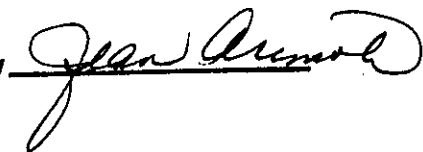


FILED

AUG 26 2009

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
) No. H-30396 LA
JOHN EDWARD DANCY,)
)
Respondent.)

ORDER DENYING RECONSIDERATION

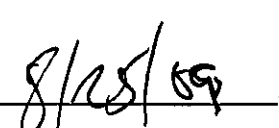
On June 22, 2009, a Decision (herein "Decision") denying reinstatement of Respondent's Real Estate broker license was rendered in the above - entitled matter. The Decision was to become effective at 12 o'clock noon on July 24, 2009.

On July 9, 2009, Respondent petitioned for reconsideration of the Decision. An order staying the effective date was issued July 16, 2009 staying the effective date until 12 o'clock noon August 24, 2009.

On August 4, 2009 Respondent submitted argument in support of his petition for reconsideration. Written argument has been submitted on behalf of Complainant.

I have given careful consideration to the record in this case, including the written arguments offered by Respondent and Complainant. I find there is no good cause to reconsider the Order Denying Reinstatement of Real Estate License of June 22, 2009. Reconsideration is hereby denied.

IT IS SO ORDERED


JEFF DAVI
Real Estate Commissioner

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FILED

JUL 16 2009

DEPARTMENT OF REAL ESTATE

By *Jean Aronch*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
JOHN EDWARD DANCY,)
Respondent.)

NO. H-30396 LA

ORDER STAYING EFFECTIVE DATE

On June 22, 2009, an Order Denying Reinstatement of License was rendered in the above-entitled matter to become effective on July 24, 2009. On July 9, 2009, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Order Denying Reinstatement of License of June 22, 2009.

IT IS HEREBY ORDERED that the effective date of the Order Denying Reinstatement of License be stayed for a period of thirty (30) days. The Order Denying Reinstatement of License of June 22, 2009, shall become effective at 12 o'clock noon on August 24, 2009.

DATED: 7/16, 2009.

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

FILED

JUL 03 2009

DEPARTMENT OF REAL ESTATE

By *Juan Mendez*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
) No. H-30396 LA
JOHN EDWARD DANCY,)
)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On October 16, 2004, in Case No. H-30396 LA, a Decision was rendered
revoking Respondent's real estate broker license effective December 17, 2004.

On May 13, 2008, Respondent petitioned for reinstatement of said real estate
broker license, and the Attorney General of the State of California has been given notice of the
filing of said petition.

I have considered Respondent's petition and the evidence and arguments in
support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has
undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted
real estate broker license.

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State
Bar (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and

1 integrity than an applicant for first time licensure. The proof must be sufficient to overcome
2 the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d
3 395).

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

7 Section 2911 (c) Expungement of criminal convictions resulting from immoral
8 or antisocial acts. Effective December 17, 2004 in Case No. H-30396 LA, Respondent's real
9 estate broker license was revoked on the ground that on April 21, 2003, in the United States
10 District Court, Central District of California, Respondent was convicted of Causing Wire
11 Fraud in violation of Title 18 United States Code Sections 2b and 1343, a felony.
12 Respondent's federal conviction cannot be expunged.

13 Section 2911 (h) Stability of family life and fulfillment of parental and familial
14 responsibilities subsequent to the conviction or conduct that is the basis for denial of the
15 agency action sought. On March 4, 2005, Respondent's license rights were suspended for the
16 second time pursuant to Family Code Section 17520C. This has never been expunged.

17 Section 2911 (i) Completion of, or sustained enrollment in, formal educational
18 or vocational training courses for economic self-improvement. Respondent is not current on
19 his real estate continuing education. Respondent has not currently taken and successfully
20 completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate
21 Law for renewal of a real estate license.

22 Section 2911 (k) Correction of business practices resulting in injury to others or
23 with the potential to cause such injury. Given the violations found and the fact that
24 Respondent has not engaged as a broker in the operation of a real estate brokerage business
25 since license discipline, Respondent has not established that he has complied with Section
26 2911 (k), Title 10, California Code of Regulations.

27 ///

1 Section 2911 (l) Significant or conscientious involvement in community,
2 church or privately-sponsored programs designed to provide social benefits or to ameliorate
3 social problems. Respondent has not demonstrated significant or conscientious involvement
4 in community service activities.

