11 (l) Significant and conscientious involvement in  
12 community, church or privately-sponsored programs  
13 designed to provide social benefits or to ameliorate  
14 social problems.

15 (m) Change in attitude from that which existed at the  
16 time of the commission of the criminal acts in question  
17 as evidenced by any or all of the following:

18 (1) Testimony of applicant.

19 (2) Evidence from family members, friends or other  
20 persons familiar with the licensee's previous conduct  
21 and with subsequent attitudes and behavioral patterns.

22 (3) Evidence from probation or parole officers or law  
23 enforcement officials competent to testify as to  
24 applicant's social adjustments.

25 (4) Evidence from psychiatrists, clinical  
26 psychologists, sociologists or other persons competent  
27 to testify with regard to neuropsychiatric or

1 emotional disturbances." (Title 10, California Code of  
2 Regulations section 2912).

3 8. Mr. Hammerburg has demonstrated partial  
4 rehabilitation, as set forth in the Factual Findings. It has  
5 been more than two years since Mr. Hammerburg sustained the  
6 criminal convictions and longer since the criminal activity that  
7 led to the criminal actions. Mr. Hammerburg successfully  
8 completed his probations, paid all fines and penalties, made full  
9 restitution and successfully obtained Orders of the Superior  
10 Court expunging the convictions in June 2002. He successfully  
11 completed a drug rehabilitation program in 1998, attended NA  
12 meetings through 1999, and there is no evidence that he has  
13 relapsed back into a life of substance abuse. The testimony of  
14 his friends and business associates confirmed that Mr. Hammerburg  
15 has changed his social associates and has a good reputation for  
16 honesty and trustworthiness in his professional real estate  
17 activities with Real Estate Unlimited. There is sufficient  
18 evidence of rehabilitation such that Mr. Hammerburg's license  
19 should not be revoked outright. However, there is insufficient  
20 evidence of rehabilitation that would sustain leaving the broker  
21 license in place, even on a restricted basis, since that would  
22 permit Mr. Hammerburg to practice entirely unsupervised. Of  
23 particular concern is the dearth of objective, extrinsic evidence  
24 of sustained, accountable recovery from 2000 forward, except Mr.  
25 Hammerburg's testimony, which was vague and less than credible in  
26 places when describing the scope and level of his drug  
27 activities. Mr. Hammerburg will most likely be able to hold his

1 gains and prove over time a sustained and relapse free recovery.  
2 As he does so, he will then be able to upgrade his license again,  
3 losing the restrictions and returning to an unrestricted broker  
4 license. But that time has not yet passed, and the objective  
5 evidence of recovery is not yet present.

6 ORDER

7 All licenses and licensing rights of Respondent GLENN  
8 ALLEN HAMMERBURG 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 10156.5 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 ninety (90) days from the effective  
14 date of this Decision.

15 The restricted license issued to Respondent shall be  
16 subject to all of the provisions of Section 10156.7 of the  
17 Business and Professions Code and to the following limitations,  
18 conditions and restrictions imposed under authority of Section  
19 10156.6 of that Code.

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

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

1 Respondent has violated provisions of the California Real Estate  
2 Law, the Subdivided Lands Law, Regulations of the Real Estate  
3 Commissioner or conditions attaching to the restricted license.

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

9 (1) That the employing broker has read the Decision 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 restricted  
14 licensee relating to activities for which a real  
15 estate license is required.

16 D. Respondent shall not be eligible to apply for the  
17 issuance of an unrestricted real estate license nor the removal  
18 of any of the limitations, conditions or restrictions of a  
19 restricted license until two (2) years have elapsed from the  
20 effective date of this Decision.

21 E. Respondent shall, within nine (9) months from the  
22 effective date of this Decision, present evidence satisfactory to  
23 the Real Estate Commissioner that respondent has, since the most  
24 recent issuance of an original or renewal real estate license,  
25 taken and successfully completed the continuing education  
26 requirements of Article 2.5 of Chapter 3 of the Real Estate Law  
27 for renewal of a real estate license. If respondent fails to

1 satisfy this condition, the Commissioner may order the suspension  
2 of the restricted license until the respondent presents such  
3 evidence. The Commissioner shall afford respondent the  
4 opportunity for a hearing pursuant to the Administrative  
5 Procedure Act to present such evidence.

