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**FILED**  
JUL 20 2005  
DEPARTMENT OF REAL ESTATE  
By *Janis B. Ostrum*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	NO. H-31063 LA
LARRY J. NIELSON, JR., )	L-2004080115
Respondent. )	

DECISION AFTER REJECTION

A hearing was held in the above-referenced matter on November 17, 2004, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge ("Judge"), Office of Administrative Hearings, State of California. It was consolidated for hearing with the Accusation against Howard D. Myers, Department of Real Estate ("Department") Case Number H-30998 LA, OAH No. L-2004070416.

Respondent Larry J. Nielson, Jr. ("Respondent") was present and was represented by Charles Benninghoff, lay representative.

///

1 Complainant Janice Waddell ("Complainant"), Deputy  
2 Real Estate Commissioner, was represented by Chris Leong,  
3 Counsel for Department.

4 Oral and documentary evidence was received and the  
5 matter was submitted for decision.

6 On January 26, 2005, Judge Rosenman, submitted a  
7 Proposed Decision which I declined to adopt as my Decision  
8 herein.

9 Pursuant to Section 11517(c) of the Government Code  
10 of the State of California, Respondent was served with notice  
11 of my determination not to adopt the Proposed Decision along with  
12 a copy of said Proposed Decision. Respondent was notified that  
13 the case would be decided by me upon the record, the transcript  
14 of proceedings held on November 17, 2004, and upon any written  
15 argument offered by Respondent and Complainant.

16  
17 On May 18, 2005, Argument was submitted by Respondent.  
18 On June 29, 2005, Argument was submitted on behalf of  
19 Complainant.

20 I have given careful consideration to the record in  
21 this case including the transcript of proceedings of  
22 November 17, 2004. I have also considered the argument submitted  
23 by Respondent and the argument submitted on behalf of  
24 Complainant.

25 The following shall constitute the Decision of the Real  
26 Estate Commissioner in this proceeding:

27 ///

FACTUAL FINDINGS

Jurisdiction and License History

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2  
3           1. Complainant brought the Accusation in her official  
4 capacity.

5           2. (a) The Department issued a restricted real estate  
6 salesperson license to Respondent on May 31, 1985. Respondent  
7 admitted the allegations in a Statement of Issues that he had  
8 been convicted in Benton County, Oregon on August 5, 1981, on  
9 his plea of guilty of first degree theft, a felony, and that the  
10 conviction was grounds for denying him a license. Respondent's  
11 petition for removal of the restrictions was granted by an Order  
12 effective February 20, 1987.

13           (b) Respondent's salesperson license was terminated  
14 upon the issuance of his broker's license on November 15, 1994.  
15 Respondent was also the designated officer for Park Avenue  
16 Financial, Inc. and Financial Center West, Inc., (FCW) and  
17 was noted by the Department as doing business as Park Avenue  
18 Financial.  
19

20           c) The Department issued an Order to Desist and  
21 Refrain, dated November 12, 1996, against Respondent and FCW  
22 based on findings that, in 1995, FCW violated the real estate  
23 law by withdrawing fees from a trust account when the fees were  
24 not expended for the benefit of the principals, by not  
25 maintaining separate records reflecting disbursements on behalf  
26 of the principals, by not maintaining account reconciliations,  
27

1 and by not notifying the Department when it employed a real  
2 estate salesperson.

3 Conviction

4 3. (a) On November 27, 2002, in the United States  
5 District Court, Central District of California, in case no.  
6 SACR 01-82-GLT, Respondent was convicted, on his guilty plea,  
7 of two counts of violating 18 United States Code Section 1344,  
8 2 (bank fraud), felonies.

9 (b) Respondent was sentenced to five years probation,  
10 including six (6) months of home detention with electronic  
11 monitoring. Respondent was also ordered to pay a special  
12 assessment of \$200. Respondent was ordered to pay restitution,  
13 jointly and severally with other defendants, in the amount of  
14 \$4,079,908.26. Respondent was ordered to pay \$7,000  
15 immediately, and make monthly payments of at least \$100 during  
16 probation. Interest and other fines were waived because  
17 Respondent did not have the ability to pay.