5 Section 2911 (n) Change in attitude from that which existed at the time of the
6 conduct in question as evidenced by any or all of the following:

7 (1) Testimony of applicant. Respondent's petition was incomplete and
8 unreliable. In response to item four (have you ever been a defendant in any civil court
9 litigation, including small claims court?) Respondent answered "No". This incorrect.
10 Respondent was a defendant in at least the following five civil cases:

11 *Gardner v. Jedco International, Inc.*, Orange County Superior Court No.
12 06CC06847, *Kratofil v. Darcy*, Los Angeles County Superior Court No. C702578; *Stiles v.*
13 *Escrow Source*, Orange County Superior Court No. 627097; *Triscari v. Dancy*, Orange
14 County Superior Court Case No. 1817932; *Diamond Bar Business Association v. Dancy*, Los
15 Angeles County Superior Court Case No. EAC074721. Respondent's petition fails to address
16 the fact that on March 4, 2005, Respondent's license rights were suspended for the second
17 time pursuant to Family Code Section 17520C. This has never been expunged. In describing
18 the misconduct resulting in revocation of Respondent's license, Respondent stated, "I made
19 the mistake of not taking action when I found out that the lender was submitting false
20 documentation to loans approved." Respondent appears to be attempting to minimize the
21 character of his wrongdoing. The Factual Basis of Respondent's plea in the criminal case
22 stated in part:

23 "Defendant intentionally engaged in a scheme to defraud the United States Department
24 of Housing and Urban Development. As part of this scheme, (a) defendant represented
25 prospective property buyers who could not legitimately qualify for FHA-insured loans;
26 (b) defendant would contact co-schemers to (a) prepare false and fabricated income
27 and credit -related documentation for those buyers to enable them to qualify for FHA-
insured loans, and (2) provide the income and credit -related documentation to loan
brokers who would use it to prepare fraudulent loan packages for FHA-insured loans

1 (c) the loan brokers would submit the fraudulent FHA loan packages to commercial
2 lenders in Los Angeles and Orange Counties."

3 Respondent admits that at hearing on the Accusation Respondent attempted to minimize his
4 role in the loan fraud by stating he was unaware of any fabricated documents. Respondent's
5 current statement reflects adversely on any change in attitude.

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

8 Reference letters submitted in support of the petition were two or more years old and did not
9 directly address Respondent's rehabilitation.

10 (3) Evidence from probation or parole officers or law enforcement officials
11 competent to testify as to applicant's social adjustments. Statements from probation and parole
12 officers merely stated Respondent's probation status and did not address rehabilitation.

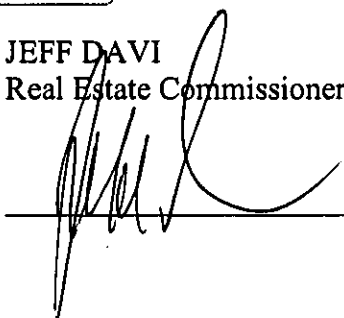
13 (4) Evidence from psychiatrists or other persons competent to testify with
14 regard to neuropsychiatric or emotional disturbances. Respondent submitted no such evidence.

15 Since Respondent has not established that Respondent has complied with
16 Sections 2911(c), (h), (i), (k), (l), and (n) of Title 10, California Code of Regulations, I am not
17 satisfied that Respondent is sufficiently rehabilitated to receive an unrestricted real estate
18 broker license.

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

21 This Order shall become effective at 12 o'clock noon on JUL 24 2009

22 DATED: 6-22, 2009

23 JEFF DAVI
24 Real Estate Commissioner
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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

JOHN E. DANCY,

On October 26, 2004, a Decision was rendered in the above-entitled matter. The Decision was to become effective on November 17, 2004, and was stayed by separate Order to December 17, 2004.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of October 26, 2004, and reconsideration is hereby denied.

JEFF DAVIS
Real Estate Commissioner

Real Estate Commissioner

SAC

FILED
NOV 15 2004
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
JOHN E. DANCY,	NO. H-30396 LA
Respondent.	L-2003110455

ORDER STAYING EFFECTIVE DATE

On October 26, 2004, a Decision was rendered in the above-entitled matter to become effective November 17, 2004.