6 This Decision shall become effective at 12 o'clock noon  
7 on May 6, 2003.

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9 IT IS SO ORDERED March 20, 2003.

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PAULA REDDISH ZINNEMAN  
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator  
Chief Deputy Commissioner

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FILED  
NOV 26 2002

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

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

In the Matter of the Accusation of	)	
GLENN ALLEN HAMMERBURG,	)	No. H-1532 FRESNO
	)	
Respondent.	)	N-2002070653

NOTICE

TO: GLENN ALLEN HAMMERBURG, Respondent, and J. ANNE RAWLINS, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 24, 2002, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 24, 2002, 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 October 7,

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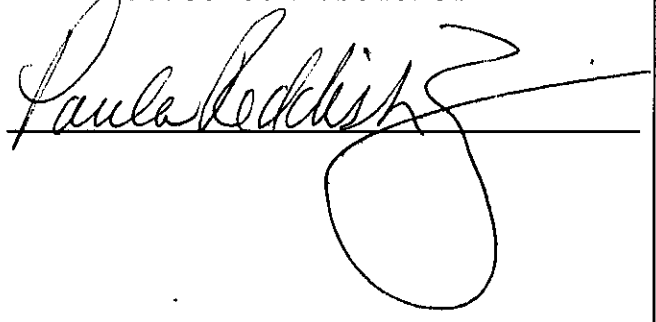
1 2002, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of October 7, 2002, at the Sacramento office  
6 of the Department of Real Estate unless an extension of the time  
7 is granted for good cause shown.

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

13           DATED: November 21, 2002

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15           PAULA REDDISH ZINNEMANN  
16           Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GLENN ALLEN HAMMERBURG,

Respondent.

Case No. H-1532 FRESNO

OAH No. N2002070653

**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on October 7, 2002.

Larry A. Alamao, Assistant Chief Counsel, represented the Department of Real Estate, State of California.

J. Anne Rawlins, Attorney at Law, represented Glenn Allen Hammerburg, who appeared.

The matter was submitted on October 7, 2002.

**FACTUAL FINDINGS**

1. John Sweeney, acting in his official capacity only as a Deputy Real Estate Commissioner, Department of Real Estate (hereafter "the Department"), State of California, made the charges and allegations contained in the Accusation and caused it to be filed on April 29, 2002. The Department has jurisdiction to suspend or revoke any real estate license issued in the State of California upon satisfactory proof that factual and legal cause exists for the action.<sup>1</sup>

2. Glenn Allen Hammerburg timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings.

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<sup>1</sup> Business and Professions Code section 10175.

3. Mr. Hammerburg is currently licensed by the Department and has licensing rights as a real estate broker. The Department issued the real estate broker license on September 29, 1993. Mr. Hammerburg was previously licensed by the Department as a real estate salesperson. The Department issued the original real estate salesperson license to Mr. Hammerburg on July 31, 1982. Mr. Hammerburg's real estate broker license has been continuously renewed since issuance, is in full force and effect and is due to expire on September 28, 2005. There is no history of any previous disciplinary action against Mr. Hammerburg, either as a real estate salesperson or as a real estate broker.

4. Mr. Hammerburg was convicted upon his plea of no contest in the Municipal Court, County of Fresno, State of California on June 2, 1998 of the crime of a violation of Penal Code section 476a(a), knowingly issuing checks with insufficient funds, a misdemeanor. The plea was conditional, and the charges were to be reduced from the felony charged to a misdemeanor, upon condition that during the imposition of a two year probationary period, Mr. Hammerburg make full restitution, pay fines and attend after care and Narcotics Anonymous and/or Alcoholics Anonymous meetings in accordance with the provisions of his sentence for the drug conviction set forth below. Mr. Hammerburg did meet and satisfy the conditions of the plea agreement, and the conviction was made a misdemeanor.

