

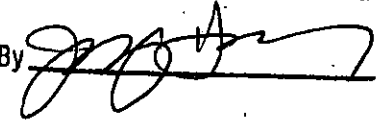
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DEC 17 2004

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Accusation of)
JOSE J. OCHOA,)
Respondent.)

No. H-31080 LA
L-2004080004

DECISION

The Proposed Decision dated November 16, 2004, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

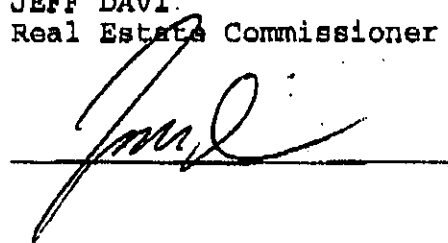
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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

This Decision shall become effective at 12 o'clock noon on January 6, 2005.

IT IS SO ORDERED December 16 2004

JEFF DAVIS
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JOSE J. OCHOA,

Respondent.

Case No. H-31080 LA

OAH Case No. L2004080004

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on October 28 2004.

Kelvin K. Lee, Real Estate Counsel, represented Complainant Maria Suarez (Complainant).

Kevin A. Spainhour, Attorney at Law, represented Respondent Jose J. Ochoa (Respondent), who was present throughout the hearing.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in this proceeding in her official capacity and not otherwise.

2. Respondent Jose J. Ochoa is licensed by the Department as a real estate broker, license ID#01066999. Prior to this, he was licensed as a real estate salesperson. Respondent's broker license is current, with an expiration date of January 14, 2007.

3. The Accusation in this matter was filed on July 7, 2004, and was served on Respondent. Respondent timely filed a Notice of Defense contesting the charges set forth therein, and this hearing followed.

4. On July 3, 2003, Respondent was convicted in case number SA CR 02-152-DOC of the United States District Court for the Central District California on his plea of guilty to one count of violating section 1343 of Title 18 of the United States Code (wire fraud). The crime for which Respondent was convicted is one that involves moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate broker. As the result of the conviction, Respondent was sentenced to three years probation under terms and conditions including but not limited to payment of restitution in the amount of \$9,250.50; a prohibition against working in any business involving mortgage loan programs without the express approval of his probation officer; and a requirement that he notify the Department of his conviction.

5. The facts and circumstances underlying the conviction are as follows: In 1997, the Federal Housing Administration (FHA) of the United States Department of Housing and Urban Development (HUD) had a mortgage insurance program through which individuals with modest income could qualify for loans in order to purchase a home. Respondent, who was then working part-time as a salesperson, represented one such prospective buyer in a transaction involving a house in Santa Ana. The mortgage lender in the transaction, Roger Alvarez, fabricated the documents necessary for the buyer to qualify for the FHA program. Based on the loan secured through and insured by FHA, the transaction was completed. A short time later, the buyer defaulted on the loan, which caused FHA to suffer a financial loss in the amount of \$18,501. Respondent was charged with wire fraud because the FHA program required that the mortgage lender wire the premium to HUD's account, which was located in a Pittsburgh bank. (Exhibit 4.)

6. Respondent admits that he was involved in this and other such transactions with Alvarez in 1997 and 1998. However, he denies that he had any knowledge of the fraudulent activity until some time later, when based on a conversation with his brother-in-law he became aware that Alvarez was asking individuals to admit to things that were not true. Although Respondent stopped referring prospective buyers to Alvarez once he became aware of this, he did not report Alvarez to law enforcement, neither did he take any steps to determine whether any of his own transactions with Alvarez had involved such fraudulent activity. He admits that he should have known Alvarez was doing something wrong based on the manner in which Alvarez was able to obtain loans. (Exhibit 6.) Based on the evidence presented, including a lack of any prior or subsequent convictions, Respondent's testimony on these issues is essentially credible.

7. Respondent thus far has complied with all terms of his probation. He fully paid the required restitution in December 2003. (Exhibits D & E.) He still has almost two years left to serve.

