



I

1  
2 In the Decision which revoked Respondent's real  
3 estate license, there were Legal Conclusions made that there  
4 was cause to revoke Respondent's real estate license pursuant  
5 to Business and Professions Code ("Code") Sections 490 and  
6 10177(b).  
7

8 On or about October 18, 2001, Respondent was  
9 convicted of violating Title 18, United States Code, Section  
10 1010 (fraud on a HUD program), a crime involving moral  
11 turpitude which is substantially related to the functions,  
12 qualifications and duties of a real estate licensee, pursuant  
13 to Section 2910, Title 10, Chapter 6, California Code of  
14 Regulations ("Regulations").  
15

16 The underlying facts of said conviction were that  
17 while working as a loan officer, Respondent obtained and passed  
18 false and fabricated documentation in support of applications  
19 for U.S. Department of Housing and Urban Development (HUD)  
20 loans.  
21

22 II

23 The burden of proving rehabilitation rests with the  
24 petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).  
25 A petitioner is required to show greater proof of honesty and  
26 integrity than an applicant for first time licensure. The proof  
27 must be sufficient to overcome the prior adverse judgment on the

1 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d  
2 395).

3           The Department has developed criteria in Title 10,  
4 Chapter 6, California Code of Regulations ("Regulations") 2911,  
5 to assist in evaluating the rehabilitation of an applicant for  
6 reinstatement of a license. Among the criteria relevant in this  
7 proceeding are:

8           2911(a) & 2911(k) - Respondent has not been licensed  
9 by the Department since his license was revoked. Additional  
10 time is needed to assess Respondent's rehabilitation.

11 Respondent has not shown correction of business practices  
12 resulting in injury to others or with the potential to cause  
13 such injury.

14           Given the fact that Respondent has not established  
15 that Respondent has complied with Regulations 2911(a) and  
16 2911(k), I am not satisfied that Respondent is sufficiently  
17 rehabilitated to receive a real estate salesperson license.

18           NOW, THEREFORE, IT IS ORDERED that Respondent's  
19 petition for reinstatement of Respondent's real estate  
20 salesperson license is denied.

21           I am satisfied, however, that it will not be against  
22 the public interest to issue a restricted real estate  
23 salesperson license to Respondent.

24           A restricted real estate salesperson license shall  
25 be issued to Respondent pursuant to Code Section 10156.5  
26 if Respondent within twelve (12) months from the date hereof:  
27

1 (a) takes and passes the written examination required  
2 to obtain a real estate salesperson license.

3 (b) makes application therefor and pays the  
4 appropriate fee for said license.

5 (c) takes and passes the Professional Responsibility  
6 Examination administered by the Department, including the  
7 payment of the appropriate examination fee for said  
8 Examination.  
9

10 The restricted license issued to Respondent shall be  
11 subject to all of the provisions of Code Section 10156.7 and to  
12 the following limitations, conditions and restrictions imposed  
13 under authority of Code Section 10156.6:  
14

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

21 2. The restricted license issued to Respondent  
22 may be suspended prior to hearing by Order of the Real Estate  
23 Commissioner on evidence satisfactory to the Commissioner that  
24 Respondent has violated provisions of the California Real  
25 Estate Law, the Subdivided Lands Law, Regulations of the Real  
26 Estate Commissioner or conditions attaching to the restricted  
27 license.

1           3. Respondent shall not be eligible to apply for  
2 the issuance of an unrestricted real estate license nor for  
3 the removal of any of the conditions, limitations or  
4 restrictions of a restricted license until two (2) years  
5 have elapsed from the effective date of this Decision.  
6

7           4. Respondent shall submit with any application for  
8 license under an employing broker, or with any application for  
9 transfer to a new employing broker, a statement signed by the  
10 prospective employing real estate broker on a form approved by  
11 the Department which shall certify:  
12

13           (a) That the employing broker has read the Decision  
14 of the Commissioner which granted the right to a restricted  
15 license; and

16           (b) That the employing broker will exercise close  
17 supervision over the performance by the restricted licensee  
18 relating to activities for which a real estate license is  
19 required.  
20

21           This Order shall become effective at 12 o'clock noon  
22 on JUL 15 2008

23 DATED: \_\_\_\_\_ *G. D. Davi* \_\_\_\_\_

24 JEFF DAVI  
25 Real Estate Commissioner  
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**FILED**  
FEB 11 2003  
DEPARTMENT OF REAL ESTATE  
*[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of     )           No. H-29495 LA  
  )           L-2002060655  
ROBERT EDUARDO ALVAREZ,                    )  
  )  
  )           Respondent.     )  
  )

DECISION AFTER REJECTION

This matter came on for hearing before Joseph D. Montoya, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on August 21, 2002. Martha J. Rosett, Counsel, represented the Complainant, Maria Suarez, a Deputy Real Estate Commissioner for the State of California. The Respondent, ROBERT EDUARDO ALVAREZ (hereinafter "Respondent") appeared in person and was represented by Roger W. Calton, Esq. All evidence being received, the matter was deemed submitted for decision at that time.