5. The facts and circumstances leading to the criminal conviction for insufficient funds checks were that Mr. Hammerburg issued several checks to grocery stores in the Fresno area in May 1997 without having sufficient funds in his bank account to pay the checks when the merchants presented them to his bank for payment. The total amount of the insufficient funds checks Mr. Hammerburg issued and that were alleged in the criminal complaint against him was \$257.54. Mr. Hammerburg testified that he was addicted to "primarily cocaine" at the time he wrote the insufficient funds checks, and due to his addiction, he does not recall much about the circumstances. He was unable to recall the exact number of the checks he wrote, did recall that he wrote the checks to grocery stores and that he was probably under the influence when he wrote them. He testified that he "probably" knew the checks were insufficient at the time he wrote them.

6. The criminal offense of knowingly writing insufficient funds checks is a crime involving moral turpitude and is substantially related to the qualifications, functions and duties of a real estate broker<sup>2</sup>. Mr. Hammerburg's conduct leading to the conviction involved the misuse of negotiable instruments to unlawfully confer a financial benefit upon himself, a form of theft.

7. Mr. Hammerburg was still selling and working in real estate at the time he wrote the bad checks, but on a very limited basis due to his addiction. In 1997, Mr. Hammerburg was operating Burgess Realty, a real estate brokerage in Fresno, with a non-licensed partner who ran the business side of the firm. The real estate market was quite soft and Mr. Hammerburg and the firm were experiencing significant financial stress. In the late

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<sup>2</sup> Title 10, California Code of Regulations section 2910.

spring of that year, Mr. Hammerburg's business partner was required to step in and remove Mr. Hammerburg as broker of record because of Mr. Hammerburg's inconsistent work patterns and the suspicion that he was abusing drugs and alcohol. The partner was concerned that Mr. Hammerburg's acts or omissions or excessive absences could harm clients of the firm, so he obtained the services of another real estate broker to come into the firm and take it over.

8. Mr. Hammerburg was convicted upon his plea of no contest in the Municipal Court, County of Fresno, State of California on June 7, 1998 of the crime of a violation of Health and Safety Code section 11366, knowingly maintaining a home where rock cocaine was being sold or given away, and using a controlled substance, rock cocaine. The plea was again conditional, and the charges were to be reduced from the felony charged to a misdemeanor, upon condition that during the imposition of a two year probationary period, Mr. Hammerburg was required to attend and complete an alcohol and drug treatment program and after care, including Narcotics Anonymous and/or Alcoholics Anonymous meetings in accordance with the instructions of the program. Part of the court's sentencing order required Mr. Hammerburg to submit himself to drug and alcohol random bodily fluids testing. Mr. Hammerburg did meet and satisfy the conditions of the plea agreement, and the conviction was made a misdemeanor.

9. In June 1997, Mr. Hammerburg owned and lived in a single family home located at 1122 E. Bremmer, Fresno. Mr. Hammerburg was contacted by officers of the Fresno Police joint narcotics suppression task force at the home on June 2, 1997 regarding citizen and neighbor complaints about drug activity taking place at the home. Mr. Hammerburg admitted officers to the home, which they searched. A pipe used for smoking rock cocaine was located in the downstairs bedroom, occupied by an unrelated woman. Mr. Hammerburg admitted to officers during the search that he used cocaine but denied selling cocaine or having it in the residence.

10. Officers returned with a search warrant for Mr. Hammerburg's residence on July 9, 1997. Mr. Hammerburg was not present. He rented the home shortly before this date to two acquaintances he admitted were persons with whom he had shared and used drugs. A few of Mr. Hammerburg's belongings were in an upstairs room but the tenants confirmed Mr. Hammerburg was living with his mother at another home on the date of the search. The search confirmed the resident tenants were using cocaine at the home, and cocaine use paraphernalia was found. No drugs were located and seized. Mr. Hammerburg could not be located, so a warrant for his arrest was issued.