18 (c) Respondent testified that there were other lump  
19 sum payments on the judgment; that he paid \$7,000 in the  
20 beginning, then another lump sum of \$12,000. He made minimum  
21 monthly payments of \$200 for a few months, which was, adjusted  
22 to \$2700. Then the probation department reviewed his income and  
23 expenses and decreased the payment to \$749, which he has paid  
24 monthly for over two (2) years.  
25  
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Facts and Circumstances

1  
2 4. Respondent testified that he and Howard Myers have  
3 worked together since 1994 in financing real estate  
4 transactions. They work with major lenders over a multi-state  
5 area. For the last seven (7) years, they have averaged about 15  
6 completed transactions per month.

7 5. (a) The acts of Respondent and Myers leading to  
8 their convictions are set forth in the District Court  
9 Presentence Report. Respondent and Myers were a small part of a  
10 larger series of transactions involving real estate in Orange  
11 County, California; more specifically, 37 fourplexes known as  
12 Haster Gardens in Garden Grove. In summary, Neko Defterios and  
13 Dale Marks purchased the properties in 1996 for \$7.3 million and  
14 showed an immediate sale to a company controlled by Henry Weiss  
15 for \$10.9 million. Defterios, Marks and Weiss used Weiss' loan  
16 application to borrow \$7.84 million from Hawthorne Savings by  
17 misrepresenting that the purchase price was \$10.9 million, when  
18 they actually used the loan proceeds to pay \$7.3 million to the  
19 seller. Further, a fraudulent escrow receipt was prepared  
20 showing Weiss made a down payment of \$3.5 million when he had  
21 made none.  
22

23 (b) Hawthorne Savings sued and, to settle, Marks and  
24 Defterios refinanced the loan through Peter Starflinger, using  
25 straw buyers who temporarily agreed to hold title. The proceeds  
26 of the refinancing went to Hawthorne Savings. They then  
27

1 unsuccessfully attempted to sell Haster Gardens to a legitimate  
2 buyer.

3 (c) Marks and Defterios then approached Respondent  
4 and Financial Center West, who obtained buyers for several of  
5 the units. Although the Presentence Report states that  
6 Respondent and Myers obtained straw buyers for some of the  
7 units, Respondent testified that he marketed some of the units  
8 to friends and business associates who were to be actual  
9 purchasers. Respondent told the buyers that, after they applied  
10 for loans and purchased the units, Marks and Defterios would  
11 work as property managers, rent out and maintain the units,  
12 collect rent and make the loan payments. Further, Respondent  
13 told them that Marks and Defterios would option to purchase the  
14 units for \$50,000 over the purchase price.

15 (d) Although these sellers were prepared to make down  
16 payments with their own money for these purchases, ultimately  
17 Marks and Defterios supplied the down payment money, which  
18 passed from their accounts, through the company's account, into  
19 the buyers' accounts.

20 (e) In the course of obtaining the loans, fraudulent  
21 documents were prepared that overstated the buyers' income and  
22 assets. Respondent and Nielson submitted the loan documents to  
23 the lender, Pan American, and represented to the lender that the  
24 buyers were providing the down payments.

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1 (f) Pan American funded the loans, the proceeds of  
2 which went to companies controlled by Marks and Defterios.  
3 Respondent and Nielson received commissions. These acts  
4 occurred in September 1997.

5 (g) About two years later, there were insufficient  
6 rental receipts to pay the loan payments and the buyers later  
7 defaulted on the loans, at a loss to Pan American.

8 6. Nielson recruited friends to invest in Haster  
9 Gardens. When they lost their investment, Respondent and Myers  
10 testified that they paid them about \$80,000 to reduce their loss  
11 and that they also paid over \$200,000 to various lenders who  
12 lost money in the transactions. Respondent and Myers borrowed  
13 money to make these payments. Respondent and Myers were  
14 criticized by the government for taking these actions because  
15 the government believed that it reduced their ability to make  
16 the restitution payments that were ordered later.

17  
18 Mitigation

19 7. Respondent and Myers cooperated in the  
20 government's investigation. Respondent assisted an agent to  
21 review and analyze numerous documents relating to the Haster  
22 Gardens transactions, as well as documents unrelated to this  
23 case. In part, these actions resulted in a delay between the  
24 events in which Respondent and Nielson were involved and their  
25 sentencing. The Assistant U.S. Attorney praised the level of  
26 cooperation. As part of their plea negotiation, and in part due  
27 to their cooperation, the government supported a downward

1 departure from the sentencing guidelines for the convictions,  
2 and Respondent and Myers will be allowed to present evidence to  
3 the U.S. District Court in hopes of reducing the amount of  
4 restitution to be paid.