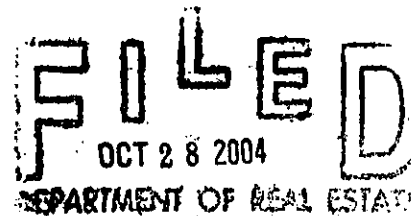
IT IS HEREBY ORDERED that the effective date of the Decision of October 26, 2004, is stayed for a period of 30 days to allow Respondent JOHN E. DANCY to file a petition for reconsideration.

The Decision of October 26, 2004, shall become effective at 12 o'clock noon on December 17, 2004.

DATED: November 15, 2004.

JEFF DAVI
Real Estate Commissioner

By: Dolores Weeks
DOLORES WEEKS
Regional Manager



8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-30396 LA
12)
13 JOHN E. DANCY,) L-2003110455
14 Respondent.)

15 DECISION AFTER REJECTION

16 This matter came on for hearing before Richard J.
17 Lopez, Administrative Law Judge of the Office of Administrative
18 Hearings, at Los Angeles, California, on May 4, 2004. Martha J.
19 Rosett, Counsel, represented the Complainant, Maria Suarez, a
20 Deputy Real Estate Commissioner for the State of California.
21 The Respondent, JOHN E. DANCY (hereinafter "Respondent"),
22 appeared in person and was represented by Frank M. Buda, Esq.
23 All evidence being received, the matter was deemed submitted for
24 decision at that time.
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1 On May 20, 2004, the Administrative Law Judge
2 submitted a Proposed Decision which was not adopted. 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 May 4, 2004, and upon any written argument offered by
11 Respondent and Complainant. Respondent submitted written
12 Argument on August 25, 2004. Complainant submitted written
13 Argument on October 18, 2004.

14 I have given careful consideration to the record in
15 this case including the transcript of the proceedings of
16 May 4, 2004. I have also considered the Arguments submitted by
17 Respondent and Complainant.

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

1 1. Complainant Maria Suarez filed the Accusation in
2 the above-captioned proceeding while acting in her capacity as a
3 Deputy Real Estate Commissioner of the Department of Real Estate
4 ("the Department"), State of California.
5

6 2. Respondent JOHN E. DANCY is currently licensed as a
7 real estate broker by the Department. He was first licensed as a
8 real estate broker on or about June 28, 2000. Prior to that
9 time, Respondent was licensed as a real estate salesperson. He
10 has been licensed since 1985. As of July 5, 2002, Respondent's
11 license was suspended indefinitely pursuant to Family Code
12 Section 17520. The suspension was released effective August 21,
13 2002.
14

15 3. On or about April 21, 2003, in the United States
16 District Court for the Central District of California, in Case
17 No. SACR-02-132-GLT, Respondent was convicted on his plea of
18 guilty to two counts of violating Title 18 of the United States
19 Code, Section 1343, 2(b) (wire fraud, causing an act to be done),
20 a felony.

21 4. Respondent was sentenced to two years probation,
22 the terms of which included payment of a restitution fine of
23 \$2,500.00, and an additional fine of \$200.00. Respondent was
24 also ordered to perform 100 hours of community service, and to
25 notify the Department of Real Estate of the conviction within 30
26 days.
27

1 5. The facts and circumstances leading to Respondent's
2 conviction are summarized in the Factual Basis of the Plea
3 Agreement in that case, as follows:

4 "Defendant and the USAO (United States Attorney's
5 Office) agree to and stipulate to the following
6 statement of facts:

7 From 1997 through 1999, in Los Angeles and Orange
8 Counties, defendant [Respondent] intentionally engaged
9 in a scheme to defraud the United States Department of
10 Housing and Urban Development ("HUD"). As part of this
11 scheme, (a) defendant represented prospective property
12 buyers who could not legitimately qualify for FHA-
13 insured loans; (b) defendant would contact co-schemers
14 to (a) prepare false and fabricated income and credit-
15 related documentation for those buyers to enable them
16 to qualify for FHA-insured loans, and (2) provide the
17 income and credit-related documentation to loan brokers
18 who would use it to prepare fraudulent loan packages
19 for FHA-insured loans (c) the loan brokers would submit
20 the fraudulent FHA loan packages to commercial lenders
21 in Los Angeles and Orange Counties.