11. Mr. Hammerburg's conduct and the facts and circumstances surrounding and leading to the conviction for maintaining a house where drugs are used or sold reveal that the offense is a crime involving moral turpitude and is substantially related to the qualifications, functions and duties of a real estate broker. The facts and circumstances leading to this conviction reveal that this offense represents more than just a personal drug use problem. Mr. Hammerburg was not entirely forthright and credible when he described what was actually taking place in and around his home that led to the Drug Suppression Unit's front

door contact with him in June 1997 and later the obtaining and service of a search warrant on his property. Moving out and renting the house to tenants he admitted were involved with him in drug use and who had "possibly" furnished him cocaine does not resolve the problem. Mr. Hammerburg was using his real estate to try to shield and protect his own and his tenant's drug use. Moreover, Mr. Hammerburg's denial that he was involved in moving drugs in and out of the house and/or selling drugs, at least to these tenants, was neither credible nor persuasive and was impeached by the tenants' hearsay statements to the police at the time the search warrant was served and his home searched. The evidence reveals a "readiness to do wrong" that is the hallmark of a crime involving moral turpitude.

12. Secondly, there is little doubt Mr. Hammerburg continued to practice real estate professionally under the aegis of his license from the Department, despite being anywhere from modestly to significantly impaired by cocaine addiction throughout this period of time. This impairment was so significant and evident to others that his partner feared a serious liability to real estate clients could occur if he permitted Mr. Hammerburg to continue to function as a real estate professional and failed to remove Mr. Hammerburg from his position with Burgess Realty as broker of record. A criminal conviction with surrounding facts and circumstances that reveal the broker is practicing real estate when substantially impaired with a significant substance addiction is a conviction that is substantially related to the qualifications, functions and duties of a licensed broker. Mr. Hammerburg pointed out that no clients suffered any harm as a result of his addiction and there is no evidence of any financial loss to his clients or his firm. There is no evidence that rebuts his contentions, but the cause could be as likely fortuitous as the product of a conscious effort to keep his financial burdens and drug activities out of his professional life and that of his clients. The contention overlooks the significant potential for serious error created when an impaired professional attempts to continue to practice under the burden of a serious addiction to a powerful narcotic. Mr. Hammerburg was very fortunate to not have made a serious mistake and caused any significant harm in any client's real estate affairs during the period of time he was significantly impaired due to his cocaine addiction. To Mr. Hammerburg's credit, he did not contest his partner's efforts to remove him from his position as broker of record, and there is no evidence of financial irregularity or misfeasance during a period of time that was financially stressful in the general real estate market and with the added burden of an expensive cocaine habit. The money for the drugs came from somewhere not apparent in this evidence, but did not apparently come from Burgess Realty or any of Mr. Hammerburg's real estate clients. These are factors in mitigation, however, and not facts that disconnect the conviction from its substantial relationship to the qualifications, functions and duties of a real estate broker.

13. Mr. Hammerburg suffered a driving under the influence conviction in 1995 where his driver's license was revoked or suspended. He continued driving until 1998, at which time, as part of his rehabilitation, he sought the services of a lawyer to get his license reinstated. The lawyer researched the matter and discovered two active warrants for Mr. Hammerburg's arrest, for the bad check charges and the charges for allowing his home to be a place where drugs were used or sold. Mr. Hammerburg's attorney arranged for Mr. Hammerburg to surrender and to resolve the charges by pleas as set forth above.

14. Mr. Hammerburg entered and completed a six-month outpatient substance abuse and treatment program offered by New Connections through the Alcoholism and Drug Abuse Council of Fresno. He testified that he enrolled in the program "upon the advice of my attorney and because I had a desire to make changes." He neglected to mention until asked that attendance and completion of such a program was required to satisfy the conditions of his probation. The program involved drug and alcohol abuse group counseling and attendance at Narcotics Anonymous ("NA") meetings once per week for a year. Mr. Hammerburg successfully completed the program on June 30, 1998. Mr. Hammerburg produced sign-in sheets evidencing attendance at NA meetings between July 10, 1998 through June 4, 1999. Mr. Hammerburg acknowledged he is not in a rehabilitation program or support group for recovery at present. He mentioned that he has "several contacts" he can call if he is thinking about using drugs. He denied having a problem with alcohol but acknowledged that maybe he did have such a problem in 1995 "because I got arrested". He does not use alcohol presently. Mr. Hammerburg testified that he has not had a problem with alcohol or drugs since he attended the programs. He did not mention in his testimony when the last time he used drugs was, whether had been subjected to random bodily fluids testing any time recently, or if he still attends NA meetings, and, if so, the frequency of that attendance.