5 8. Respondent testified that the restitution amount  
6 of over \$4 million was required by the Assistant U.S. Attorney  
7 in the plea negotiation for the purpose of having Marks and  
8 Defterios jointly liable for this amount of total damages. It  
9 is noted that the criminal information (the charging document)  
10 in the federal case alleges that Respondent defrauded a bank  
11 with respect to two property loans, in the aggregate loan amount  
12 of \$502,400. (The information against Myers alleges two other  
13 property loans, in the aggregate loan amount of \$508,800.  
14 However, Respondent and Nielson have utilized a forensic  
15 accountant to review the transactions, who has calculated the  
16 loss attributable to them as \$698,027.19. Respondent and Myers  
17 intend to submit this information to the U.S. District Court in  
18 hopes of reducing the amount of restitution they are to pay.

19 9. The Presentence Reports conclude that Respondent  
20 and Myers are "substantially less culpable than Marks and  
21 Defterios," who had already defrauded Hawthorne before  
22 Respondent and Myers became involved. Also noted, as mitigating  
23 factors, is that they were not aware of the overall scheme of  
24 Marks and Defterios, and did not profit as much as Marks and  
25 Defterios.  
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1 10. Throughout the criminal and administrative  
2 proceedings, Respondent and Myers have taken full responsibility  
3 for their crimes. The Judge determined that Respondent's  
4 expressions of remorse appeared sincere and that Respondent was  
5 well-spoken and answered questions directly and honestly. The  
6 Judge also found that Respondent has changed his business  
7 practices so that there will be no occurrence of any unlawful  
8 conduct and that he appeared to have learned from these  
9 mistakes. Respondent has also taken continuing education  
10 courses beyond those required for licensure. He testified that  
11 he has been married for 22 years and supports a 19 year old son  
12 in college and a fifteen year old daughter in high school.

13 11. Respondent presented some evidence of  
14 rehabilitation from others, including that he has volunteered  
15 time for community activities. His probation officer notes that  
16 Respondent is in compliance with his probation and is scheduled  
17 for release in November, 2007.

18  
19 Aggravation

20 12. Respondent stated that he knew the transactions  
21 were suspicious when Marks and Defterios began to provide the  
22 down payment money. Nevertheless, he continued in the  
23 fraudulent scheme after he realized that the down payment for  
24 purchases were not made by the borrowers.

25 13. Respondent's crime is very serious, involved  
26 significant financial harm to others and was directly related to  
27 his duties and responsibilities as a real estate licensee.

LEGAL CONCLUSIONS

1  
2           1. Cause exists to revoke or suspend Respondent's  
3 real estate broker license pursuant to Business and Professions  
4 Code Sections 490 and 10177(b), for the conviction of a crime  
5 involving moral turpitude and substantially related to the  
6 qualifications and duties of a real estate licensee.

7           2. Cause to issue a restricted real estate  
8 salesperson license to Respondent was not established as  
9 discussed below.

10                   Criteria of Rehabilitation.

11           3. Criteria of Rehabilitation (Revocation or  
12 Suspension) have been developed by the Department pursuant to  
13 Section 482(b) of the Business and Professions Code for the  
14 purpose of evaluating the rehabilitation of a licensee against  
15 whom an administrative disciplinary proceeding for revocation  
16 or suspension of the license has been initiated on account of  
17 a crime committed by the licensee. Said criteria are set forth  
18 at Section 2912, Title 10, Chapter 6, California Code of  
19 Regulations ("Regulations").

20                   Application of the Criteria of Rehabilitation as set  
21 forth in Regulation 2912 is as follows:

22                   Regulation (a): More than two years have past since  
23 Respondent's conviction on November 27, 2002.

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1 Regulation (b): The Court ordered restitution has not  
2 been completed. Respondent testified that he has made two (2)  
3 lump sum payments of \$17,000 and minimum payments of \$200 for  
4 about three (3) months which was adjusted to \$1,116, which he  
5 has paid monthly for over two (2) years.

6 Regulation (c): Federal convictions cannot be  
7 expunged.

8 Regulation (d): This Regulation is not applicable  
9 because the underlying offense does not require registration  
10 pursuant to Penal Code Section 290.

11 Regulation (e): Respondent is scheduled to be on  
12 probation until November 27, 2007.

13 Regulation (f): This Regulation is not applicable  
14 because there is no evidence that the criminal conviction  
15 was attributable to the use of a controlled substance or  
16 alcohol.

