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DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of)	No. H-30045 LA
MIKE GEORGE HUBBARD,)	L-2003040525
Respondent.)	

DECISION

The Proposed Decision dated August 5, 2003, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

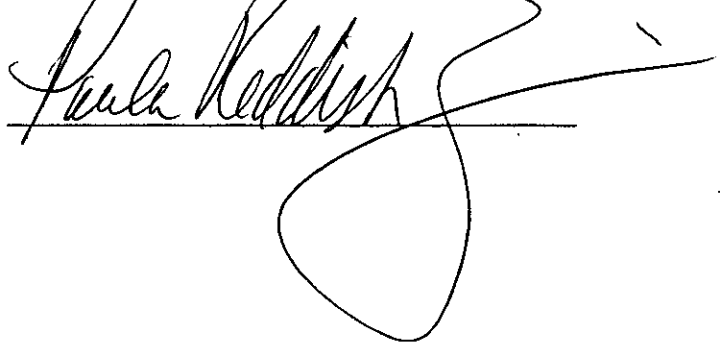
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on September 25, 2003.

IT IS SO ORDERED September 3, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MIKE GEORGE HUBBARD
400 S. Sepulveda Blvd., Suite 100
Manhattan Beach, CA 90266

License No. 00387523.

Respondent.

Case No. H-30045 LA

OAH No. L2003040525

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 22, 2003.

Martha J. Rosett, Real Estate Counsel, represented complainant Department of Real Estate (hereinafter "Department").

Dale A. Eleniak, Esq., represented Respondent Mike George Hubbard (hereinafter "Respondent").

Oral and documentary evidence was taken and the matter was submitted on July 22, 2003.

FACTUAL FINDINGS

1. Maria Suarez, a Deputy Real Estate Commissioner of the State of California, alleged and filed the charges contained in the Accusation in her official capacity.
2. The Department first issued a real estate broker's license to Respondent in 1973. Respondent has held a broker's license continuously since that time. Respondent's current broker's license, license number 00387523, is due to expire on May 1, 2005.
3. On October 21, 2002, in the United States District Court for the Central District of California, Case No. CR-00-032(B)GHK, Respondent was convicted on his guilty plea to four counts of making false statements in a loan application, and aiding and abetting and causing an act to be done, in violation of Title 18 United States Code, sections

1014 and 2. These are crimes of moral turpitude that are substantially related to the duties, functions and qualifications of a real estate broker.

4. Respondent was ordered to pay a \$200 special assessment, partial restitution of \$36,000, to Citicorp Mortgage Inc. (\$27,000) and World Savings and Loan (\$9,000), placed on three years probation, and ordered to participate in a six-month home detention program as directed by his probation officer. Respondent has paid the special assessment and continues to make monthly payments toward the \$36,000 restitution amount. Respondent is scheduled to complete probation in October 2005, although he intends to apply to terminate probation in January 2004.

5. The facts and circumstances underlying Respondent's convictions are that from approximately 1987 to 1991, Respondent was a "developer" of properties in the South Bay Area of Los Angeles County, along with Allan "Bill" H. Jukes, a developer and home builder. Respondent acted as the real estate agent for several properties that he and Jukes developed. Frequently, Respondent marketed these properties as "no money down" transactions. In fact, however, Respondent contributed his own monies as the down payments for the buyers in these transactions, unbeknownst to the financial institutions that loaned the money. Respondent provided the down payment in escrow on behalf of the buyers and falsely represented to the lender that the buyer had contributed the down payment. To ensure buyers qualified and obtained loans to purchase their properties, Respondent knowingly caused fraudulent loan packages to be submitted to the underwriting departments of the buyers' lenders. Respondent also arranged it so that the escrow instructions, loan applications and other documents submitted to the financial institutions falsely reflected that the buyers were contributing the down payments on these properties. Respondent then obtained concealed second deeds of trust on the properties, and deposited into escrow the necessary funds which were falsely represented as the buyers' down payments. At the close of escrow, unbeknownst to the lenders, the down payments would be reimbursed over a five-year period of time to Respondent as the holder of the second deed of trust.

6. Respondent's convictions resulted from conduct that occurred in 1990. On four different occasions, Respondent made false statements, or caused or aided and abetted potential buyers to make false statements in loan applications to financial institutions for the purpose of influencing the actions of those financial institutions in connection with loans to buyers for properties developed by Respondent. Specifically, in loans made in 1990 in the amounts of \$202,400, \$179,900, \$476,000, and \$400,000, the first three made by Citicorp Savings, and the last by World Savings & Loan Association, Respondent misrepresented to the lender the amount and the source of the down payment, and concealed the fact that Respondent made the down payment on the properties, and that he held a second deed of trust for the repayment of the down payment.

7. Respondent admits that he made the false statements in the loan applications and that he concealed a second deed of trust on the loans. Respondent, however, maintained that he structured the "no money down" transactions to prevent properties he developed from

going into foreclosure because of a downturn in the real estate market. Respondent paid the down payment for buyers who would not otherwise qualify for the loans, to facilitate the purchases of his properties and avoid foreclosure. Respondent stated that he was confronted with the choice of losing everything he had or structuring the loan transactions to insure that the buyers would qualify for the loans. He made the choice to falsify the loan applications and avoid foreclosure of his properties.