8. In 1999, subsequent to the transaction that underlies the conviction, Respondent was issued his broker's license, and he purchased ownership interest in the

real estate agency at which he had been working. Respondent has been the sole responsible broker at that agency for the past five years. He currently employs four sales associates. He and his associates are bilingual (English/Spanish), and much of their clientele comes from the local Hispanic community. Respondent does not handle any loans, but rather refers them to large, reputable agencies that he investigates prior to committing to any business relationship with them. Respondent is up to date on his Continuing Education. (Exhibit G.) He also holds monthly meetings for his employees, to which he invites other professionals, such as lawyers and escrow and title insurance representatives, who will often speak on recent developments in the real estate field.

9. Respondent expressed remorse for his conviction, and accepts responsibility for his involvement in the illegal transaction. However, Respondent believes that his real mistake was in not reporting Alvarez to law enforcement once he discovered the illegal activity, as he maintains that he was unaware of the fraudulent activity until long after the transactions had been completed. His reasons for pleading guilty were in part financial, but also in part because he wished to avoid any possibility of receiving jail time.

10. Respondent has been involved in a numerous charitable and community activities over the years. He has been particularly active in the area of youth sports, including baseball, soccer, softball, and football, to which he has dedicated both his time as a coach and his money as a sponsor dating back well before his conviction. Respondent also has maintained an active interest in his hometown in Mexico, to which he has provided a large amount of civic support in the form of school sponsorship and an annual fiesta. (Exhibits H, I, J, K, L, M, N, O, P, Q, R, and U.) Respondent is married, and has five children, three of whom reside with Respondent's ex-wife. Respondent's broker's license and real estate business provides financial support for all of them, as well as to other family members.

11. In support of his character, Respondent offered the testimony of Donna Mancuso, his regular title insurance representative who has known Respondent for approximately seven years and regularly attends his monthly staff meetings; Stanley Villanueva, a loan officer for Clarion Mortgage who has handled approximately 60 loans for Respondent's clients and who originally met Respondent when he played on a Little League team Respondent was coaching; and Maria Ocegueda, one of Respondent's sales associates. All attested to Respondent's good character. None of them were fully aware of the circumstances surrounding Respondent's conviction until this hearing.

LEGAL CONCLUSIONS

Cause exists to suspend or revoke Respondent's real estate broker's license pursuant to the provisions of Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of a crime substantially related to the qualifications, functions or duties of a real estate license, as set forth in Factual Findings 4 and 5.

As part of the regulations governing the practice of real estate in the State of California, the Department of Real Estate ("Department") has developed certain criteria,

set forth in the California Code of Regulations, Title 10, section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a conviction.

A review of those criteria applicable to the facts of this case reveals the following:

A. The Guidelines recommend the passage of not less than two (2) years since the most recent criminal conviction. Respondent's conviction occurred in 2003, a little more than one year ago. However, the acts underlying that conviction occurred in 1997-98, almost seven years ago. Further, this is Respondent's only conviction.

B. The Guidelines recommend considering payment of restitution. Respondent has paid all restitution required by his criminal sentence.

C. The Guidelines recommend considering successful completion or early discharge from probation. As noted, Respondent remains on probation until at least 2006. However, he thus far has committed no probation violations.

D. The Guidelines recommend considering correction of business practices responsible for the crime committed. Respondent has clearly changed the manner in which he does business, employing significant quality control that includes regular training for his employees and assists in his determination of lenders with whom he ultimately does business. It is also significant that, at the time of the underlying acts, Respondent was a part-time salesperson, whereas for the past five years he has been a full-time broker.

E. The Guidelines recommend considering changes in business relationships since the time the underlying acts were committed. Although Respondent failed to report the lender's activity to law enforcement, he did terminate his business relationship with that individual, and has had no further contact with him.

F. The Guidelines recommend considering stability of family life. The evidence establishes that Respondent devotes a significant amount of his non-working hours to his family, and that his family life at this time appears stable.

G. The Guidelines recommend considering significant and conscientious community involvement. As noted in Factual Finding 10, Respondent's community involvement is both significant and extensive.

The Guidelines also recommend evaluating several factors relating to changes in the licensee's attitude since the time of the conviction. Respondent does not deny the fact of his conviction, or that the conviction is substantially related to his real estate broker's license. However, as noted in Factual Finding 6, Respondent does deny actual knowledge of the fraudulent activity underlying his conviction, his admissions in the plea agreement notwithstanding. Complainant's position on this issue is essentially that,

because Respondent denies actual knowledge, yet stipulated to such as part of the plea agreement, he has not accepted responsibility for his actions, and as such has not demonstrated a sufficient change in his attitude. However, Respondent points out that there are many reasons to accept a plea agreement in federal court, and if indeed he did not have actual knowledge of the fraudulent activity of his co-defendant, to accept responsibility for something he did not do would be of no real value in demonstrating either remorse or a change in attitude. Respondent should not be subject to a higher degree of discipline "because he is unwilling to perform an artificial act of contrition." *Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730, 745.

