



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

WILFREDO CONCEPCION PASCUAL,  
  
Respondent.

Case No. H-8018 SF

OAH No. N2001120031

**PROPOSED DECISION**

On February 13, 2002, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry A. Alamao, Counsel, represented the Department of Real Estate.

Respondent Wilfredo Concepcion Pascual did not appear for the hearing in this matter.

On February 13, 2002, the record closed and the matter was deemed submitted.

**FINDINGS OF FACT**

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

2. Upon a determination that the accusation and notice of hearing had been properly served in accordance with Government Code sections 11505 and 11509, the matter proceeded as a default hearing under Government Code section 11520.

3. Respondent Wilfredo Concepcion Pascual ("respondent") is presently licensed and/or has licensing rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.

4. On June 28, 2001, the Superior Court of California, County of Alameda, convicted respondent, on his plea of nolo contendere, of the offense of violating California Penal Code § 487, subdivision (a) (Grand Theft), a felony.

The offense of grand theft involves moral turpitude and is substantially related to the qualifications, functions or duties of a real estate licensee. (California Code Regulations, title 10, § 2910).

5. The facts and circumstances of respondent's acts that led to his conviction in June 2001 are provided by a crime report by the Union City (Alameda County) Police Report, dated January 20, 2000.

The police crime report shows that over the period of May 20, 1999, to June 28, 1999, respondent in his capacity as a real estate licensee employed at the Union City office of San Francisco Mortgage Exchange stole about \$9,000 from an escrow account, which had been established in the name of Oscar Lopez. Respondent embezzled the money through representations to Oscar Lopez that the checks, in an amount of \$8,800, as given to respondent would be deposited into an escrow account established for closing of a real estate transactions through San Francisco Mortgage Exchange. Respondent's employer – San Francisco Mortgage Exchange – was required to pay \$9,100 to the escrow account for Oscar Lopez upon the closing of a real estate sales transaction to which the consumer was a party.

6. As a result of the June 2001 conviction, the court suspended sentencing, placed respondent on probation and prescribed certain terms and conditions of probation. The court established a term of three years probation. The court sentenced respondent to confinement in county jail for two days, but granted him credit for time served. The court required that respondent pay a court fee of \$127 and \$100 to the state victims' restitution fund. Moreover, the court commanded respondent to stay away from the victims of his crime.

At a hearing on August 30, 2001, the Superior Court ordered respondent to pay restitution of \$9,100 to his crime victim: the San Francisco Mortgage Exchange.

7. In that respondent failed to appear at the hearing of this matter, no evidence in mitigation or rehabilitation is available. Hence, no basis exists to consider respondent's rehabilitation following his most recent criminal conviction.

*Matters that Indicate Respondent's Lack of Rehabilitation*

8. Respondent's felony conviction occurred in June 2001, which is less than one year ago.

9. The period of probation due to the criminal conviction will not expire until approximately June 2004.

10. No evidence exists that respondent has made full restitution of \$9,100 to the victim of his crime--San Francisco Mortgage Exchange, which had employed him.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that the Commissioner may suspend or revoke a license on the ground that the licensee has “been convicted of a crime... (that)... is substantially related to the qualifications, functions or duties of the business ... for which the license was issued....”

Business and Professions Code section 10177, subdivision (b) establishes that the Commissioner may suspend or revoke a license to a real estate licensee who has “been convicted of a felony, or a crime involving moral turpitude.”

Cause to suspend or revoke respondent’s license as a real estate salesperson exists under Business and Professions Code sections 490 and 10177, subdivision (b), by reason of the matters set forth in Factual Findings 4.

2. Absent compelling evidence in mitigation or rehabilitation, it would be contrary to the public interest to permit respondent to retain a salesperson license.

## ORDER

All licenses and licensing rights of respondent Wilfredo Concepcion Pascual under the Real Estate Law are revoked.

DATED: February 25, 2002



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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

**FILED**

NOV 28 2001

DEPARTMENT OF REAL ESTATE

*In the Matter of the Accusation of*

WILFREDO CONCEPCION PASCUAL

By Shelley Ely

Case No. H-8018 SF

OAH No.

\_\_\_\_\_  
*Respondent*

**NOTICE OF HEARING ON ACCUSATION**

***To the above named respondent:***

***You are hereby notified*** that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, THE ELIHU HARRIS STATE BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612** on **FEBRUARY 13, 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.

Dated: NOVEMBER 28, 2002

DEPARTMENT OF REAL ESTATE

By

Larry Alamao  
LARRY ALAMA, Counsel

1 MICHAEL B. RICH, Counsel  
State Bar No. 84257  
2 Department of Real Estate  
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FILED  
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DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of )  
12 WILFREDO CONCEPCION PASCUAL, )  
13 Respondent. )  
14 \_\_\_\_\_ )

No. H- 8018 SF

ACCUSATION

15 The Complainant, LES BETTENCOURT, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of accusation  
17 against WILFREDO CONCEPCION PASCUAL (hereinafter referred to as  
18 "Respondent") is informed 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 California Business and Professions Code) as a real estate  
23 salesperson.

24 II

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


1 III

2 On or about June 28, 2001, in the Superior Court,  
3 County of Alameda, Respondent was convicted of violation of  
4 Section 487(a) of the California Penal Code (Grand theft), a  
5 crime involving moral turpitude which is substantially related  
6 under Section 2910, Title 10, California Code of Regulations to  
7 the qualifications, functions or duties of a real estate  
8 licensee.

9 IV

10 The facts alleged above constitute cause under Sections  
11 490 and 10177(b) of the Code for suspension or revocation of all  
12 licenses and license rights of Respondent under the Real Estate  
13 Law.

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

21  
22   
23 LES BETTENCOURT  
Deputy Real Estate Commissioner

24 Dated at Oakland, California,  
25 this 16<sup>th</sup> day of October, 2001