22 Based on the fraudulent acts, practices and devices of
23 defendant, the lenders would fund the loans. In
24 addition, the lenders would wire the FHA insurance
25 premiums to HUD's account at Mellon Bank in Pittsburgh,
26 Pennsylvania and transmit the loan packages to the FHA
27 for insurance."

28 The Factual Basis then set forth details of two
29 specific transactions, one occurring in February of 1999,
30 pertaining to a loan for property in Anaheim, California, and
31 one occurring in June of 1997, pertaining to a loan for property
32 located in Aliso Viejo, California.

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1 6. The Plea Agreement also contained the following
2 statement regarding the "Nature of the Offense":

3 "In order for defendant to be guilty of counts one and
4 two, which charge a violation of Title 18, United
5 States Code, Section 1343, the following must be true:
6 (1) defendant must have knowingly participated in a
7 scheme to defraud or to obtain money or property by
8 means of false pretenses, representations, or promises;
9 (2) defendant must have acted with the intent to
defraud; and (3) defendant must have used or caused
others to use interstate wires in furtherance of this
scheme. Defendant admits that defendant is, in fact,
guilty of this offense as described in count one of the
information."

10 7. Respondent remains on probation. He provided
11 evidence of completion of payment of the restitution fine and the
12 additional fine. He completed 100 hours of community service and
13 notified the Department timely of his conviction. Respondent
14 completed the community service requirement of the criminal
15 probation by assisting the Southern California PGA's
16 (Professional Golf Association) junior golf program. In
17 addition, Respondent, a golf professional, volunteered his time
18 as a rules official and with other tournament administrative
19 duties at various golf events.

20 8. Respondent testified that he is an active member of
21 the USC Alumni Association and is an active member, together with
22 his wife, of the Calvary Chapel in Corona.
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1 9. At hearing, Respondent testified on his own behalf.
2 Notwithstanding the facts established and admitted in the Plea
3 Agreement, as set forth above, Respondent denied referring
4 clients to individuals who would help them create false
5 documents. As to the 1997 transaction, Respondent testified that
6 he did not know about the improprieties in the loan package
7 submitted to the lenders until he was contacted by the FBI in
8 2000 during their investigation into the matter. As to the 1999
9 transaction, Respondent testified at hearing that he did not find
10 out about the false documents submitted in support of the loan in
11 question until after the loan was approved, but before the deal
12 closed and the loan was funded. Respondent testified that he was
13 culpable, in essence, for his complicity. Respondent testified
14 that he was not aware of what, if any, legal action was taken
15 against the mortgage brokers in the transactions in question.
16

17 10. Respondent testified at hearing that he no longer
18 associates with the individuals involved in the 1997 and 1999
19 transactions leading to his conviction. The Administrative Law
20 Judge found Respondent to be remorseful about his criminal
21 conduct. However, the discrepancy between what Respondent
22 testified to and what he admitted to as the factual basis for his
23 guilty plea suggests Respondent may not be accepting full
24 responsibility for his actions, or may be minimizing his role in
25 the illegal conduct. In any event, Respondent may not
26 collaterally attack the criminal conviction and may not deny as
27

1 legal facts the findings forming the basis for his conviction
2 (Arneson v. Fox, 28 Cal.3d 440).

3 11. Respondent's wife, Linda Dancy, who is currently
4 licensed as a real estate broker, testified on Respondent's
5 behalf. She testified that she has known Respondent since 1993
6 and that they married in 1999. Mrs. Dancy testified that she
7 worked in the same real estate office with Respondent between
8 1995 and 2000, which would include the period of time leading to
9 Respondent's criminal conviction. She testified that she was not
10 aware of the conduct leading to Respondent's conviction until the
11 couple were contacted by the FBI in 2000. She was not prosecuted
12 or otherwise implicated. She supports her husband, finds him to
13 be honest and a good real estate agent.

14 12. Respondent obtained his real estate broker license
15 in 2000. Respondent provided letters of reference from several
16 individuals, including a representative of the charity where he
17 performed community service, and four satisfied customers. Of
18 these, only the representative of the charity was aware of
19 Respondent's conviction, as it led to his volunteering time.
20 No other letters or testimony was offered from real estate
21 licensees who are familiar with Respondent's work and reputation
22 as an agent in the real estate industry.
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LEGAL CONCLUSIONS

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

8 2. Cause exists to suspend or revoke or otherwise
9 discipline the real estate broker license issued to Respondent
10 JOHN E. DANCY pursuant to Business and Professions Code Sections
11 490 and 10177(b), for his conviction of a crime of moral
12 turpitude.
13

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

16 (a) Less than two years have passed since Respondent's
17 conviction on April 21, 2003.