Respondent's testimony regarding the circumstances underlying his conviction was essentially credible, and consistent with his prior statements on the subject that were admitted into evidence. (Exhibits 5 & 6.) Further, there is evidence in the record that Respondent has accepted responsibility for what happened and has changed his attitude since the time of the underlying acts. He admits his mistake in failing to do more than simply cut his ties to the lender and in his words "turn a blind eye" to the illegal activity once he had discovered it, and now understands that he should have reported the activity to law enforcement, regardless of the personal consequences. As a responsible broker, he also appears to take quality control and employee training very seriously, as set forth in Factual Finding 8.

As always, the primary concern in a case involving professional licensing is the protection of the public interest. Respondent's conviction goes to the heart of that interest as it relates to real estate. However, Respondent has clearly learned from this experience, has worked as a broker for five years since the underlying acts without incident, has no other convictions apart from this, and no prior record of discipline with the Department. Based on the evidence presented in this matter, revocation or suspension of Respondent's real estate licenses to ensure protection of the public interest is not required. However, because of the nature of Respondent's conviction, and because he still remains on criminal probation, certain safeguards and restrictions should be placed on his license.

ORDER

The license and licensing rights of Respondent Jose J. Ochoa 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 of 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. The restricted license issued to Respondent pursuant to this Decision shall be suspended for 10 days effective the date the restricted license is issued.

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 has elapsed from the effective date of this Decision.

5. Respondent shall report in writing to the Department 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 summaries of salient information concerning each real estate transaction in which Respondent engaged during the period covered by the report.

6. 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 renewed 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 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: _____

11/16/09



MARK T. ROOHK
Administrative Law Judge
Office of Administrative Hearings

58070

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)

Case No. H-31080 LA

JOSE J. OCHOA,

OAH No. L-2004080004

Respondent.

FILED
AUG 25 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By [Signature]

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 THURSDAY, OCTOBER 28, 2004, at the hour of 1:30 P.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: August 25, 2004

By

[Signature]
KELVIN K. LEE, Counsel

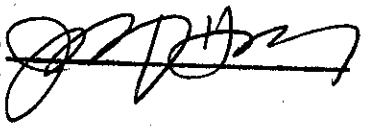
cc: Jose J. Ochoa
Kevin A. Spainhour, Esq.
Sacto.
OAH

58210
KELVIN K. LEE, Counsel (SBN 152867)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6905

FILED
JUL 19 2004

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) No. H-31080 LA
JOSE J. OCHOA,)
Respondent.) A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JOSE J. OCHOA aka Jose Barajas ("Respondent") alleges as follows:

I

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

II

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate broker.

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III

1 On or about October 20, 2003, in the United States
2
3 District Court, Central District of California, Respondent JOSE
4 J. OCHOA, was convicted of one (1) count of violating Title 18,
5 Section 1343 (Wire Fraud) and one (1) count of violating Title
6 18, Section 2, subdivision (b) (Causing an Act to be Done) of
7 the United States Code. These crimes involve moral turpitude,
8 and bear a substantial relationship under Section 2910, Title
9 10, Chapter 6, California Code of Regulations to the
10 qualifications, functions or duties of a real estate licensee.

IV

11 The crimes of which Respondent was convicted, as
12 described in Paragraph III above, constitute cause under
13 Sections 490 and 10177(b) of the Code for the suspension or
14 revocation of the license and license rights of Respondent under
15 the Real Estate Law.
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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 all the licenses and license rights of
5 Respondent, JOSE J. OCHOA, under the Real Estate Law (Part 1 of
6 Division 4 of the Business and Professions Code) and for such
7 other and further relief as may be proper under other applicable
8 provisions of law.

9 Dated at Los Angeles, California

10 this 7th day of July, 2004.

11 
12 Maria Suarez
Deputy Real Estate Commissioner

13 cc: JOSE J. OCHOA
14 Maria Suarez
15 Sacto.
LMA
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