

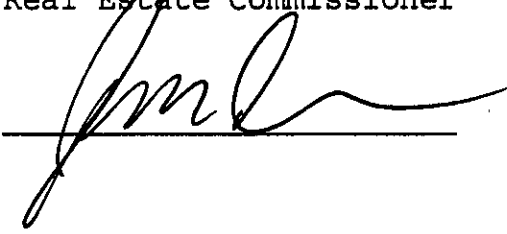


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I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of May 9, 2006, and reconsideration is hereby denied.

IT IS SO ORDERED 6-27-06

JEFF DAVI  
Real Estate Commissioner



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**FILED**  
MAY 12 2006  
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of ) NO. H-32078 LA  
 ) L-2005080788  
FRANK RICHARD MARTINEZ, )  
 )  
Respondent. )

DECISION AFTER REJECTION

This matter was heard by Carolyn D. Magnuson,  
Administrative Law Judge (hereinafter "ALJ") of the Office of  
Administrative Hearings on January 25, 2006.

The Complainant was represented by Lissete Garcia,  
Counsel for the Department of Real Estate.

Respondent FRANK RICHARD MARTINEZ (hereinafter  
"Respondent") appeared personally and was represented by Frank  
M. Buda, Attorney at Law.

Evidence was received, the hearing was closed and the  
matter stood submitted.

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1 On February 3, 2006, ALJ Magnuson, submitted a Proposed  
2 Decision which I declined to adopt as my Decision herein.

3 Pursuant to Section 11517(c) of the Government Code  
4 of the State of California, Respondent was served with notice  
5 of my determination not to adopt the Proposed Decision of the ALJ  
6 along with a copy of said Proposed Decision. Respondent was  
7 notified that the case would be decided by me upon the record,  
8 the transcript of proceedings held on  
9 January 25, 2006, and upon any written argument offered by  
10 Respondent and Complainant.

11 On April 17, 2006, Argument was submitted by  
12 Respondent. On April 18, 2006, Argument was submitted on behalf  
13 of Complainant.

14 I have given careful consideration to the record in  
15 this case including the transcript of proceedings of  
16 January 25, 2006. I have also considered the Argument submitted  
17 by Respondent and the Argument submitted on behalf of  
18 Complainant.

19 The following shall constitute the Decision of the Real  
20 Estate Commissioner in this proceeding:

21 FACTUAL FINDINGS

22 1. The Complainant, Janice Waddell, Deputy Real  
23 Estate Commissioner of the Department of Real Estate of the  
24 State of California (hereinafter "Department") filed Accusation  
25 No. H-32078 LA in her official capacity on July 15, 2005.  
26 Thereafter, Respondent filed a Notice of Defense requesting a  
27 hearing.

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## 2. License History/Accusation

The Department initially issued real estate salesperson license number 01310381 to Respondent on May 14, 2001. Respondent is presently licensed in the employ of licensed real estate broker Barbara Mayber Lynch (hereinafter "Lynch") of All California Brokerage, Inc.

On July 15, 2005, the Department filed an Accusation alleging that Respondent's convictions involved moral turpitude, were substantially related to the qualifications, functions or duties of a real estate licensee, and that there was cause to revoke or suspend Respondent's license and/or license rights pursuant to Code Sections 490 and 10177(b).

## 3. Convictions

a. On or about June 1, 2004, in the United States District Court, Central District of California, Southern Division, Case No. SA-CR 03-61-GLT, Respondent was convicted of violating 18 U.S.C. Section 157(1)(3) (bankruptcy fraud), a felony.

The Indictment stated that between June 2000 and December 2000, Respondent acting with the intent to defraud, devised and executed a scheme to defraud financial institutions and other creditors which were seeking to foreclose on property owned by third parties. The scheme was designed to delay foreclosure proceedings initiated by the creditors by fraudulently transferring partial interest in the properties at issue to straw debtors in whose name a bankruptcy proceeding

1 would be filed. In furtherance of the scheme, Respondent filed  
2 or caused to be filed, bankruptcy petitions and knowingly made  
3 and caused to be made false representations in relation to those  
4 bankruptcy proceedings.