18 (b) Respondent provided evidence at hearing that he has
19 paid the \$2,250.00 restitution fine.

20 (c) Respondent's federal conviction cannot be
21 expunged.

22 (d) Registration pursuant to Penal Code Section 290
23 does not apply in this case.

24 (e) Respondent has not completed probation, though he
25 has been placed on "compliance status" and does not have to
26 report to his probation officer as frequently.
27

1 (f) There is no evidence that Respondent's criminal
2 conduct was related to alcohol or drug abuse, so Regulation
3 2911(f) does not apply.

4 (g) Respondent completed payment of the additional
5 fine of \$200.00.

6 (h) In terms of changes in business practices,
7 Respondent testified that he no longer associates with the
8 mortgage loan brokers involved in the transactions in question.
9 Respondent has obtained a broker license. He currently works
10 independently of supervision. Other than Respondent's and his
11 wife's testimony, no other evidence was offered from licensed
12 individuals who are familiar with Respondent's work and
13 reputation in the real estate industry. (This despite the fact
14 that Respondent has been licensed since 1985 and that Respondent
15 testified that he is active in the California Association of
16 Realtors.)
17

18 (i) In terms of new and different social and business
19 relationships, Respondent testified that he is also a
20 professional golfer and participates in charitable activities.
21 He testified that he is active in the California Association of
22 Realtors and he and his wife are active in their church.

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1 (j) In terms of stability of family life, Respondent
2 testified that his family life is stable, and that he has three
3 children, two of whom are grown. Respondent's real estate broker
4 license was suspended for six weeks in 2002, pursuant to Family
5 Code Section 17520 for failure to provide proof of compliance
6 with a court order to pay child support. Respondent blamed this
7 failure to comply on the District Attorney's office failing to
8 process paperwork in a timely fashion. Respondent balked at
9 explaining what support was ordered, and why it was to be paid
10 through the District Attorney's office, and what specifically
11 caused the delay. He testified that he is no longer required to
12 pay child support through the District Attorney's office, as he
13 pays the child's mother directly.

14 (k) Respondent completed course work for a broker
15 license, passed the broker exam, and is now a broker.
16

17 (l) As described in section (i) above, in addition to
18 being a professional golfer, Respondent is involved in charitable
19 activities related to golf and church.

20 (m) In terms of change in attitude, the Administrative
21 Law Judge opined that Respondent was remorseful and has changed
22 his attitude from that which existed at the time of the conduct
23 in question. The problem is that Respondent testified that his
24 only wrongdoing was that he was complicit and failed to report
25 the misconduct of others in one specific incident. (He denied
26 knowing about the improprieties in the first incident until after
27

1 he was contacted by the FBI.) This somewhat contradicts the
2 facts he had previously admitted in his Plea Agreement. In
3 addition, other than his own testimony and that of his wife,
4 Respondent offered no independent assessment of his character,
5 business practices and attitude.

6 4. Honesty and integrity are crucial among the
7 qualifications to be a real estate licensee and to handle the
8 tremendous fiduciary responsibilities such licensure carries with
9 it. Having been convicted of wire fraud based on an admission in
10 the Plea Agreement to having, "knowingly participated in a scheme
11 to defraud or to obtain money by false pretenses", Respondent's
12 character and fitness have been called into question. A period
13 of longer than one year free of misconduct is necessary to
14 establish rehabilitation. In addition, Respondent's testimony
15 that he was acting in complicity with others, in contradiction to
16 the facts as set forth in the Plea Agreement, calls into question
17 his ability to take responsibility for his actions and to conduct
18 himself within the bounds of the law.

19 5. The Administrative Law Judge made it clear that the
20 Complainant met its burden in establishing that grounds exist to
21 revoke or otherwise discipline Respondent's real estate license.
22 That having been met, the degree of discipline rests solely with
23 the Commissioner (Golde v. Fox(1979) 98 Cal.App.3d 167, 178).
24 Respondent's conviction, and the totality of the circumstances
25 surrounding it, call into question his integrity and honesty
26
27

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

9 6. I disagree with the Administrative Law Judge's
10 opinion that a restricted broker license would be adequate to
11 protect the public from the risk of further violations of the
12 law. Whether Respondent will continue to avoid participating in
13 illegal schemes is unknown.