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///  
///

1 On September 20, 2002, the Administrative Law Judge  
2 submitted a Proposed Decision which I declined to adopt. My  
3 Decision is set forth herein.

4 Pursuant to Section 11517(c) of the Government Code of  
5 the State of California, Respondent was served with notice of my  
6 determination not to adopt the Proposed Decision of the  
7 Administrative Law Judge along with a copy of said Proposed  
8 Decision. Respondent was notified that the case would be  
9 decided by me upon the record, the transcript of proceedings  
10 held on August 21, 2002, and upon any written argument offered  
11 by Respondent and Complainant. Respondent submitted written  
12 argument on November 19, 2002. Complainant submitted further  
13 argument on January 16, 2003.

14 I have given careful consideration to the record in  
15 this case including the transcript of the proceedings of  
16 August 21, 2002. I have also considered the Arguments submitted  
17 by Respondent and Complainant.

18 The following shall constitute the Decision of the  
19 Real Estate Commissioner in this proceeding.

20 FINDINGS OF FACT

21 1. Complainant Maria Suarez filed the Accusation in  
22 the above-captioned proceeding while acting in her capacity as a  
23 Deputy Real Estate Commissioner of the Department of Real Estate  
24 ("the Department"), State of California.

25 2. Respondent ROBERT EDUARDO ALVAREZ is currently  
26 licensed as a real estate salesperson by the Department. His  
27 license, number 01081747, is current. He has been licensed since

1990.

1  
2 3. On October 18, 2001, in the United States District  
3 Court for the Central District of California, in Case No. SA CR-  
4 00- 1 56-GLT, . Respondent was convicted of violating Title 18 of  
5 the United States Code, Section 1010 (fraud on a HUD program).  
6 The conviction followed Respondent's guilty plea, by which he  
7 admitted to passing as true, "a document, knowing it to have been  
8 altered, forged and counterfeited."

9 4. Respondent was sentenced to five years probation,  
10 the terms of which included home detention for four months. He  
11 was ordered to pay restitution of \$125,000.00 and to perform 250  
12 hours of community service, along with some fines and penalties.  
13 Other terms and conditions, standard to probation grants, were  
14 imposed as well, including that Respondent report to the  
15 Probation Officer all real estate transactions in which he  
16 represents the buyers or the sellers. Respondent was also  
17 required to report his conviction to the Department of Real  
18 Estate within thirty days. (It should be noted that this is a  
19 standard requirement in loan fraud cases. HUD and the FBI can  
20 criminally prosecute and prevent fraud in the processing of HUD  
21 loans. However, only state licensing agencies, such as the  
22 Department of Real Estate, can revoke a license to prevent fraud  
23 in connection with all other loans and real estate transactions.)

24 5. Respondent has completed only one of the five years  
25 of probation, which is scheduled to end in 2006. By his own  
26 account, as of hearing, Respondent had completed 100 hours of the  
27 250 hours of community service ordered by the court. Respondent



1 did pay the entire restitution amount of \$125,000.00. Respondent  
2 testified that he has not been providing reports regarding his  
3 licensed activities to the Probation Officer because he has not  
4 been asked to.

5 6. The facts and circumstances of the crime, which  
6 are set forth in the Government's Position with Respect to  
7 Sentencing, are described as follows:

8 "As part of the government's HUD fraud initiative, the  
9 FBI opened an investigation of several prominent investors  
10 who purchased and resold properties using fraudulently  
11 obtained HUD loans. In reviewing loan files for these  
12 investors, the FBI learned that defendant Robert Alvarez  
acted as a loan broker for some of these investors. In  
this capacity, defendant obtained and passed false and  
fabricated income, asset and down payment documentation in  
support of numerous applications for HUD loans."  
13 (Respondent's Exhibit A, page 3)

14 Respondent was engaged in an ongoing practice of  
15 fraudulent conduct relating to HUD loans. One of those instances  
16 formed the specific basis for his conviction, but that instance  
17 was not in fact an isolated occurrence.

18 7. Respondent's testimony at the administrative  
19 hearing regarding the facts and circumstances of his crime  
20 focussed on the specific instance for which he was convicted. He  
21 explained that at the time of the conduct leading to his  
22 conviction, he was employed as a loan officer at Mark I Mortgage,  
23 where he remained until April 12, 2000. In approximately August  
24 of 1999, he submitted a loan package to a lender which contained  
25 information which Respondent knew to be false. Namely, the  
26 package contained a "gift letter" to a lender, indicating that  
27 the borrowers had received a certain amount of the funds used for

1 down payment as a gift, when in fact the funds were not a gift.  
2 The lender was thereby falsely assured in writing that money  
3 invested in a property by the purchaser was unencumbered, i.e.,  
4 was not a loan from someone else, but a gift to the borrowers.