17 Regulation (g): Respondent has paid court ordered  
18 fines, but has not paid the monetary penalty (restitution)  
19 imposed by the court.

20 Regulation (h): Respondent testified that he has  
21 corrected his business practices.

22 Regulation (i): It appears that Respondent still has  
23 contact and business dealings with Nielson, who appeared at the  
24 administrative hearing.

25 Regulation (j): Respondent testified that he has a  
26 stable family life.  
27

1 Regulation (k): Respondent has taken continuing  
2 education courses.

3 Regulation (l): Respondent testified that he is  
4 involved in community and social programs.

5 Regulation (m): The judge found that there was  
6 evidence of Respondent's remorse and that he had taken  
7 responsibility for his crimes.

8 Respondent has not met the criteria of rehabilitation.  
9 Respondent is still on probation and owes a substantial amount  
10 of restitution.

11 It is not known if Respondent's criminal activity was  
12 a one time offense or error in judgment by Respondent. However,  
13 Respondent was only convicted once of the criminal activities.

14 Although the evidence does indicate that Respondent  
15 was cooperative with law enforcement officials and that he  
16 admitted guilt and entered a plea of guilty, this was done after  
17 the criminal activity came to the attention of law enforcement  
18 officials, and was self-serving.

19 Licensee Responsibilities.

20 4. Honesty and truthfulness are attributes  
21 required of a real estate licensee because they are  
22 fiduciaries in their dealings with the public. A real  
23 estate license by its very nature gives the licensee access  
24 to the personal information, funds, and property of those  
25 who seek the licensees services. Clients rely on the  
26 licensee's integrity in representing them, disclosing  
27 important facts about the properties and information he or

1 she is privy to and holding monies and other personal  
2 property in a fiduciary capacity.

3 The Legislature intended to ensure that real  
4 estate brokers and salespersons will be honest,  
5 truthful and worthy of the fiduciary responsibilities  
6 which they will bear. (Ring v. Smith (1970)  
7 5 Cal.App.3<sup>rd</sup> 197, 205, Golde v Fox (1976) 98  
8 Cal.App.3d, 167, 177.). Harrington v. Department  
9 of Real Estate (1989) 214 Cal.App.3d, 394, 402.

10 5. The Real Estate Law and the disciplinary  
11 procedures provided for in the Real Estate Law are designed to  
12 protect the public and to achieve the maximum protection for the  
13 purchasers of real property and those dealing with real estate  
14 licensees (Business and Professions Code Section 10050 and  
15 Handeland v. Department of Real Estate (1976) 58 Cal.App.3d  
16 513.)

17 6. Real estate licensees occupy a unique position of  
18 trust and responsibility toward the consuming public. They  
19 function with little supervision. The possession of a real  
20 estate license, even a license issued on a restricted basis,  
21 entitles the holder to access to the homes and property of  
22 others without supervision. Such licensees must be trustworthy.  
23 The public is entitled to assurance that persons to whom real  
24 estate licenses are issued are persons that can be relied upon  
25 and that they can be trusted with such access and that their  
26 personal property is safe with licensees.

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1 7. Respondent's crime occurred within the context of  
2 his licensed activity. There is a risk to the consuming public,  
3 if Respondent is allowed to retain a real estate license. We  
4 cannot know with certainty that Respondent will not commit  
5 another offense, thus, his licensure poses a risk to the public  
6 interest.

7 Respondent was licensed as a real estate broker when  
8 the offense occurred. A restricted license allows licensees to  
9 perform the same acts as a non-restricted license including the  
10 same access to monies and homes of members of the public and no  
11 one can constantly monitor all activity.

12 8. Department's role is to protect the public  
13 interest. I disagree with the Administrative Law Judge's  
14 conclusion that it would not be against the public interest to  
15 issue Respondent a restricted real estate broker license.  
16 Whether Respondent meets the terms of the court and his  
17 probation and will avoid committing additional crimes is  
18 unknown.

19 Our most effective means of protecting the public is  
20 to refuse to allow a licensee to retain a license when there is  
21 any doubt about the licensee's rehabilitation.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent

LARRY J. NIELSON, JR. under the Real Estate Law are revoked.