8. Respondent testified that he lost "everything" in 1990 as a result of his failed real estate development investments. He lost his marriage and family because of his monetary losses and his subsequent conviction for making false statements in loan applications.

9. Respondent is 67 years old and has lived in Manhattan Beach for almost 45 years. He has been a real estate broker for almost 30 years, but operated as a real estate developer for only about three years, from 1987 to 1990. Respondent currently works as an associate broker with Remax Realty where he has been employed since 1983. Respondent no longer does business transactions as a real estate developer and only represents buyers and sellers in real estate transactions. Respondent has no other source of income other than his real estate broker's license.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent Mike George Hubbard's real estate broker's license pursuant to Business and Professions Code Sections 490 and 10177(b), based on Factual Findings 3, 4, and 5, in that Respondent was convicted of four counts of making false statements in loan applications, crimes of moral turpitude that are substantially related to the duties, functions and qualifications of a real estate broker.

2. Title 10 of the California Code of Regulations, section 2912 contains the rehabilitation criteria to be considered by the Department in a Revocation or Suspension case. Section 2912, subdivision (a) provides that there should be a passage of not less than two years from the most recent conviction that is substantially related to the qualifications, functions and duties of a real estate broker. Respondent's criminal conduct occurred approximately thirteen years ago in 1990, and he has not had any new complaints lodged against him since that time. However, Respondent's criminal conviction occurred in October 2002, a passage of less than two years. Respondent's conviction for four counts of false statements in a loan application and misrepresentations to a financial institution are directly related to the duties and functions inherent in a real estate broker license. Thus, the two-year guideline recommendation is appropriate in this case. Respondent also has not completed paying the restitution ordered, the conviction has not been expunged, and he has not completed probation, three other indicia of rehabilitation that respondent fails to meet under Section 2912, subdivision (b), (c) and (e) respectively. Respondent stated at hearing that he had lost everything, including his family, due to failed efforts at real estate development and

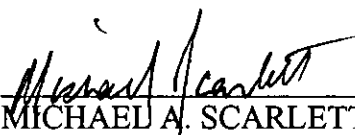
his subsequent convictions. This evidences instability of family life, another factor in determining whether Respondent has been rehabilitated.

3. Respondent admitted at hearing that his conduct was unlawful and stated that, if given the choice, he would not have made the decisions he did in 1990. He also testified that he no longer makes financial investments in the development of properties that he would likely be involved in selling. Respondent has paid the special assessment ordered by the court when he was convicted. These facts are positive criteria for purposes of determining rehabilitation under the Department's guidelines. However, other than Respondent's own testimony, there was no other evidence indicating he has been rehabilitated. On balance, because Respondent's convictions are less than ten months old, and are directly related to his duties and functions as a real estate broker, his probation has not been terminated, and he has not completed payment of restitution, there is insufficient evidence to support Respondent's contention that he has been sufficiently rehabilitated. The public's interest would not be adequately protected if Respondent was allowed to retain his real estate broker's license.

ORDER

All licenses and licensing rights of Respondent Mike George Hubbard under the Real Estate Law are revoked.

DATED: August 5, 2003



MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

1 all times mentioned herein, Respondent was licensed as a real
2 estate broker. Respondent was first licensed by the Department
3 in 1973.

4 3.

5 On or about October 21, 2002, in the United States
6 District Court, Central District of California, in Case No.
7 CR00-032(B) GHK, Respondent was convicted on his plea of guilty
8 to four counts of violating Title 18 U.S.C. Section 1014; 2
9 (false statement in loan application, aiding, abetting, and
10 causing an act to be done), a crime of moral turpitude which is
11 substantially related to the qualifications, functions and duties
12 of a real estate licensee pursuant to Title 10, Chapter 6 of the
13 California Code of Regulations, Regulation 2910(a) (4) and (8).

14 The circumstances leading to the conviction were that
15 Respondent, on at least four separate occasions, made false
16 statements with regard to the amount and source of the down
17 payment, and existence of encumbrances on the property in the
18 escrow instructions. Respondent was sentenced to three years
19 probation, the terms and conditions of which included six months
20 home detention and payment of restitution of \$36,000 to two
21 lenders.

22 4.

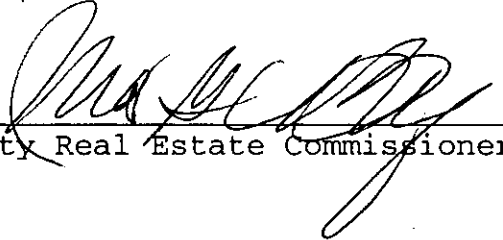
23 Respondent's conviction, as set forth in Paragraph 3
24 above, constitutes grounds for the revocation or suspension of
25 Respondent's license pursuant to Business and Professions Code
26 Sections 490 and 10177(b).

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1 WHEREFORE, the Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of Respondent
5 MIKE GEORGE HUBBARD under the Real Estate Law and for such other
6 and further relief as may be proper under applicable provisions
7 of law.

8 Dated at Los Angeles, California

9 this 2nd day of April, 2003.

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12 Deputy Real Estate Commissioner
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21 cc: Mike George Hubbard
22 Sacto.
23 Maria Suarez
24 RJ
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