5 8. Respondent further testified that over the course  
6 of his approximately ten years as a licensed real estate  
7 salesperson, he would sometimes loan clients money to cover the  
8 downpayment and not report that loan in the documentation  
9 provided to the lender.

10 9. As of the time of hearing, Respondent said that he  
11 was employed as a loan officer at Ameristar Lending in Orange  
12 County, where he had worked since June of 2000. He testified  
13 that his employer, Ameristar Lending, and broker Michael Pollock,  
14 are aware of his fraud conviction. Respondent did not however,  
15 provide any additional direct evidence in the form of testimony  
16 or a letter of reference from his employing broker. There was no  
17 evidence provided from any source, other than his own testimony,  
18 as to Respondent's work habits and ethics. There was therefore  
19 no reliable evidence upon which to gauge rehabilitation in this  
20 regard.

21 10. Respondent testified about his family life. He is  
22 currently married, and has been for approximately ten years.  
23 Respondent has two children by his wife, and they are raising a  
24 niece, the daughter of his wife's deceased sister. He is active  
25 in his community, coaching two youth sports, and leading his  
26 daughter's Indian Princess group, an organization affiliated with  
27 the YMCA.

1           11. Respondent emphasizes, in mitigation, that he was  
2 quick to cooperate with the Federal Prosecutors and provide them  
3 with information about others with whom he was associated in the  
4 real estate industry who were also engaging in illegal practices.  
5 A copy of the U.S. Attorney's Brief entitled, "The Government's  
6 Position with Regards to Sentencing", originally submitted for  
7 consideration by the sentencing court, was admitted as  
8 Respondent's "Exhibit A" in these proceedings as administrative  
9 hearsay, subject to the limitations set forth in Government Code  
10 Section 11513(d). Among other things, this document, along with  
11 the Probation Officer's Letter (Respondent's "Exhibit B")  
12 describes how, in exchange for his cooperation, Respondent  
13 received relatively lenient treatment, and was only charged with  
14 one of what the U.S. Attorney characterizes as "numerous"  
15 incidents of illegal activity. Respondent was also spared any  
16 time in prison, serving four months house detention instead.  
17 There was nothing altruistic about Respondent's conduct, which  
18 was motivated solely by the benefits conferred and the need to  
19 minimize the imposition of a more severe sentence.

21           12. The criminal court documents provided are not  
22 conclusive one way or another as to whether the loan in question  
23 went into default and if so, what losses were incurred. However,  
24 as noted in the Probation Officer's letter to the criminal court,  
25 Respondent's Exhibit B,

26           "The loss calculation in this case may under-represent  
27 the actual risk posed to lenders by the defendant's actions.  
Alvarez, seems to be benefiting from the booming Southern

1 California real estate market which is raising property  
2 values even in the economically depressed neighborhoods  
3 where many of these properties were "flipped." The  
4 properties which were sold for a profit could have easily  
5 suffered significant losses had the real estate market  
6 fallen. Although an upward departure is not recommended,  
7 this unaddressed risk is considered a factor in aggravation  
8 which justifies the additional sanction of community  
9 service." (Respondent's Exhibit B, p.3)

6 13. Nothing has been offered on behalf of Respondent  
7 from the Federal Government by way of recommendation regarding  
8 these administrative proceedings and Respondent's licensure.  
9 Rather, Exhibits A and B were originally prepared in the context  
10 of making a recommendation as to the criminal sentencing and  
11 propriety of prison time. The U.S. Attorney's opinion expressed  
12 therein with regards to Respondent's "recidivism," was in that  
13 context. The terms of probation do in fact include notifying the  
14 Department of Real Estate and also include provisions regarding  
15 Respondent's providing reports to the Probation Officer regarding  
16 activities for which a real estate license is required.

18 14. As his one character witness, Respondent's wife,  
19 Debra Leann Alvarez, was present at hearing and testified on his  
20 behalf. She described the toll this matter has taken on their  
21 family and expressed her fears that if Respondent loses his real  
22 estate license, the family will have no other way to support  
23 itself. However, those fears seem unfounded, given her own work  
24 history, which included corporate collections, and Respondent's  
25 own skills which can be applied in a context that does not  
26 require access to highly sensitive financial transactions. Mrs.  
27 Alvarez was not able to shed any meaningful light on Respondent's

1 rehabilitation from a business perspective, as she says she was  
2 not aware of his business dealings during the period leading to  
3 his conviction.

4 LEGAL CONCLUSIONS

5 1. Respondent's conviction for HUD fraud constitutes a  
6 crime of moral turpitude. That crime is substantially related to  
7 the duties, qualifications, and functions of a real estate  
8 licensee, based on Title 10, Chapter 6, California Code of  
9 Regulations (hereafter "CCR"), section 2910(a)(2), (a)(4) and  
10 (a)(8).