5 Respondent was sentenced to federal prison for  
6 thirteen (13) months, followed by three years supervised  
7 release, the terms and conditions of which included payment of a  
8 total fine of \$10,000.00, notification to the Department within  
9 30 days of the fact of conviction, and obtaining written  
10 approval from the Probation Officer for any employment.

11 Respondent was released from prison after serving 10 months, has  
12 paid the \$10,000.00 fine and will be on supervised release until  
13 2008.

14 b. On or about July 2, 2004, in the Superior Court of  
15 California, County of Los Angeles, in Case No. BA249720,  
16 Respondent was convicted of violating Civil Code  
17 Section 2945.4(g) (inducing or attempting to induce any real  
18 property owner to enter a contract which does not comply in all  
19 respects with the foreclosure consultant requirements), a felony  
20 later reduced to a misdemeanor pursuant to Section 17(b)(4) of  
21 the Penal Code. Respondent was sentenced to three years summary  
22 probation, to include serving 180 days in county jail. On or  
23 about December 19, 2005, terminated probation, set aside the  
24 conviction, and dismissed the charges against Respondent  
25 pursuant to Penal Code sections 17(b)(3) and 1203.4.

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Factors in Mitigation

1 At the administrative hearing Respondent testified as  
2 follows:  
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4 4. Respondent testified and described the  
5 circumstances surrounding his conviction as follows: In 1999,  
6 Respondent's brother, Armando Martinez, introduced him to a man,  
7 Jonathan Donell (hereinafter "Donell"), who claimed to be a  
8 lawyer. Donell convinced Respondent that it was legal for him  
9 to assist homeowners against whom foreclosure proceedings had  
10 been initiated to delay their foreclosures. The delay was  
11 accomplished by having the owner deed an interest in the  
12 imperiled property to a third party. In turn, a bankruptcy  
13 proceeding, in which the property was listed as an asset, was  
14 filed in the name of the third party. The bankruptcy filing  
15 invoked the automatic stay provision of the bankruptcy law  
16 against the foreclosure thereby extending the owner's retention  
17 of the subject property. Respondent testified that it was his  
18 responsibility to locate distressed homeowners, sign them up for  
19 the program, and obtain the deed. The bankruptcy proceedings  
20 were handled by Donell, Respondent's alleged associate.  
21 Respondent also testified that over time, as he acquired  
22 experience, and as Donell became more evasive, Respondent came  
23 to doubt the legitimacy of the program and decided to stop  
24 participating in it.  
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1                   5. Respondent further testified that the FBI  
2 contacted him regarding the bankruptcy transactions and that he  
3 cooperated with their investigation.

4                   6. Respondent also testified that he then became a  
5 real estate salesperson. He first worked for Coldwell Banker  
6 brokerage. In July 2002, he then moved to All California  
7 Brokerage, Inc. His employing broker is aware of the  
8 convictions and is willing to continue Respondent's employ and  
9 supervise his transactions.

10                   Factors in Aggravation

11                   7. Respondent testified that his alleged associate,  
12 Donell, had assured him that the transactions were legal. There  
13 is no evidence supporting the existence or whereabouts of the  
14 alleged associate, Jonathan Donell. Respondent's testimony is  
15 self-serving.

16                   8. By pleading guilty to bankruptcy fraud charges,  
17 Respondent admitted to have knowingly devised or participated in  
18 a scheme to defraud, with the intent to defraud, and in carrying  
19 out the scheme, Respondent filed bankruptcy petitions or  
20 knowingly made a false or fraudulent representation, claim or  
21 promise in relation to a bankruptcy proceeding. This is a  
22 serious crime. Respondent's testimony that he did not know that  
23 his actions were illegal is no excuse for engaging in fraudulent  
24 misconduct. Respondent's testimony is self-serving and not  
25 supported by any other evidence.  
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1 9. ALJ Magnuson found that there was a period of time  
2 between Respondent's recognition that what he was doing was not  
3 legal and his discontinuing his participation in late 2000.