14 With a restricted broker license, Respondent would be
15 allowed to continue to act in an unsupervised capacity, with no
16 one overseeing his work. There would be no way to prevent
17 Respondent from committing further violations; no internal checks
18 and balances to ensure compliance.

19 When there is doubt about a licensee's honesty and
20 integrity, and that licensee's rehabilitation is incomplete, the
21 Department's most effective means of protecting the public is to
22 refuse to allow a licensee to retain a license.
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1 In short, there is insufficient evidence upon which to
2 base a determination that the public would be adequately
3 protected by allowing Respondent to continue to hold a real
4 estate broker license, on a restricted basis.

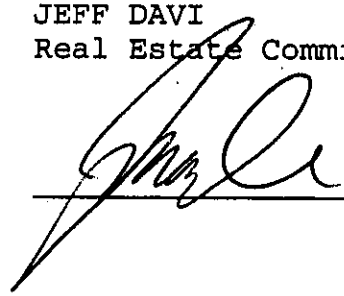
5 ORDER

6 All licenses and licensing rights of Respondent JOHN E.
7 DANCY under the Real Estate Law are revoked.

8 This Decision shall become effective at 12 o'clock noon
9 on November 17, 2004.

10 IT IS SO ORDERED October 26, 2004.

11 JEFF DAVI
12 Real Estate Commissioner

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FILED
JUN 24 2004
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

JOHN E. DANCY,)

Respondent.)

No. H-30396 LA

L-2003110455

NOTICE

TO: JOHN E. DANCY, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 20, 2004, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 20, 2004, 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 May 4,

///

1 2004, 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 May 4, 2004, at the Los Angeles office of
6 the Department of Real Estate unless an extension of the time is
7 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 Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: June 18, 2004

14
15 JOHN R. LIBERATOR
16 Acting Real Estate Commissioner
17 *for Robin T. Wilson*

18 *Robin T. Wilson*
19 By Robin T. Wilson
20 Chief Legal Officer
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHN E. DANCY,

Respondent.

Case No. H-30396 LA
OAH No. L2003110455

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on May 4, 2004.

Martha Rosett, Staff Counsel, represented the complainant.

Respondent appeared in person and was represented by Frank Buda, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes, and orders as follows:

FINDINGS OF FACT

1

The Complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in her official capacity.

2

At all times herein mentioned, Respondent was licensed under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. Respondent was originally licensed by the Department of Real Estate as a salesperson on August 30, 1985 and has been licensed as a broker since June 28, 2000. The license was suspended indefinitely per *Family Code §17520* as of July 5, 2002. Thereafter the license was released from suspension effective August 21, 2002 following notification per said *§17520*.

On or about April 21, 2003, in the United States District Court, Central District of California, in Case Number SACR 02-132-GLT, Respondent was convicted on his plea of guilty to two counts of violating 18 U.S.C. 1343, 2(b) (wire fraud, causing an act to be done), a felony.

The facts and circumstances of the crime are summarized in the Factual Basis of the Plea Agreement in that case:

Factual Basis

Defendant and the USAO (United States Attorney's Office) agree to and stipulate to the following statement of facts:

From 1997 through 1999, in Los Angeles and Orange Counties, defendant (Respondent) intentionally engaged in a scheme to defraud the United States Department of Housing and Urban Development ("HUD"). As part of this scheme, (a) defendant represented prospective property buyers who could not legitimately qualify for FHA-insured loans; (b) defendant would contact coschemers to (a) prepare false and fabricated income and credit-related documentation for those buyers to enable them to qualify for FHA-insured loans, and (2) provide the income and credit-related documentation to loan brokers who would use it to prepare fraudulent loan packages for FHA-insured loans (c) the loan brokers would subject the fraudulent FHA loan packages to commercial lenders in Los Angeles and Orange Counties.

Based on the fraudulent acts, practices and devices of defendant, the lenders would fund the loans. In addition, the lenders would wire the FHA insurance premiums to HUD's account at Mellon Bank in Pittsburgh, Pennsylvania and transmit the loan packages to the FHA for insurance.