11 2. Cause exists to suspend or revoke or otherwise  
12 discipline the real estate salesperson license issued to  
13 Respondent ROBERT EDUARDO ALVAREZ pursuant to Business and  
14 Professions Code sections 490 and 10177(b), for his conviction of  
15 a crime of moral turpitude.

16 3. Application of the Criteria for Rehabilitation set  
17 forth in Regulation 2912 reveals the following:

18 (a) A little over one year has passed since  
19 Respondent's conviction in October of 2001. It is reasonable to  
20 assume that having recently been convicted of a very serious  
21 crime that is directly related to his profession, an individual  
22 will do and say anything to make things right, at least for a  
23 period of time. Rehabilitation must be viewed over a period of  
24 time longer than one or two years in a case such as this when the  
25 underlying illegal practices took place over the course of years.

26 (b) Respondent has made restitution in the amount of  
27 \$125,000. He is very fortunate to have been in a position to

1 complete making restitution so quickly.

2 (c) Respondent's conviction has not been expunged.

3 (e) Respondent has not completed probation. He has  
4 only completed a little over one year of a five year term and  
5 remains on probation until 2006. As of hearing, he had only  
6 completed 100 of the 250 hours of community service ordered,  
7 primarily cleaning beaches.

8 (f) There is no evidence that Respondent's criminal  
9 conduct was related to alcohol or drug abuse, so Regulation  
10 2911(f) does not apply.

11 (g) Fines have been paid.

12 (h) According to Respondent and his wife, their family  
13 life has been strengthened by having to deal with the  
14 consequences of Respondent's conviction. They say that  
15 Respondent spends more time than he used to at home and is more  
16 active than he used to be in community activities involving his  
17 children. It is unfortunate that Respondent did not take his  
18 familial responsibilities more seriously before deciding it was  
19 acceptable to regularly participate in fraud and illegal conduct  
20 as a means to make a living. Hopefully, Respondent is in the  
21 process of changing in this regard, but again, not enough time  
22 has passed to tell.

23 (i) There is no evidence of any new formal educational  
24 or vocational training courses.

25 (j) There is no evidence that Respondent is operating  
26 under a tremendous debt load, so Regulation 2911(j) does not  
27 apply.

1 (k) No evidence was presented to corroborate or  
2 otherwise support Respondent's assertion that he has implemented  
3 meaningful changes in his business practices. The absence of any  
4 evidence in the form of letters of support or testimony from  
5 supervising brokers or from any individuals in the industry is  
6 glaring. Not one person who has worked with Respondent on a  
7 day-to-day basis over a period of time has offered a  
8 recommendation that he be allowed to keep his real estate  
9 license. The record is devoid of any evidence upon which to  
10 evaluate Respondent's character qualifications in the context of  
11 his professional reputation for honesty and integrity, other than  
12 the criminal records themselves.

13 (l) With regards to community activities, Respondent  
14 has 150 hours of the court ordered 250 hours to complete in his  
15 mandatory community service, which he has served cleaning  
16 beaches. Respondent and his wife testified to his increased  
17 involvement in the sports and social group activities of the  
18 three children he and his wife are raising.

19 (m) Respondent is no longer working at the real estate  
20 company where he was working when he committed the acts leading  
21 to his criminal conviction. Other than the points raised in  
22 items (a) through (l) above, no witnesses or documents were  
23 introduced into the record to address changes in Respondent's  
24 social and business relationships.

25 (n) With regards to change in attitude from that which  
26 existed at the time of the conduct in question, both at hearing  
27 and in his interview with the Department's representative during

1 the investigation of this matter, Respondent did not seem to  
2 understand the gravity of his conduct. Respondent expressed  
3 dismay at the misperception that no one else has been or will be  
4 disciplined by the Department for fraudulent conduct of the kind  
5 in which he engaged. This is somewhat contradictory to the  
6 documents Respondent submitted from the federal court which  
7 describe how Respondent was caught up in a larger prosecution of  
8 an industry wide practice. It is entirely inconsistent with his  
9 claim that lenience is due because his cooperation with the  
10 Federal prosecutors was significant and led to the successful  
11 prosecution of others.

12 4. Honesty and integrity are crucial among the  
13 qualifications to be a real estate licensee and to handle the  
14 tremendous fiduciary responsibilities such licensure carries with  
15 it. Having been convicted of loan fraud, based on an admission  
16 of factual guilt, Respondent's character and fitness have been  
17 called into question. A period of longer than one year free of  
18 misconduct is necessary to establish rehabilitation. In  
19 addition, Respondent's claim that he was acting at the behest of  
20 others merely underscores his inability to take responsibility  
21 for his actions and his failure to comport his actions within the  
22 bounds of the law.