4 Witnesses on Respondent's Behalf

5 10. Witnesses testified on Respondent's behalf as  
6 follows: Armando Martinez, Respondent's older brother; Barbara  
7 Mayber Lynch, Respondent's employing broker; and Denise Mae  
8 Manriquez, Respondent's wife of five years. Mrs. Manriquez  
9 testified that she and Respondent have a good relationship and  
10 are expecting their first child. She also testified that  
11 Respondent's earnings are their primary source of income. She  
12 further testified that Respondent has expressed remorse for his  
13 convictions and attends church with her.

14 11. Although Respondent presented character  
15 references from his family and employer, stating that he is  
16 remorseful of his convictions and is an honest and religious  
17 person, who is active in church and attends services regularly,  
18 this is not conclusive evidence of Respondent's character.

19 Respondent also submitted a number of letters of  
20 reference attesting to his character. The authors were aware of  
21 Respondent's convictions, although, some of the authors of the  
22 letters learned of the conviction only after they had conducted  
23 business with Respondent and expressed shock when learning of  
24 Respondent's conviction for bankruptcy fraud.

25 12. ALJ Magnuson found that Respondent accepts  
26 responsibility for his criminal conduct and is repentant and  
27 remorseful.

LEGAL CONCLUSIONS

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1. Cause exists to revoke or suspend Respondent's real estate salesperson license pursuant to Business and Professions Code Sections 490 and 10177(b), for the convictions of crimes involving moral turpitude and substantially related to the qualifications and duties of a real estate salesperson, set forth in Finding 3.

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

Criteria of Rehabilitation.

3. Criteria of Rehabilitation (Revocation or Suspension) have been developed by the Department pursuant to Section 482(b) of the Business and Professions Code 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 crime committed by the licensee. Said criteria are set forth at Section 2912, Title 10, Chapter 6, California Code of Regulations ("Regulations").

Application of the Criteria of Rehabilitation as set forth in Regulation 2912 reveals the following:

Regulation (a): It has been less than two years since Respondent's convictions in June and July 2004.

Regulation (b): Respondent has paid all court ordered restitution for his convictions.

Regulation (c): Respondent's federal conviction

1 cannot be expunged. Respondent's state conviction was expunged  
2 pursuant to Penal Code Section 1203.4 on December 19, 2005.

3 Regulation (d): This regulation is not applicable  
4 because the underlying offenses do not require registration  
5 pursuant to Penal Code Section 290.

6 Regulation (e): Respondent remains on federal  
7 probation until 2008. Respondent was discharged from probation  
8 for his state conviction on or about October 27, 2005.

9 Regulation (f): This Regulation is not applicable  
10 because there is no evidence that the criminal convictions were  
11 attributable to the use of a controlled substance.

12 Regulation (g): Respondent has paid all fees and  
13 fines required by the courts.

14 Regulation (h): Respondent is currently employed as a  
15 real estate sales agent. His employer testified that Respondent  
16 has conducted himself in a professional manner and has never  
17 received any complaints against him.

18 Regulation (i): Respondent testified that Donell, the  
19 alleged associate, has fled and has not been located. There is  
20 no evidence that Respondent has contact with Donell.

21 Regulation (j): Respondent is married and expecting a  
22 first child.

23 Regulation (k): At the hearing, Respondent presented  
24 a certificate from T.C.I. Educational Services acknowledging  
25 Respondent's completion of 15 hours in a Basic Real Estate  
26 course.  
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1 Regulation (l): At the hearing, Respondent submitted  
2 a Certificate of Achievement from the Taft Correctional  
3 Institution for completing a forty day spiritual journey  
4 entitled "The Purpose Driven Life". Respondent also testified  
5 that he is involved in church activities for Living Hope Church  
6 in San Clemente.

7 Regulation (m): At the administrative hearing,  
8 Respondent testified that he felt remorseful and embarrassed for  
9 what happened, and for putting his family through his  
10 convictions.

11 At the hearing, Respondent's wife, brother, and his  
12 employing broker testified on his behalf. There were also a  
13 number of reference letters offered on his behalf.

14 This testimony is self-serving. Respondent and his  
15 family have an interest in maintaining Respondent's license. In  
16 addition, Respondent's employing broker cannot supervise  
17 Respondent at all times and be present during all transactions  
18 which Respondent handles for clients.