In or about the dates set forth below, for the purpose of executing the scheme to defraud, defendant caused to be transmitted in interstate commerce by wire communications the following wire transfers from commercial lenders in California to HUD's account at Mellon Bank in Pittsburgh, Pennsylvania:

<u>Count</u>	<u>Date</u>	<u>Funds Wired</u>
One	2/99	FHA insurance premium for Mirad Financial Group's loan for the purchase of 914 South Country Glen Way, Anaheim, California.

Two

6/97

FHA insurance premium for Temple Inland Mortgage Corp.'s loan for the purchase of 3 Quebec, Aliso Viejo, California.

4

By its facts and circumstances set forth in Finding 3 the crime is a crime of moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to *Title 10, California Code of Regulations, Regulation 2910*.

Additionally, the offense is described in the plea agreement as follows:

Nature of the Offense

In order for defendant to be guilty of counts one and two, which charge a violation of *Title 18, United States Code, §1343*, the following must be true: (1) defendant must have knowingly participated in a scheme to defraud or to obtain money or property by means of false pretenses, representations or promises; (2) defendant must have acted with the intent to defraud; and (3) defendant must have used or caused others to use interstate wires in furtherance of this scheme. Defendant admits that defendant is, in fact, guilty of this offense as described in count one of the information.

5

As a result of the conviction Respondent was ordered to pay fines of \$2,250.00 and was sentenced to two years probation, the terms of which included performing 100 hours of community service and notifying the Department of Real Estate of the conviction within 30 days.

Respondent did timely pay the fines; did timely perform 100 hours of community service and did timely notify the Department. There was no condition of restitution in that no one suffered economic loss as a result of respondent's conduct. In March, 2004 respondent's case was transferred to the courts' compliance caseload because of full compliance with probation. He did fully cooperate with the FBI during its investigation and with the Department during its investigation.

3

Respondent did, on March 9, 2004, complete the required 45 units of continuing education in real estate including the 3 unit course in ethics. He has been and continues to be a member of the California Association of Realtors and the National Association of Realtors and does keep current in evolving real estate information.

Respondent completed the community service requirement of the criminal probation by assisting the Southern California PGA's (Professional Golf Association) junior golf program. Additionally respondent, a golf professional, volunteered his time as a rules official and with other tournament administrative duties at various junior golf events. In the written opinion of the PGA Southern California Section Director of Junior Golf Respondent "...was, and remains, a tremendous asset to our junior golf program."

Respondent is an active member of the USC Alumni Association and is an active member, together with his wife, of the Calvary Chapel in Corona. By this conduct and by the conduct set forth in Finding 7 Respondent has conscientious involvement in community and church programs designed to provide social benefits.

Respondent did proffer documentary evidence (letters) from a number of persons familiar with Respondent and Respondent's character. The persons included those who have had recent and past real estate dealings with respondent. That written opinion evidence, although restricted "administrative hearsay" did attest to Respondent's good character.

Respondent no longer has any associations with lenders involvement in the 1997 and 1999 transactions. Respondent is remorseful about his criminal conduct and has a change in attitude from that which existed in 1997 and 1999. That change was demonstrated by the credible testimony of Respondent and Respondent's wife together with the documentary evidence referenced in Finding 9.

In mitigation, Respondent has been a long time licensee of the Department with no violations of the Real Estate Law. He has been, except for the conduct set forth in Findings 3 and 4, a socially responsible person and professionally responsible licensee.

Respondent's conviction is less than two years remote. However, the time of the criminal conduct is five years remote. Since that time Respondent has returned to the status of a professionally responsible licensee as demonstrated by the rehabilitation set forth in the foregoing findings.

The crime-dishonest acts-is a severe one. Respondent, however, has established sufficient rehabilitation and mitigation to continue licensure on a restricted status.

CONCLUSIONS OF LAW

1

Cause exists for discipline of respondent's real estate license and license rights for violation of *Business and Professions Code* §§10177(b) and 490 by reason of Findings 3 and 4.

2

The objective of an administrative proceeding relating to discipline, if any, is to protect the public; to determine whether a license holder has exercised his privilege in derogation of the public interest. Such proceedings are not for the primary purpose of punishment: *Fahmy v. MBC* (1995) 38 Cal. App. 4th 810, 817; *Ex Parte Brounsell* (1778) 2 Cowp. 829, 98 Eng. Rep. 138. Respondent did exercise his license privileges in derogation of the public interest. However reason of Finding 11 the public interest would not be adversely affected by the issuance of a restricted license.