23 5. The Administrative Law Judge made it clear that the  
24 Complainant met its burden in establishing that grounds exist to  
25 revoke or otherwise discipline Respondent's real estate license.  
26 That having been met, the degree of discipline rests solely with  
27 the Commissioner. (Golde v. Fox(1979) 98 Cal.App.3d 167, 178)



1 Respondent's conviction, and the totality of the circumstances  
2 surrounding it call into question his integrity and honesty  
3 necessary to carry out his fiduciary responsibilities to the  
4 public. While failure to meet even one of the enumerated  
5 criteria for rehabilitation would be sufficient to support an  
6 order revoking a license, in this case, Respondent has failed to  
7 meet many of these criteria. Respondent failed to demonstrate  
8 that the public interest would adequately be protected by  
9 allowing him to continue to hold any form of real estate license  
10 at this time.

11 6. I disagree with the Administrative Law Judge's  
12 opinion that Respondent poses a low risk of further violations of  
13 the Real Estate Law, or any law. Whether Respondent will  
14 continue to avoid committing fraudulent crimes is unknown. After  
15 Respondent has spent a period of time without the supervision of  
16 the criminal justice system, his actions can be again evaluated  
17 and his level of rehabilitation can be more accurately  
18 determined. California courts have held that little weight is  
19 placed on the fact that a license applicant did not commit  
20 additional crimes while in prison, or while on parole or  
21 probation. (See In re Menna (1995) 11 Cal.4<sup>th</sup> 975; Seide v.  
22 Committee of Bar Examiners (1989) 49 Cal.3d 933) For example, In  
23 re Gossage (2000) 23 Cal.4<sup>th</sup> 1080, the court noted that persons  
24 under the direct supervision of correctional authorities are  
25 required to behave in an exemplary fashion and gave little weight  
26 to the fact that a licensee did not commit additional crimes  
27

1 during the period of probation or while engaged in the  
2 disciplinary process. Such is the case with Respondent.

3 In short, there is insufficient evidence upon which to  
4 base a determination that the public would be adequately  
5 protected by the issuance of a restricted license to Respondent  
6 at this time.

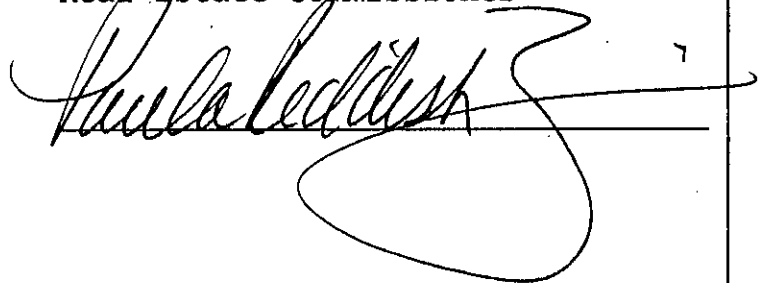
7 ORDER

8 All licenses and licensing rights of Respondent ROBERT  
9 EDUARDO ALVAREZ under the Real Estate Law are revoked.

10 This Decision shall become effective at 12 o'clock noon  
11 on March 3, 2003.

12 IT IS SO ORDERED February 10, 2003.

13  
14 PAULA REDDISH ZINNEMANN  
15 Real Estate Commissioner  
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A large, stylized handwritten signature in black ink, appearing to read "Paula Reddish Zinnemann", is written over a horizontal line. The signature is highly cursive and extends significantly to the right of the line.

*Sacto  
2/16/02*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILE**  
JUL 16 2002  
DEPARTMENT OF REAL EST.  
*Jane B. ...*

\* \* \* \* \*

In the Matter of the Accusation ) Case No. H-29495 LA  
) OAH No. L-2002060655  
ROBERT EDUARDO ALVAREZ, )  
)  
Respondent(s). )

**NOTICE OF HEARING ON ACCUSATION**

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on AUGUST 21, 2002, at the hour of 9:00 a.m., 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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: July 16, 2002

DEPARTMENT OF REAL ESTATE

By: *Martha J. Rosett*  
MARTHA J. ROSETT, Counsel

cc: Robert Eduardo Alvarez.  
Ameristar Lending Group, Inc.  
Roger W. Calton  
Sacto., OAH

*State*  
*2002*

**FILED**  
OCT 18 2002  
DEPARTMENT OF REAL ESTATE

*Sandra B. Orme*

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

In the Matter of the Accusation of	)	No. H-29495 LA
ROBERT EDUARDO ALVAREZ,	)	L-2002060655
	)	
	)	
Respondent.	)	

NOTICE

TO: ROBERT EDUARDO ALVAREZ, Respondent, and ROGER W. CALTON, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 20, 2002, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 20, 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 August 21,

///



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of Accusation Against:

ROBERT EDUARDO ALVAREZ,

Respondent.

Case No. H-29495 LA

OAH No. L2002060655

**PROPOSED DECISION**

The above-captioned matter was heard by Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California on August 21, 2002. Complainant was represented by Ms. Martha J. Rosett, Staff Counsel, Department of Real Estate. Respondent appeared with his attorney, Mr. Roger W. Calton.