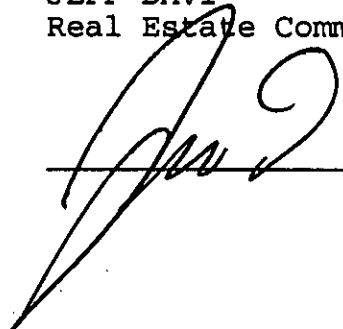
This Decision shall become effective at 12 o'clock noon

on AUG 9 2005.

IT IS SO ORDERED

7-14-05

JEFF DAVI  
Real Estate Commissioner



A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line. The signature is stylized and cursive.

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**FILED**  
MAR - 2 2005

DEPARTMENT OF REAL ESTATE

By Laura B. Orna

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	No. H-31063 LA
LARRY J. NIELSON, JR.,	)	
Respondent.	)	L-2004080115

NOTICE

TO: LARRY J. NIELSON, JR., Respondent, and CHARLES BENNINGHOFF, his representative.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated January 26, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated January 26, 2005, 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 November 17,

///



1 2004, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

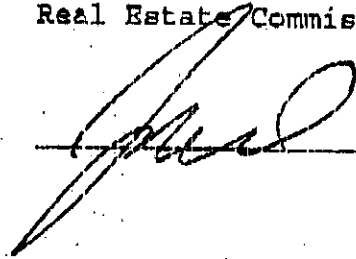
3           Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of November 17, 2004, at the Los Angeles  
6 office of the Department of Real Estate unless an extension of  
7 the time is granted for good cause shown.

8           Written argument of Complainant to be considered by me  
9 must be submitted within 15 days after receipt of the argument of  
10 Respondent at the 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:           3-1          , 2005

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15           JEFF DAVI.  
16           Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LARRY J. NIELSON, JR.,

Respondent.

DRE No. H-31063 LA

OAH No. L2004080115

**PROPOSED DECISION**

This matter was heard on November 17, 2004, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. It was consolidated for hearing with the Accusation against Howard D. Myers, DRE no. H-30998 LA, OAH no. L2004070416.

Respondent Larry J. Nielson, Jr. (Respondent) was present and was represented by Charles Benninghoff, lay representative.

Complainant Janice Wadell (Complainant), Deputy Real Estate Commissioner, was represented by Chris Leong, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was submitted for decision.

**FACTUAL FINDINGS**

**Jurisdiction and License History**

1. Complainant brought the Accusation in her official capacity.
2. (a) The Department issued a restricted real estate salesperson license to Respondent on May 8, 1985. Respondent admitted the allegations in a Statement of Issues that he had been convicted in Benton County, Oregon on August 5, 1981, on his plea of guilty of first degree theft, a felony, and that the conviction was grounds for denying him a license. Respondent's petition for removal of the restrictions was granted by Order effective February 20, 1987.  
  
(b) Respondent's salesperson license was terminated upon the issuance of his broker's license on November 15, 1994. Respondent was also the designated officer for Park Avenue Financial, Inc. and Financial Center West, Inc., (FCW) and was noted by the Department as doing business as Park Avenue Financial.

(c) The Department issued an Order to Desist and Refrain, dated November 12, 1996, against Respondent and FCW based on findings that, in 1995, FCW violated the real estate law by withdrawing fees from a trust account when the fees were not expended for the benefit of the principals, by not maintaining separate records reflecting disbursements on behalf of the principals, by not maintaining account reconciliations, and by not notifying the Department when it employed a real estate salesperson.

### Conviction

3. (a) On November 27, 2002, in the United States District Court, Central District of California, in case no. SACR 01-82-GLT, Respondent was convicted, on his guilty plea, of two counts of violating 18 United States Code section 2(b) (bank fraud), which are felonies.

(b) Respondent was sentenced to five years probation, including 6 months of home detention with electronic monitoring. Respondent was also ordered to pay a special assessment of \$200. Respondent was ordered to pay restitution, jointly and severally with other defendants, in the amount of \$4,079,908.26. Respondent was ordered to pay \$10,000 immediately, pay \$3,500 within 90 days of sentencing, and make monthly payments of at least \$200 during probation. Interest was waived because Respondent did not have the ability to pay.

(c) Respondent testified that there were other lump sum payments on the judgment; that he paid \$17,000 in the beginning, then another lump sum of \$17,000. He made minimum monthly payments of \$200 for about 3 months. Then the probation department reviewed his income and expenses and increased the payment to \$1,116, which he has paid monthly for over two years.

