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2 In the Decision which revoked Respondent's real estate  
3 broker license, there were Legal Conclusions made that there was  
4 cause to revoke Respondent's license pursuant to Business and  
5 Professions Code Section Sections 490 and 10177(b) for  
6 conviction of a crime.

7 On October 6, 2003, Respondent was convicted of  
8 violating 18 United States Code (U.S.C.) Section 1343 (wire  
9 fraud), and 18 U.S.C. Section 2(b) (causing an act to be done -  
10 wire fraud), felonies. Said crimes involve moral turpitude and  
11 bear a substantial relationship under Section 2910, Title 10,  
12 Chapter 6, California Code of Regulations ("Regulations") to  
13 the qualifications, functions, or duties of a real estate  
14 licensee.  
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16 The underlying circumstances were that from a date  
17 uncertain until March 5, 1998, in Los Angeles and Orange  
18 counties, Respondent intentionally engaged in a scheme to  
19 defraud lenders and the Department of Housing and Urban  
20 Development (HUD), to obtain money and property by means of  
21 materially false and fraudulent pretenses, representations,  
22 and promises.  
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1 II

2 The burden of proving rehabilitation rests with the  
3 petitioner. (Feinstein v. State Bar (1952) 39 Cal. 2d 541).

4 A petitioner is required to show greater proof of honesty and  
5 integrity than an applicant for first-time licensure. The proof  
6 must be sufficient to overcome the prior adverse judgment on the  
7 applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d  
8 395).

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

14 2911 (a) - Additional time is needed to assess  
15 Respondent's rehabilitation, due to Respondent's history of  
16 substantially related acts and conduct.

17 Given the fact that Respondent has not established  
18 that Respondent has complied with Regulation 2911(a), I am  
19 not satisfied that Respondent is sufficiently rehabilitated  
20 to receive a real estate broker license.

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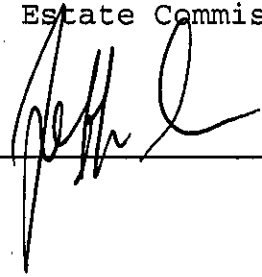
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NOW, THEREFORE, IT IS ORDERED that Respondent's  
petition for reinstatement of Respondent's real estate broker  
license is denied.

This Order shall become effective at 12 o'clock noon  
JAN 23 2008  
on \_\_\_\_\_.

DATED: 12-20-07

JEFF DAVI  
Real Estate Commissioner

  
\_\_\_\_\_

*Sacto  
Jae*

**FILED**  
MAY 16 2005  
DEPARTMENT OF REAL ESTATE

By *Laura B. Stone*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	NO. H-31120 LA
ROGELIO GARDUNO ALVAREZ,	)	L-2004080641.
	)	
	)	
Respondent.	)	

ORDER DENYING RECONSIDERATION

On April 12, 2005, a Decision was rendered in the above-entitled matter. The Decision was to become effective on May 5, 2005, but was stayed by separate Order to May 16, 2005.

On April 22, 2005, Respondent petitioned for reconsideration of the Decision of April 12, 2005.

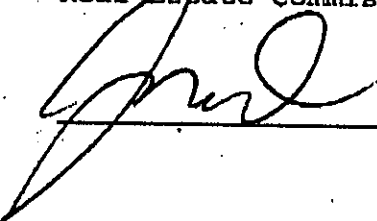
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I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of April 12, 2005, and reconsideration is hereby denied.

IT IS SO ORDERED 5-16-05

JEFF DAVI  
Real Estate Commissioner



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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROGELIO GARDUNO ALVAREZ,

Respondent.

Case No. H-31120 LA

OAH No. L2004080641

**PROPOSED DECISION**

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 11, 2005.

Chris Leong, Staff Counsel, represented Complainant James Waddell, Deputy Real Estate Commissioner of the Department of Real Estate.

Charles Benninghoff, Administrative Advocate, represented Rogelio Garduno Alvarez (hereinafter Respondent) who was present at hearing.

Oral and documentary evidence was taken and the record was held open until February 11, 2005, to allow Respondent to submit evidence regarding his motion for early termination of probation and expungement. On January 26, 2005, Respondent informed the court that his motion had been denied. The matter was submitted on February 11, 2005, without additional response by the Department.

**FACTUAL FINDINGS**

1. James Waddell (Complainant) made the Accusation in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department or DRE), State of California.

2. Respondent is presently licensed as a real estate broker, License No. 01128552. Respondent has license rights until September 25, 2006, unless revoked pursuant to these proceedings.