15. Mr. Hammerburg was the broker of record of Burgess Realty in Fresno at the time of the criminal offenses. He went to work for James Burgess, the owner of the firm, in 1988, and purchased the brokerage in 1994 with a partner. Mr. Hammerburg became the broker of record for Burgess Realty according to the Department's records on July 12, 1994. As set forth above, Mr. Hammerburg's partner was required to remove Mr. Hammerburg as broker of record due to his substance abuse. However, Mr. Hammerburg continued to be associated with the firm until 1998, at which time he associated with Voyagin Realty in Fresno. Mr. Hammerburg joined Realty Unlimited Group in October 2001, where he continues to date. He serves as a salesperson, manages the property management side of the firm and manages escrows. He is not the broker of record with Realty Unlimited, but is an associated broker.

16. Mr. Hammerburg obtained relief from the Fresno County Superior Court on June 21, 2002 from the disabilities of both criminal convictions set forth above. Mr. Hammerburg filed Petitions pursuant to Penal Code section 1203.4 on that date seeking expungements in both cases. The Court granted both Petitions and entered Orders expunging both convictions and dismissing the charges.

17. Mr. Hammerburg presented some evidence of rehabilitation in the form of testimony of his former partner at Burgess Realty and persons of good character and reputation who have worked with Mr. Hammerburg or been represented by him in real estate transactions. Each testified they were aware generally that Mr. Hammerburg had suffered from a drug problem and had sustained drug and bad check convictions, but were nevertheless of the opinion that Mr. Hammerburg is honest, trustworthy and a person of good character. All expressed a high level of satisfaction with his trustworthiness and reliability in handling real estate transactions professionally and honestly. Mr. Hammerburg pointed out

that despite his addiction and the bad check charges, there has never been any evidence of any harm to any real estate client relying upon him, or any problem with any real estate transaction that he has handled due to his substance abuse or any incident involving dishonesty with negotiable instruments.

18. Mr. Hammerburg is partially rehabilitated and meets some of the Department's criteria for weighing and assessing rehabilitation. However, Mr. Hammerburg's testimony regarding the criminal offenses, particularly the drug charges, was often vague, and sometimes unpersuasive and lacking in credibility. His denial that he was involved with the sales of cocaine was particularly lacking in credibility and unpersuasive. His substance abuse recovery program is similarly vague. It does not appear that he has any firmly structured accountability and support program in place at the present time, a potentially slippery proposition for one once addicted to such a pervasive narcotic as rock cocaine. The fact that Mr. Hammerburg did not appear to be very concerned about the possibility for relapse by structuring for himself an organized relapse prevention program with checks and supports outside himself is cause for concern. Yet he did complete the New Connections treatment program, was faithful in attending NA meetings for at least a couple of years, evidently passed random drug screenings and successfully completed both conditional probations. His claims of continuing sobriety since completing the programs are not refuted by any real evidence, and it is strongly hoped that he never has a relapse for the remainder of his life. But in light of his lack of credibility regarding the extent and level of his involvement in drugs in the first place, the level of confidence that can be attributed to such statements standing alone, without any sort of outside accountability, such as the continuation of clean random bodily fluids screenings and regular support group attendance, is lower than it might be in the presence of such external checks.

19. Counsel for the Department pointed out that issuing insufficient funds checks is a particular problem for a person working in a profession where honesty and reliability regarding the use of negotiable instruments is absolutely essential. Mr. Hammerburg made full restitution for the checks but did not appear to appreciate the import of counsel's comments and did not address this issue in his testimony. The casual manner in which Mr. Hammerburg addressed the issue of his writing the bad checks is a legitimate concern. In mitigation of these concerns, Mr. Hammerburg enjoys a good reputation for honesty and trustworthiness with those who have dealt with him as a real estate professional. He obtained expungement of the conviction as well.