### Facts and circumstances; rehabilitation

4. Respondent and Howard Myers have worked together since 1994 in financing real estate transactions. They work with major lenders over a multi-state area. For the last 7 years, they have averaged about 15 completed transactions per month.

5. (a) The acts of Respondent and Myers leading to their convictions were a small part of a larger series of transactions involving real estate in Orange County, California; more specifically, 37 fourplexes known as Haster Gardens in Garden Grove.<sup>1</sup> In summary, Neko Deferios and Dale Marks purchased the properties in 1996 for \$7.3 million and showed an immediate sale to a company controlled by Henry Weiss for \$10.9 million. Deferios, Marks and Weiss used Weiss' loan application to borrow \$7.84 million from Hawthorne Savings by misrepresenting that the purchase price was \$10.9 million, when they actually used the loan proceeds to pay \$7.3 million to the seller. Further, a fraudulent escrow

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<sup>1</sup> This summary is derived primarily from the District Court Presentence Report of Respondent (Exhibit A).

receipt was prepared showing Weiss made a down payment of \$3.5 million when he had made none.

(b) Hawthorne Savings sued and, to settle, Marks and Defterios refinanced the loan through Peter Starflinger, using straw buyers who temporarily agreed to hold title. The proceeds of the refinancing went to Hawthorne Savings. They then unsuccessfully attempted to sell Haster Gardens to a legitimate buyer.

(c) Marks and Defterios then approached Respondent and Myers' company, Financial Center West, who obtained buyers for several of the units. Although the Presentence Report (Exhibit A) states that Respondent and Myers obtained straw buyers for some of the units, Respondent testified that he marketed some of the units to friends and business associates who were to be actual purchasers. Respondent told the buyers that, after they applied for loans and purchased the units, Marks and Defterios would work as property managers, rent out and maintain the units, collect rent and make the loan payments. Further, Respondent told them that Marks and Defterios would option to purchase the units for \$50,000 over the purchase price.

(d) Although these sellers were prepared to make down payments with their own money for these purchases, ultimately Marks and Defterios supplied the down payment money, which passed from their accounts, through FCW's account, into the buyers' accounts.

(e) In the course of obtaining the loans, Myers and others prepared fraudulent documents that overstated the buyers' income and assets. Respondent and Myers submitted the loan documents to the lender, Pan American, and represented to the lender that the buyers were providing the down payments.

(f) Pan American funded the loans, the proceeds of which went to companies controlled by Marks and Defterios. Respondent and Myers received commissions. These acts occurred in September 1997.

(g) About two years later, there were insufficient rental receipts to pay the loan payments and the buyers later defaulted on the loans, at a loss to Pan American.

6. Respondent recruited friends to invest in Haster Gardens. When they lost their investment, Respondent and Myers paid them about \$80,000 to reduce their loss. Respondent and Myers also paid over \$200,000 to various lenders who lost money in the transactions. Respondent and Myers borrowed money to make these payments. Respondent and Myers were criticized by the government for taking these actions because the government believed that it reduced their ability to make the restitution payments that were ordered later.

7. Respondent and Myers cooperated in the government's investigation. Respondent assisted an agent to review and analyze numerous documents relating to the Haster Gardens transactions, as well as documents unrelated to this case. In part, these actions resulted in a delay between the events in which Respondent and Myers were involved and their sentencing. The Assistant U.S. Attorney praised the level of cooperation. As part of their plea negotiation, and in part due to their cooperation, the government supported a downward departure from the sentencing guidelines for the convictions, and Respondent and Myers will be allowed to present evidence to the U.S. District Court in hopes of reducing the amount of restitution to be paid.

8. Respondent testified that the restitution amount of over \$4 million was required by the Assistant U.S. Attorney in the plea negotiation for the purpose of having Marks and Deferios jointly liable for this amount of total damages. It is noted that the criminal information (the charging document, Exhibit 3) in the federal case alleges that Respondent defrauded a bank with respect to two property loans, in the aggregate loan amount of \$502,400. (The information against Myers alleges two other property loans, in the aggregate loan amount of \$508,800. Exhibit 9.) However, Respondent and Myers have utilized a forensic accountant to review the transactions, who has calculated the loss attributable to them as \$698,027.19. (Exhibit CC.) Respondent and Myers intend to submit this information to the U.S. District Court in hopes of reducing the amount of restitution they are to pay.