Evidence was received, the case argued, and the matter submitted on the hearing date. The Administrative Law Judge hereby makes his findings of fact, conclusions of law, and orders, as follows:

**FINDINGS OF FACT**

1. Complainant Maria Suarez filed the Accusation in the above-captioned proceeding while acting in her capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("the Department"), State of California.
2. Respondent Robert Eduardo Alvarez is currently licensed as a real estate salesperson by the Department. His license, number 01081747, is current. He has been licensed since 1990.
3. On October 18, 2001, Respondent was convicted of a serious crime. The conviction entered in the United States District Court for the Central District of California in the case *United States vs. Robert Alvarez*, case no. SA CR-00-156-GLT. Respondent was convicted of one count of violating Title 18 of the United States Code, at section 1010. That conviction followed Respondent's guilty plea, and by that plea he was convicted of fraud on a HUD program.

4. (A) The Federal Court sentenced the Respondent to five years probation, including a term of home detention for a period of four months. He was ordered to pay restitution of \$125,000.00 and to perform 250 hours of community service, and some fines and penalties. Other terms and conditions, standard to probation grants, were imposed as well.

(B) It should be noted that the United States Attorney moved the court for a reduced sentence in the matter "for his substantial assistance to authorities." (See Exhibit "A", page 1, lines 22-23.) The prosecutors informed the Federal Court that respondent assisted in investigation and prosecution of several HUD fraud perpetrators, including one of the largest perpetrators—one of the people making the most profits from fraud—and that because of Respondent's assistance one of the most prevalent fraud schemes ("property flipping") had been substantially curtailed. Respondent's assistance was "extremely significant and useful" (Id., page 4, line 22), and his information was truthful, reliable, and complete. He suffered a significant risk of reprisal and injury.

(C) The U.S. Attorney concluded that ". . . [Respondent] presents an especially low risk of recidivism. [Respondent] has led a largely law abiding life. When his crime was discovered, he not only accepted responsibility and showed remorse, but he also took positive steps to remedy the harm caused by his misconduct by diligently assisting authorities." (Exhibit "A", page 6, lines 9 through 13.)

5. The facts and circumstances of the crime follows. Respondent worked as a loan officer in the employ of a licensed real estate broker. In approximately August 1999, he had submitted a "gift letter" to a lender, so that the lender was assured in writing that money invested in a property by the purchaser was unencumbered, *i.e.*, was not a loan from some one else, but a gift to the borrowers.

6. Respondent has already paid the entire restitution amount of \$125,000 to the federal government, even though the terms of probation allowed a period of time to make payments on nearly half of the sum. He did this by liquidating assets, including some of his wife's retirement funds. He has completed approximately 100 of the 250 hours of community service obligation imposed upon him by the federal court.

7. (A) Respondent is currently married, and has been for approximately ten years. His wife has been highly supportive of Respondent, and helped pay the restitution from her separate property. Respondent has two children by his wife, and they are raising a niece (the daughter of his wife's sister) who was orphaned. Respondent is the sole source of support for his family. Respondent has a stable family situation, a fact corroborated by the federal probation office when it evaluated Respondent for sentencing. Respondent is also active in his community, such as coaching two youth sports, and leading his daughter's Indian Guides group, an organization affiliated with the YMCA.

(B) Mrs. Alvarez was credible in her testimony in her demeanor, including in the way in which she responded to cross-examination. She credibly testified to the matters above, and to the fact that Respondent has made significant changes in his lifestyle in the past two years. These changes are related to changes in his work environment, as he is in a more stable employment and closer to home. This has allowed his better side to reassert itself.

8. Respondent is employed as a loan officer at an established firm in Orange County, having left the firm that was involved in the false transactions. He has been in the current job for approximately two years. His employment situation is stable, as his employer is aware of the conviction. At his new firm there is much more oversight of transactions, and people to review them, and the transactions are more conventional than those Respondent processed in his past employment. Mr. Alvarez' current job allows him to spend more time with his family, strengthening that unit.

9. While Respondent was prosecuted for only one wrongful incident, there is evidence that he had involved himself in other questionable transactions. The U.S. Attorney's memorandum to the court (Ex. "A") indicates that he was involved with other wrongdoing, but those prosecutors only filed one claim against him. In late February 2002, during an interview at the Department, he gave the impression that he had been involved in other questionable transactions, at the behest of his employer, who told him that it was legal. From his testimony at this hearing, it was gleaned that Respondent was loaning money to some buyers, and obtaining repayment after the escrows closed.