19 Respondent also submitted a number of letters of  
20 reference attesting to his character. The authors were aware of  
21 Respondent's convictions, although, some of the authors of the  
22 letters learned of the conviction only after they had conducted  
23 business with Respondent and expressed shock when learning of  
24 Respondent's conviction for bankruptcy fraud.

25 It is not known exactly how long Respondent's criminal  
26 activity occurred. However, Respondent did not immediately  
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1 cease from participating in the scheme when he claimed to have  
2 realized that it was not legal.

3 Respondent testified that he was cooperative with law  
4 enforcement officials and the evidence does indicate that he  
5 admitted guilt and entered a plea of guilty. However, this was  
6 done after the crime was committed and after Respondent was  
7 confronted by law enforcement officials. This also was self-  
8 serving. In his federal case, Respondent was originally charged  
9 with two felony counts for Conspiracy and Bankruptcy Fraud for  
10 filing or causing to have filed at least four fraudulent  
11 bankruptcy petitions. As a result of Respondent's cooperation  
12 and a plea bargain, Respondent was only convicted of one (1)  
13 felony count. Respondent's sentence would have been  
14 significantly reduced as a result of this plea bargain.  
15 Additionally, in Respondent's state criminal case, Respondent  
16 was initially charged with seven felony counts including  
17 Mortgage Foreclosure Consultant Inducing Owner to Enter into  
18 Contract without Providing Required Notice, Fraud by Mortgage  
19 Foreclosure Consultant, and Attempting to File a False or Forged  
20 Instrument. As a result of a plea bargain, Respondent was only  
21 convicted of one (1) misdemeanor count. Respondent's sentence  
22 would have been significantly reduced as a result of this plea  
23 bargain.

24 In addition, at the administrative hearing, Respondent  
25 stated that he was misled by the alleged associate who cannot be  
26 located. Respondent claimed that he was not aware that what he  
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1 was doing was illegal. Respondent has not unequivocally  
2 admitted guilt for his actions.

3 I disagree with ALJ Magnuson's finding that Respondent  
4 accepts responsibility for his criminal conduct.

5 Considering all these factors, a change in attitude  
6 has not been shown.

7 The Offense

8 4. In his plea of nolo contendere to bankruptcy  
9 fraud, Respondent admitted to filing or causing to have filed  
10 fraudulent bankruptcy petitions. This was not just an error in  
11 judgment, but criminal in nature. I disagree with the ALJ's  
12 finding that the evidence established that an alleged associate  
13 convinced Respondent that the program simply took advantage of  
14 loopholes in the law and was entirely legal. As previously  
15 discussed herein, the only evidence presented was Respondent's  
16 testimony which was self-serving and not supported by any other  
17 evidence.

18 It is not known if there was other misconduct or  
19 criminal offenses by Respondent; however, there is no evidence  
20 of such.

21 Licensee Responsibilities

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

1 disclosing important facts about the properties and information  
2 he or she is privy to and holding monies and other personal  
3 property in a fiduciary capacity.

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

11 6. The Real Estate Law and the disciplinary  
12 procedures provided for in the Real Estate Law are designed to  
13 protect the public and to achieve the maximum protection for the  
14 purchasers of real property and those dealing with real estate  
15 licensees (Business and Professions Code Section 10050 and  
16 Handeland v. Department of Real Estate (1976) 58 Cal.App.3d  
17 513.)

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

8. Temptations to "bend the rules" or otherwise  
engage in dishonest dealing abound. Respondent testified that  
he engaged in the misconduct trying to find "loopholes" in the

1 Bankruptcy Law. We cannot know with certainty that Respondent  
2 will not commit another offense; thus, his licensure poses a  
3 risk to the public interest.

4 Respondent is licensed as a real estate salesperson  
5 employed by a real estate broker. Therefore, even if Respondent  
6 is granted a restricted real estate salesperson license, it is  
7 not certain that the required broker oversight would control  
8 Respondent's activities and protect the public. A restricted  
9 license allows licensees to perform the same acts as a non-  
10 restricted license including the same access into homes of  
11 members of the public.