20. There is enough rehabilitation present that Mr. Hammerburg should be allowed to continue as a restricted real estate broker licensee, under the supervision of a fully informed broker. The broker's license currently permits Mr. Hammerburg to work completely unsupervised, if he chooses to do so. The evidence Mr. Hammerburg presented does not support allowing that to continue without a significantly longer period of crime and drug free rehabilitation.

## LEGAL CONCLUSIONS

1. "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."<sup>3</sup>

2. Mr. Hammerburg violated section 490, as set forth in the Factual Findings. Mr. Hammerburg was convicted in 1997 of the crimes of writing checks knowing he did not have sufficient funds to cover them when they were presented for payment, and for maintaining a house where drugs were sold or used. As set forth in the Factual Findings, both crimes involve moral turpitude. "Moral turpitude" means a general "readiness to do evil"<sup>4</sup>... "We recently summarized the moral character requirement this way: "Good moral character includes traits of 'honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the laws of the state and the nation and respect for the rights of others and for the judicial process.' [Citation omitted in original.] Persons of good character also do not commit acts or crimes involving moral turpitude—a concept that embraces a wide range of deceitful and depraved behavior. [Citations omitted in original.]"<sup>5</sup> Conviction of a crime involving theft necessarily involves moral turpitude.<sup>6</sup> Writing knowingly insufficient funds checks is a form of theft. As set forth in the Factual Findings, the circumstances of the conviction for maintaining a house where drugs are used or sold in this instance is a crime involving moral turpitude.

3. "(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.
- (2) Counterfeiting, forging or altering on an instrument or the uttering of a false statement."

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<sup>3</sup> Business and Professions Code section 490.

<sup>4</sup> People v. Castro (1985) 38 Cal. 3d 301, 314

<sup>5</sup> In re Lesansky (2001) 25 Cal.4th 11, 16, In re Gossage (2000) 23 Cal.4th 1080, 1095

<sup>6</sup> People v. Castro (1985) 38 Cal.3d 301, 315-316, In re Rothrock (1940) 16 Cal.2d 449, 454



“...”

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”<sup>7</sup>

4. Both convictions involve conduct that is substantially related to the qualifications, functions, and duties of a real estate broker, as set forth in the Factual Findings. The theft nature and the involvement of negotiable instruments of the insufficient funds checks conviction fits squarely within the meaning of the Department’s regulatory criteria for substantially related convictions.<sup>8</sup> The drug conviction is less clear, but under the facts and circumstances of this case, the conviction reflects a licensed broker’s misuse of real estate as a shield for his own and his tenants’ drug activities, as well reflecting the continuation of real estate practice while suffering from a significant impairment due to substance abuse, an impairment Mr. Hammerburg acknowledged. In these senses, the drug conviction was for a criminal offense that does reflect a substantial relationship to the qualifications, functions and duties of a real estate broker, as set forth in detail in the Factual Findings. Legal cause therefore exists to revoke or suspend Mr. Hammerburg’s real estate broker’s license for the drug conviction as well.

5. “The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

“...”

“(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.”<sup>9</sup>

6. Separate legal cause exists pursuant to section 10177(b) for the revocation or suspension of Mr. Hammerburg’s real estate broker’s license. As set forth above, he has been convicted of two separate misdemeanor criminal offenses, each of which involves moral turpitude and each of which is substantially related to the qualifications, functions and

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<sup>7</sup> Title 10, California Code of Regulations section 2910, in pertinent part.

<sup>8</sup> Id.

<sup>9</sup> Business and Professions Code section 10177(b).

duties of a real estate broker. Both convictions have been expunged pursuant to Penal Code section 1203.4, but that fact is one of mitigation and not a defense to a revocation or suspension action.