10. It is found that, on balance, Respondent has a remorseful attitude toward his past misconduct. This finding is based on the testimony of the Respondent at the hearing, which was credible in terms of Respondent's demeanor, which indicated by body language and tone a discomfort and shame for his actions. The finding is also based on the conclusions of the U.S. Attorney, which reported to the federal court that Respondent had exhibited remorse. (See Factual Finding 4(C), above.) It is fairly inferred that prosecutors had considerable contact with Respondent, as they plainly had to spend substantial time with Respondent in resolving the matter of his wrongdoing, and obtaining his cooperation. That Respondent expressed resentment about his conviction during the Department interview is somewhat understandable, as the memo indicates he was expressing dissatisfaction that others he was closely involved with, such as his employer, have seemingly gone unpunished, while he has already paid a considerable price for his misconduct.<sup>1</sup> It is also noted that Respondent reported his conviction to the Department, and apparently before his interview in February of 2002.

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<sup>1</sup> For example, Respondent was ordered to pay a rather large amount of restitution, but there is no evidence in any of the paperwork, including the probation report and motion to reduce sentence, that his actions caused any actual loss; there is no evidence of a default in the transaction that was charged in the criminal information. To be sure, this has been a result, as the federal authorities indicate, of a rising real estate market, but might make Respondent feel singled out when there is evidence that his broker and other licensees were also engaged in misconduct. However, he should not assume that the Department will let the matter alone, nor that the federal authorities are done with their case.



11. It is found that the Respondent poses a low risk of further violations of the Real Estate Law, or any law. This finding is based in part on the conclusions of the U.S. Attorney and the federal probation office, and each of them, that he poses a low risk of recidivism. Respondent has already paid dearly for his mistake, in terms of financial costs and emotional tolls on himself and his wife. He is fully aware that any wrongdoing could land him in the federal penitentiary, and destroy his marriage and family. Respondent in fact has a strong and stable family, and is in a stable job, which he has held two years. At that job there is not the same pressure to "cut corners" as in his former employment. This constitutes a change in his working circumstances, and there has been a change in business practices, and this minimizes the chance of further wrongdoing. There is no evidence that any substance abuse contributed to his wrongdoing, and in fact the evidence is to the contrary, as reported by the federal probation office.

12. In mitigation, there is no evidence of any loan default in connection with the transaction that actually gave rise to the conviction, or any other questionable act taken by Respondent in the past.

13. Under all the facts and circumstances, the public welfare and safety can be protected by a disciplinary order less than the outright revocation of Respondent's license.

### **LEGAL CONCLUSIONS**

1. Respondent's conviction for HUD fraud constitutes a crime of moral turpitude *per se*, based on Factual Findings 2, 3, and 5. That crime is substantially related to the duties, qualifications, and functions of a real estate licensee, based on Title 10, California Code of Regulations (hereafter "CCR"), section 2910(a)(2) and (a)(4).

2. Cause exists to suspend or revoke or otherwise discipline the real estate salesperson's license issued to Respondent Robert E. Alvarez pursuant to Business and Professions Code sections 490 and 10177(b), for his conviction of a crime of moral turpitude, based on Legal Conclusion 1, and Factual Findings 2, 3, and 5.

3. Respondent has taken substantial steps toward rehabilitation as defined in the Department's guidelines:

He has satisfied the restitution criteria of CCR section 2912(b), based on Factual Finding 6;

He has paid the fines ordered by the Court, based on Factual Finding 6, thereby meeting the criteria of section 2912(f);

He has corrected or changed his business practices, based on Factual Findings 8 and 11, meeting the criteria of section 2912(g);

He has new and different social and/or business relationships from those that he had at the time of his wrongdoing, based on Factual Findings 7(A) and (B), 8, and 11, meeting the criteria of section 2912(h);

He has shown a very stable family life and complete fulfillment of parental and familial obligation since his conviction, as set forth in the section 2912(i), based on Factual Findings 7(A) and (B), 8, and 11.

Respondent exhibits a change in attitude, as set forth in section 2912(l)(1), (2), and (3), based on Factual Findings 7(A) and 7(B), 8, 10, and 11.

4. Respondent has not satisfied the criteria set forth in section 2912(a) [two years from conviction], 2912(b) [expungement of the conviction]<sup>2</sup>, or 2912(d), successful completion of parole.

5. The regulation does not require a licensee to meet any particular criteria in moving to establish rehabilitation, nor does the regulation or any statute establish that more weight must be placed on any factor or factors, as opposed to another criteria.

6. Notwithstanding the forgoing conclusions, the public interest can be protected by a discipline order that does not require an outright revocation of Respondent's license, based on Factual Findings 4(B), 4(C), 6, 7(A) and 7(B), 8, 10, 11, 12, and 13, and Legal Conclusions 3 and 5.

#### Discussion and Rationale:<sup>3</sup>

Crimes of dishonesty generally constitute crimes of moral turpitude. (*E.g., In Re Rothrock* (1944) 25 Cal. 2d. 588.) Here a crime of fraud in connection with a real estate transaction is plainly related to the duties and qualifications of a real estate professional, because the public must be able to rely on the honesty and integrity of such licensees.