9. The Presentence Reports (Respondent, Exhibit A; Myers, Exhibit 10) conclude that Respondent and Myers are "substantially less culpable than Marks and Deferios," who had already defrauded Hawthorne before Respondent and Myers became involved. Also noted, as mitigating factors, is that they were not aware of the overall scheme of Marks and Deferios, and did not profit as much as Marks and Deferios.

10. Throughout the criminal and administrative proceedings, Respondent and Myers have taken full responsibility for their crimes. Respondent stated that he knew the transactions were suspicious when Marks and Deferios began to provide the down payment money. Nevertheless, he continued in the transactions. Respondent's expressions of remorse appeared sincere. Respondent was well-spoken and answered questions directly and honestly. Respondent also established that he has changed his business practices so that there will be no occurrence of any unlawful conduct. He appears to have learned from these mistakes. Respondent has also taken continuing education courses beyond those required for licensure. He has been married for 22 years and supports a 19 year old son in college and a fifteen year old daughter in high school.

11. Respondent presented an impressive array of evidence of good character and rehabilitation. Numerous witnesses and declarations attested to his leadership in Boy Scout activities, even after his son was too old to participate; involvement in school activities and committees; helpfulness and competence in business transactions; and an excellent business reputation. His probation officer notes Respondent is in compliance with his probation and is scheduled for release in November 2007.

## LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 490 because Respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate salesperson. The Department has regulations that define the acts that are substantially related to the qualifications, functions, or duties of a licensee. California Code of Regulations, title 10, section 2910. Under subdivisions (a)(1) and (a)(8), Respondent's acts of bank fraud are substantially related to the qualifications, functions, or duties of a licensee. Factual Findings 3 and 5.

2. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10177, subdivision (b), based on Respondent's conviction. A criminal conviction can form the basis for discipline of a real estate broker's license if the crime is a felony or a crime involving moral turpitude. Respondent suffered felony convictions. Factual Finding 3.

3. Criteria have been developed by the Department to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as an offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), stability of family life;
- Subdivision (i), enrollment in or completion of educational or training courses;
- Subdivision (j), discharge of debts to others, or earnest efforts to do so;
- Subdivision (k), correction of business practices causing injury;
- Subdivision (l), significant involvement in community, church or private programs for social betterment;
- Subdivision (m), new and different social and business relationships; and
- Subdivision (n), change in attitude from the time of conviction to the present, evidenced by: testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

4. (a) Respondent has addressed, and satisfied, many of these criteria of rehabilitation. More than seven years have passed since the acts leading to his conviction, and more than two years have passed since the conviction. Respondent is making restitution, but has a long way to go to completion. He has made appropriate efforts to discharge these debts. Although he intends to seek a reduction in the amount, this has not yet occurred. He has paid fines. His family life is stable, he takes continuing education courses, and he has learned from these acts and corrected his business practices. His involvement in community programs is laudable. Respondent is remorseful for his past conduct and he is unlikely to re-offend.

(b) There is no doubt that Respondent committed a serious crime. Revocation of his license would be justified by the severity of the crime, coupled with its occurrence while Respondent was performing duties for which a real estate license is required, and that Respondent has a licensing history including a 1981 conviction and a 1996 Order to Desist and Refrain. However, the evidence of Respondent's remorse, rehabilitation, and what he has learned and how it has affected him, established that it would not be against the public interest to issue a restricted license, with terms and conditions designed to protect the public safety and welfare.

#### ORDER

All licenses and licensing rights of Respondent Larry J. Nielson, Jr. under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for thirty (30) days from the effective date of this Decision; provided, however, that if Respondent petitions, a portion of up to fifteen (15) days of said suspension shall be stayed upon condition that:

(a) Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250 for each day of the suspension for a total monetary penalty of \$3,750;

(b) Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter.

(c) No further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision in this matter.

(d) If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

(e) If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within one year from the effective date of the Decision, the stay hereby granted shall become permanent.

*Not adopted*

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 nolo contendere to a crime which is substantially related to 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, Regulations 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 two 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 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.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order suspension of Respondent's license until Respondent passes the examination.



7. 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 order 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 the Respondent engaged during the period covered by the report.

8. The nature of these restrictions on the license of Respondent Larry J. Nielson, Jr. should also be reflected on the entities of Park Avenue Financial Group and Financial Center West, Inc.

DATED: January 26, 2005.