3. On October 6, 2003, in the United States District Court, Central District of California, in Case No. CR SA02-152, Respondent was convicted on his guilty plea to one count of wire fraud, in violation of 18 U.S.C. § 1343, and one count of causing an act (wire fraud) to be done, in violation of 18 U.S.C. § 2(b), a felony and a crime involving moral

turpitude that is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent was sentenced to probation for three (3) years, ordered to pay restitution in the amount of \$18, 501.00 to the Department of Housing and Urban Development (HUD), and to pay a special assessment in the amount of \$100.00. Respondent has fully paid the restitution ordered by the court.

4. The facts and circumstances underlying Respondent's conviction are that from a date uncertain until March 5, 1998, in Los Angeles and Orange Counties, Respondent intentionally engaged in a scheme to defraud lenders and HUD to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises. As part of the scheme Respondent: (a) contacted co-schemers to prepare false and fabricated income and credit-related documentation for buyers to enable them to qualify for FHA insured loans; (b) used the documentation to prepare fraudulent loan packages for FHA-insured loans; (c) knowing that the income and credit related documentation were false and fabricated, Respondent would submit the loan packages to commercial lenders in Los Angeles and Orange Counties.

5. Based upon these fraudulent loan packages, the lenders would fund the buyers' loans, wire insurance premiums to HUD's account at Mellon Bank in Pittsburg, Pennsylvania, and transmit the loan packages to the FHA for insurance. Based on these fraudulent transactions, the FHA would insure the buyers' loans. In many cases, the buyers would default on the loans, leaving the FHA with significant losses.

6. In August 1997, Respondent caused to be transmitted in interstate commerce by wire a FHA insurance premium for Citifed Diversified Incorporated's loan for the purchase of a property at 2325 South Orange, Santa Ana, California, to HUD's account at Mellon Bank in Pittsburg, Pennsylvania. In 1998, Respondent caused to be transmitted in interstate commerce by wire a FHA insurance premium for Citifed Diversified Incorporated's loan for the purchase of a property at 1581 Jadestone Lane, Corona, California, to HUD's account at Mellon Bank in Pittsburg, Pennsylvania. In March 1998, Respondent caused to be transmitted in interstate commerce by wire a FHA insurance premium for Citifed Diversified Incorporated's loan for the purchase of a property at 808 East 2<sup>nd</sup> Street, Santa Ana, California, to HUD's account at Mellon Bank in Pittsburg, Pennsylvania.

7. Respondent is 40 years of age and is married with four children. He is the sole supporter for his wife and family and has worked in real estate since about 1990. Respondent became involved in real estate financing as a broker in 1993 or 1994. In 1997, he met Jose Ochoa who he began to work with processing real estate loan transactions, including the FHA loans involved in Respondent's 2003 conviction. Respondent could not recall how many transactions he processed with Ochoa, who was a co-defendant in Respondent's criminal case, except that he remembers processing "a few transactions" with Ochoa between 1997 and 1999.

8. In approximately January 2000, Respondent became involved in his wife's church, the Strong Tower Apostolic church, and began to change his life based upon his deepening religious beliefs. According to Respondent, in January 2000 he decided he would no longer be involved in fraudulent FHA loan transactions and informed all the salespersons in his office that he would not serve as the broker for these deals. Respondent stated all of his associates decided to leave his office after he informed them of his intention not to conduct unlawful transactions. In April 2000, Respondent was contacted by the Federal Bureau of Investigation (FBI) regarding the fraudulent FHA loan transactions. Respondent cooperated fully with the FBI in his investigation, which ultimately resulted in his conviction in 2003.

9. Respondent regrets that he participated in the fraudulent FHA-insured loan transactions and expressed sincere remorse at hearing. Respondent admitted he participated in the fraudulent FHA loan scheme by knowingly receiving fabricated and false loan documents and processing the loan packages through the financial institutions. He stated there were about 30 persons involved with him and Ochoa in the conspiracy to defraud HUD with the FHA fraudulent loan transactions. Respondent claims that he no longer is involved with any of the persons in the conspiracy and he no longer has any real estate salespersons working under his broker license.

10. Since the beginning of 2000, Respondent has devoted his life to his church and family and appears to be well on his way to meaningful rehabilitation. As a result of his involvement in his church, Respondent has become a better father and husband to his family. Respondent has paid all of the restitution ordered by the court but remains on probation until October 2006.