On the issue of rehabilitation, it is true that only one year has elapsed since Respondent's conviction, but it is noted that the crime occurred in 1999. Respondent's cooperation with the FBI began over two years ago, in August 2000, and it appears that the filing of the criminal information and entry of a plea was delayed while Respondent assisted the prosecutors. To place too much weight on section 2912(a) in this case would be to penalize a party for making efforts to rectify his wrongdoing, which is what Respondent did here. Likewise, while Respondent has not completed probation, he took waived some benefits of his plea agreement to pay all of the restitution before it was due. This supports the

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<sup>2</sup> However, federal law does not have "expungement" or an analog to Penal Code section 1203.4.

<sup>3</sup> The section that follows is within the ambit of Government Code section 11425.50(d) and is intended to explain the basis for the findings and conclusions, and to discuss legal issues. To the extent stated it is to augment credibility findings as well.

inference that Respondent can comply with any orders made by the Commissioner which are probationary in nature.

The purpose of this proceeding is not to punish the Respondent, but to protect the public. (*E.g., Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.) Given the evaluation by two federal offices that Respondent poses a low risk of recidivism, the public can be protected without an outright revocation. Further, in this case an outright revocation may send a message that licensees who transgress have nothing to gain by cooperation with criminal prosecutors or the Department, which does not appear a sound policy. Given the facts and circumstances of this case, revocation of Respondent's license with the issuance of a restricted license, along with a suspension, will allow Respondent to complete his rehabilitation, while providing adequate protection for the public. At the same time, a suspension would make clear to Respondent that his misconduct has not been approved, and will deter other licensees as well.

### ORDER

All licenses and licensing rights of Respondent Robert E. Alvarez under the Real Estate Law are revoked; provided, however, that a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays the Department of Real Estate the appropriate fee for a restricted license within ninety (90) days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provision of Section 1015.6 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. That the restricted license issued to Respondent be actually suspended for a period of thirty (30) days
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 conviction or plea of noel contendere to a crime which is substantially related to the Respondent's fitness or capacity as a real estate licensee.
3. 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, Regulation of the Real Estate Commissioner or conditions attaching to the restricted license.
4. 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.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the 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.

6. 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 orders 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, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which Respondent has engaged during the period covered by the report.

7. During the period that the restricted license is in effect Respondent shall obey all laws, rules, and regulations governing the rights, duties, and responsibilities of a real estate licensee in the State of California, and shall remain in compliance with the terms and conditions of his criminal probation.

8. Respondent shall provide a copy of this decision to any broker employing him at the time the decision becomes final, and within ten days of receiving it. Such broker(s) shall, within ten days of receipt from Respondent, provide to the Commissioner a written statement that certifies that such employer, partner, or corporation has read this Decision.

9. Respondent shall not change his place of employment or address of record without written notice to the Commissioner. Should Respondent seek to enter the employ of any other licensee, or to enter into any partnership with any other licensee, or become the officer of any corporate real estate licensee, he shall provide such person or persons a copy of this Decision. Such persons shall, within ten days of such employment, provide to the Commissioner a written statement which certifies that such employer, partner, or corporation has read this Decision of the Commissioner.

September 20, 2002

  
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JOSEPH D. MONTOYA  
Administrative Law Judge  
Office of Administrative Hearings

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3.

On or about October 18, 2001, in the United States District Court, Central District of California, in Case No. SACR00-156-GLT, Respondent was convicted of one count of violating 18 U.S.C. 1010 (fraud on a HUD program), a crime of moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was sentenced to five years probation, the terms and conditions of which included four months home detention, 250 hours of community service, restitution in the amount of \$125,000, and payment of fines and penalties.

4.

The facts and circumstances leading to Respondent's conviction for fraud were as follows:

Respondent submitted a loan application package for a Federal Housing Administration loan from Home Loan Mortgage which contained information and documentation Respondent knew to be false.

5.

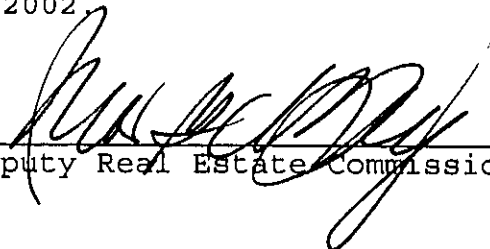
Respondent's convictions as set forth in Paragraph 3 above constitutes grounds to discipline Respondent's license and license rights pursuant to Code Sections 490 and 10177(b).

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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/or license rights of ROBERT EDUARDO ALVAREZ, under the Real Estate Law and for such other and further relief as may be proper under applicable provisions of law.

Dated at Los Angeles, California  
this 13th day of May, 2002.

  
Deputy Real Estate Commissioner

cc: Roberto Eduardo Alvarez  
Ameristar Lending Group, Inc.  
Sacto.  
Maria Suarez  
AW