ORDER

not adopted { All licenses and licensing rights of Respondent under the Real Estate Law are revoked: provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to §10156.5 of the *Business and Professions Code* if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license with in 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of § 10156.7 of the *Business and Professions Code* and to the following limitations, conditions and restrictions imposed under authority of §10156.6 of that Code:

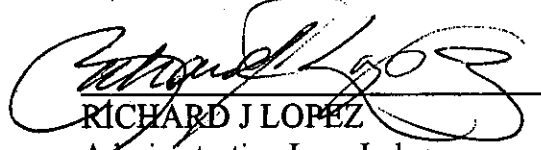
1. The restricted license issued to Respondent may be suspended prior to hearing by order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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 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 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.

Dated: May 20, 2004


RICHARD J LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:lp

502

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

JOHN E. DANCY,

Respondent(s)

Case No. **H-30396 LA**

OAH No. L-2003110455

FILED
MAR 11 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED 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, Suite 630, Los Angeles, CA 90013-1105 on **TUESDAY, MAY 4, 2004**, 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 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: March 11, 2004

By MARtha J. ROSETT
MARtha J. ROSETT, Counsel

cc: John E. Dancy
Frank M. Buda, Esq.
Sacto.
OAH

5A

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

JOHN E. DANCY,

Respondent(s)

Case No. **H-30396 LA**

OAH No. L-2003110455

FILED
DEC 11 2003
DEPARTMENT OF REAL ESTATE

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, Suite 630, Los Angeles, CA 90013-1105 on **WEDNESDAY, MARCH 17, 2004**, 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 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.

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DEPARTMENT OF REAL ESTATE

Dated: December 11, 2003

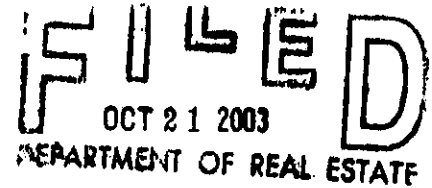
By


MARTHA J. ROSETT, Counsel

cc: John E. Dancy
Frank M. Buda, Esq.
Sacto.
OAH

1 MARTHA J. ROSETT, Counsel (SBN 142072)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013-1105

5 (213) 576-6982
6 (213) 576-6914



7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9
10 STATE OF CALIFORNIA

11 * * * *

12 In the Matter of the Accusation of)
13 JOHN E. DANCY,)
14 Respondent.)

No. H-30396 LA

A C C U S A T I O N

15
16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against JOHN E. DANCY (hereinafter "Respondent"), is informed and
19 alleges as follows:

20 1.

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation in
23 her official capacity.

24 2.

25 At all times herein mentioned, Respondent was licensed
26 under the Real Estate Law (Part 1 of Division 4 of the Business
27 and Professions Code, hereinafter "Code"), as a real estate

1 broker. Respondent was originally licensed by the Department of
2 Real Estate as a salesperson on August 30, 1985 and has been
3 licensed as a broker since June 28, 2000.

4 3.

5 On or about April 21, 2003, in the United States
6 District Court, Central District of California, in Case Number
7 SACR 02-132-GLT, Respondent was convicted on his plea of guilty
8 to two counts of violating 18 U.S.C. 1343, 2(b) (wire fraud,
9 causing an act to be done), a felony and crime of moral turpitude
10 which is substantially related to the qualifications, functions
11 and duties of a real estate licensee pursuant to Title 10,
12 Chapter 6 of the California Code of Regulations, Regulation 2910.
13 Respondent was ordered to pay fines of \$2,250.00 and was
14 sentenced to two years probation, the terms of which included
15 performing 100 hours of community service and notifying the
16 Department of Real Estate of the conviction within 30 days.

17 4.

18 Respondent's conviction as set forth in Paragraph 3
19 above constitutes grounds to suspend or revoke Respondent's real
20 estate license and license rights pursuant to Code Sections
21 10177(b) and 490.

22 //

23 //

24 //

25 //

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27 //

1 WHEREFORE, 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 the license and license rights of Respondent,
5 JOHN E. DANCY, under the Real Estate Law (Part 1 of Division 4
6 of the Business and Professions Code), and for such other and
7 further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California

10 this 20th day of October, 2003.

11
12 
13 Deputy Real Estate Commissioner
14
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24

25 cc: John E. Dancy
26 Maria Suarez
27 Sacto.
CW