11. As a real estate broker, Respondent is entrusted with a fiduciary responsibility to his clients and is relied upon by financial institutions to be honest and trustworthy when transacting real estate loan packages. Respondent's unlawful conduct raises grave concerns about his ability to remain licensed as a real estate broker. Respondent's criminal conduct involved significant acts of fraud and dishonesty which were directly related to the real estate profession and his duties as a licensee. Although Respondent maintains that he no longer has salespersons working under his broker license, given the gravity of the misconduct in this case, Respondent can not be allowed to retain a broker's license with the freedom and independence such a license allows. Respondent has shown that he is making significant strides toward rehabilitation and changing his life after committing these serious criminal offenses. However, it has been less than two years since Respondent's conviction and he remains on felony criminal probation until October 2006. There has not been passage of enough time since Respondent's conviction to adequately assess his rehabilitation and his fitness to retain a real estate broker's license.

12. On these facts, it can not be found that Respondent has been sufficiently rehabilitated from his October 2003 conviction for wire fraud to permit him to retain his real estate broker's license. There still exists a significant risk of injury and harm to the public if Respondent is allowed to retain his license at this time.

## LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate broker's license pursuant to Business and Professions Code Sections 490 and 10177(b), in that Respondent was convicted of wire fraud and causing an act (wire fraud) to be done, crimes of moral turpitude that are substantially related to the qualifications, functions, and duties of a real estate salesperson, as is set forth in Factual Findings 3 through 6.
2. There is insufficient evidence that Respondent has rehabilitated himself from his October 2003 conviction for wire fraud, by reason of Factual Findings 7 through 12.


Title 10 of the California Code of Regulations, section 2912 contains the rehabilitation criteria to be considered by the Department in a revocation or suspension case. Section 2912, subdivision (a) provides that there should be a passage of not less than two years from the most recent conviction that is substantially related to the qualifications, functions and duties of a real estate broker. Respondent's criminal conviction occurred in October 2003, less than two years ago and he remains on probation until October 2006. The criminal conduct involved a fraudulent scheme in processing FHA-insured loan applications and misrepresentations to commercial lenders. This crime was directly related to his duties as a real estate broker and occurred while he was performing those duties.

Respondent fully admitted his misconduct and appears to be well on the way to rehabilitation. He has paid the restitution ordered as a condition of his probation, and appears to have made significant changes in his life since January 2000. But given the gravity of Respondent's criminal conduct, it can not be concluded that Respondent would not present a significant risk to the public if he is allowed to retain his real estate broker's license at this time. There simply has not been passage of enough time to determine whether Respondent's has been successfully rehabilitated from his criminal conviction.

## ORDER

All licenses and licensing rights of Respondent Rogelio G. Alvarez under the Real Estate Law are revoked.

DATED: March 13, 2005, 2005

  
\_\_\_\_\_  
MICHAEL A. SCARLETT  
Administrative Law Judge  
Office of Administrative Hearings

*Sacto for*

**FILED**  
SEP 29 2004  
DEPARTMENT OF REAL ESTATE

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

By *Janice B. Stone*

*In the Matter of the Accusation of*

ROGELIO GARDUNO ALVAREZ,

}  
}

Case No. H-31120 LA

OAH No. L-2004080641

*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 **JANUARY 11, 2005**, 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 29, 2004

By *CHRIS LEONG*  
*CHRIS LEONG, Counsel*

cc: Rogelio Garduno Alvarez  
Benninghoff & Ramirez  
SACTO./OAH

*Leong*

CHRIS LEONG, Counsel (SBN 141079)  
Department of Real Estate  
320 West Fourth Street, Suite 350  
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982  
-or- (213) 576-6910 (Direct)

**FILED**  
JUL 29 2004  
DEPARTMENT OF REAL ESTATE

By *Jana B. Stein*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	No. H-31120 LA
ROGELIO GARDUNO ALVAREZ,	)	<u>ACCUSATION</u>
Respondent.	)	

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against ROGELIO GARDUNO ALVAREZ (hereinafter "Respondent"), is informed and alleges as follows:

I

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

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II

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

5 CONVICTIONS

6 III

7 On or about October 6, 2003, in the United States  
8 District Court, Central California, in Case No. CR SA02-152,  
9 Respondent was convicted of violating 18 U.S.C. Sections 1343  
10 (Wire Fraud) and 2(b) (Causing an Act to Be Done), a felony and a  
11 crime involving moral turpitude which is substantially related to  
12 the qualifications, functions and duties of a real estate  
13 licensee. Respondent was sentenced to probation for three (3)  
14 years.

15 IV

16 The conviction set forth above constitutes cause  
17 under Code Sections 490 and 10177(b) for the suspension or  
18 revocation of all licenses and license rights of Respondent  
19 under 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 licenses and license rights of Respondent,  
5 ROGELIO GARDUNO ALVAREZ, 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  
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 27 day of July, 2004.

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13 Deputy Real Estate Commissioner  
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22 cc: Rogelio Garduno Alvarez  
23 Waddell  
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