*David Rosenman*

DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings

*Sacto  
May*

**FILED**  
SEP - 1 2004

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

By *Laura B. Stone*

*In the Matter of the Accusation of*

LARRY J. NIELSON, JR.,

}

Case No. H-31063 LA

OAH No. L-2004080115

Respondent

**NOTICE OF HEARING ON ACCUSATION**

**To the above named respondent:**

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California on **NOVEMBER 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.

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: September 1, 2004

By *CHRIS LEONG*  
**CHRIS LEONG, Counsel**

cc: Larry J. Nielson, Jr.  
Charles Benninghoff  
Sacto./OAH

*Sachs*  
*Jag*

1 CHRIS LEONG, Counsel (SBN 141079)  
2 Department of Real Estate  
3 320 West Fourth Street, Suite 350  
4 Los Angeles, CA 90013-1105  
5 Telephone: (213) 576-6982  
6 -or- (213) 576-6910 (Direct)  
7

**FILED**  
JUL 14 2004  
DEPARTMENT OF REAL ESTATE

By *James B. Jones*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 LARRY J. NIELSON, JR., )  
13 individually and dba )  
14 Park Avenue Financial Group and )  
15 as designated officer of )  
16 Financial Center West, Inc.; )  
17 Respondent. )

No. H- 31063 LA

A C C U S A T I O N

17 The Complainant, Janice Waddell, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of Accusation  
19 against LARRY J. NIELSON, JR. individually and dba Park Avenue  
20 Financial Group and as designated officer of Financial Center  
21 West, Inc. (hereinafter "Respondent"), is informed and alleges as  
22 follows:

23 I

24 Respondent is presently licensed and/or has license  
25 rights under the Real Estate Law, Part 1 of Division 4 of the  
26 Business and Professions Code (hereinafter "Code"), as a real  
27

1 estate broker and dba Park Avenue Financial Group and as  
2 designated officer of Financial Center West, Inc.

3 II

4 The Complainant, Janice Waddell, a Deputy Real Estate  
5 Commissioner of the State of California, makes this Accusation  
6 against Respondent in her official capacity.

7 CONVICTIONS

8 III

9 On or about November 27, 2002, in the United States  
10 District Court Central District of California, Case No.  
11 SACR 01-82-GLT, Respondent was convicted of violating two counts  
12 of 18 USC 1344, 2(b) (Bank fraud, causing an act to be done), a  
13 felony and a crime involving moral turpitude which is  
14 substantially related to the qualifications, functions and duties  
15 of a real estate licensee. Respondent was sentenced to pay  
16 restitution in the amount of \$4,079,908.26.

17 PRIOR DEPARTMENTAL ACTION

18 IV

19 On or about November 20, 1996, before the Department of  
20 Real Estate, State of California, Case No. H-26887 LA, an Order  
21 to Desist and Refrain was issued against Respondent. Respondent  
22 was found to be in violation of 10146 and 10161.8 of the Code and  
23 Sections 2831.1 and 2831.2 of Title 10, Chapter 6, California  
24 Code of Regulations. On April 22, 1985, before the Department of  
25 Real Estate, State of California, Case No. H-461 SA, a Statement  
26 of Issues was filed against Respondent. On May 16, 1985, a  
27

1 Stipulation and waiver was filed on this case. On March 3, 1987,  
2 a Order Granting Unrestricted License was filed on this case.

3 V

4 The convictions set forth above constitute cause  
5 under Code Sections 490 and 10177(b) for the suspension or  
6 revocation of all licenses and license rights of Respondent  
7 under the Real Estate Law.

8 WHEREFORE, Complainant prays that a hearing be  
9 conducted on the allegations of this Accusation and that upon  
10 proof thereof, a decision be rendered imposing disciplinary  
11 action against all licenses and license rights of Respondent,  
12 LARRY J. NIELSON, JR. individually and dba Park Avenue  
13 Financial Group and as designated officer of Financial Center  
14 West, Inc., under the Real Estate Law (Part 1 of Division 4 of  
15 the Business and Professions Code), and for such other and  
16 further relief as may be proper under other applicable  
17 provisions of law.

18 Dated at Los Angeles, California

19 this 1 day of July, 2004.

20  
21   
22 Deputy Real Estate Commissioner  
23

24 cc: Larry J. Nielson, Jr.  
25 Janice Waddell  
26 Sacto.  
27 EE