7. "The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances."<sup>10</sup>

8. Mr. Hammerburg has demonstrated partial rehabilitation, as set forth in the Factual Findings. It has been more than two years since Mr. Hammerburg sustained the criminal convictions and longer since the criminal activity that led to the criminal actions. Mr. Hammerburg successfully completed his probations, paid all fines and penalties, made full restitution and successfully obtained Orders of the Superior Court expunging the convictions in June 2002. He successfully completed a drug rehabilitation program in 1998, attended NA meetings through 1999, and there is no evidence that he has relapsed back into a life of substance abuse. The testimony of his friends and business associates confirmed that Mr. Hammerburg has changed his social associates and has a good reputation for honesty and trustworthiness in his professional real estate activities with Real Estate Unlimited. There is sufficient evidence of rehabilitation such that Mr. Hammerburg's license should not be revoked outright. However, there is insufficient evidence of rehabilitation that would sustain leaving the broker's license unrestricted, which permits Mr. Hammerburg to practice entirely unsupervised, intact. Of particular concern is the dearth of objective, extrinsic evidence of sustained, accountable recovery from 2000 forward, except Mr. Hammerburg's testimony, which was vague and less than credible in places when describing the scope and level of his drug activities. Mr. Hammerburg will most likely be able to hold his gains and prove over time a sustained and relapse free recovery. As he does so, he will then be able to upgrade his license again, losing the restrictions and returning to an

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<sup>10</sup> Title 10, California Code of Regulations section 2912.

unrestricted broker's license. But that time has not yet passed, and the objective evidence of recovery is not yet present.

### ORDER

All licenses and licensing rights of respondent Glenn Allen Hammerburg 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. 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 (2) years have elapsed from the effective date of this Decision.
4. 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 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.
5. Respondent may not serve as broker of record for any firm, not may he practice real estate unsupervised by a broker of record. Respondent must be employed by an employing broker during the restricted license period who is willing to associate him with that broker's firm and supervise his activities for which a real estate license is required. Respondent may not practice alone. 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

*NOT ADOPTED*

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.

6. 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.

DATED: October 24, 2002

*Stephen J. Smith*

STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings

FILED  
AUG 29 2002

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

*In the Matter of the Accusation of*

GLENN ALLEN HAMMERBURG,

}

Case No. H-1532 FRESNO

OAH No. N-2002070653

*Respondent*

**FIRST CONTINUED  
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 STATE BUILDING, 2550 MARIPOSA MALL, ROOM 1038, FRESNO, CALIFORNIA 93721** on **OCTOBER 7, 2002**, at the hour of **1:30 PM**, 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, 2002

By Larry Alamao  
LARRY A. ALAMA, Counsel

FILED  
AUG - 2 2002

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

DEPARTMENT OF REAL ESTATE

By Kathleen Centenas

*In the Matter of the Accusation of*

GLENN ALLEN HAMMERBURG,

} Case No. H-1532 FRESNO

} OAH No. N-2002070653

\_\_\_\_\_  
*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, 560 J STREET, SUITES 340/360, SACRAMENTO, CA 95814** on **OCTOBER 2, 2002**, at the hour of **10:30 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.

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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 1, 2002

By

Larry Alamao  
LARRY A. ALMAO, Counsel

1 LARRY A. ALAMAO, Counsel  
State Bar No. 47379  
2 Department of Real Estate  
P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
APR 29 2002

DEPARTMENT OF REAL ESTATE

By *Katherine Contreras*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

11 In the Matter of the Accusation of )  
12 )  
12 GLENN ALLEN HAMMERBURG, ) NO. H-1532 FRESNO  
13 )  
13 Respondent. ) ACCUSATION  
14 )

15 The Complainant, John W. Sweeney, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of Accusation  
17 against GLENN ALLEN HAMMERBURG (hereinafter "Respondent"), is  
18 informed and alleges as follows:

I

19  
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.

II

24  
25 The Complainant, John W. Sweeney, a Deputy Real Estate  
26 Commissioner of the State of California, makes this Accusation in  
27 his official capacity.



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III

On or about June 2, 1999, in the Superior Court of California, County of Fresno, Respondent was convicted of violation of Section 476(a) of the California Penal Code (Non-Sufficient Funds Checks), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about June 7, 1999, in the Superior Court of California, County of Fresno, Respondent was convicted of violation of Section 11366 of the California Health and Safety Code (Maintenance of Location for Sale of Controlled Substance), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.


V

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

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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.

  
JOHN W. SWEENEY  
Deputy Real Estate Commissioner

Dated at Fresno, California,  
this 10<sup>th</sup> day of April, 2002.