12 9. Respondent argued that his real estate license is  
13 the primary means to earn a livelihood. However, the  
14 Department's role is to protect the public interest and not to  
15 provide Respondent the ability to earn a living. There are  
16 other employment opportunities and jobs available.

17 10. I disagree with the ALJ's opinion that it would  
18 not be against the public interest to allow Respondent to  
19 continue to work as a real estate salesperson with a restricted  
20 license. Whether Respondent  
21 will continue to avoid committing fraudulent crimes is unknown.

22 11. Respondent remains under supervision of the  
23 criminal justice system. After Respondent has spent a period of  
24 time without the supervision of the criminal justice system, his  
25 actions can be again evaluated and his level of rehabilitation  
26 can be more accurately determined. California courts have held  
27 that little weight is placed on the fact that a license

1 applicant did not commit additional crimes while in prison, or  
2 while on parole or probation (See In re Menna (1995) 11 Cal.4<sup>th</sup>  
3 975; Seide v. Committee of Bar Examiners (1989) 49 Cal.3d 933).  
4 For example, In re Gossage (2000) 23 Cal.4<sup>th</sup> 1080, the court  
5 noted that persons under the direct supervision of correctional  
6 authorities are required to behave in an exemplary fashion and  
7 gave little weight to the fact that a licensee did not commit  
8 additional crimes during the period of probation or while  
9 engaged in the disciplinary process. Such is the case with  
10 Respondent.

11 Respondent's convictions indicates his propensity to  
12 do wrong. More time is needed after probation to determine if  
13 Respondent is rehabilitated.

14 12. Respondent poses a threat to the public interest.  
15 It has not been shown that Respondent is rehabilitated and that  
16 he will not engage in similar criminal and dishonest acts as a  
17 real estate licensee. It has not been shown that the public  
18 welfare would be adequately protected by allowing Respondent to  
19 retain a real estate license.

20 A determination cannot be made that the public would  
21 be adequately protected by the issuance of a restricted license  
22 to Respondent at this time.

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ORDER

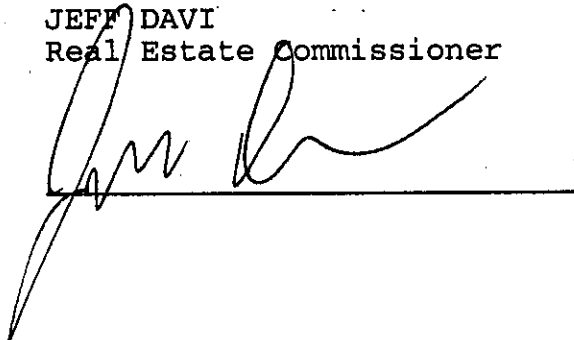
WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent  
FRANK RICHARD MARTINEZ under the Real Estate Law are revoked.

This Decision shall become effective at 12 o'clock noon  
on June 1, 2006.

IT IS SO ORDERED

JEFF DAVI  
Real Estate Commissioner

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1 2006, and any written argument hereafter submitted on behalf of  
2 Respondent and Complainant.

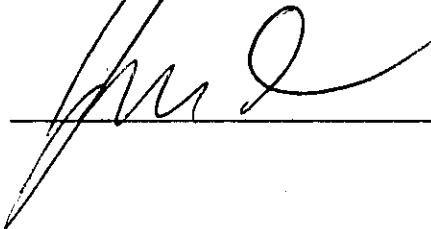
3 Written argument of Respondent to be considered by me  
4 must be submitted within 15 days after receipt of the transcript  
5 of the proceedings of January 25, 2006, at the Los Angeles office  
6 of the Department of Real Estate unless an extension of the time  
7 is granted for good cause shown.

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: \_\_\_\_\_

2/23/06

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15 JEFF DAVIS  
Real Estate Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Agency No. H 32078 LA
	)	
FRANK RICHARD MARTINEZ,	)	OAH No. L2005080788
	)	
Respondent.	)	
_____	)	

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on January 25, 2006.

Lisette Garcia, Staff Counsel, represented the Complainant.

Frank M. Buda, Attorney at Law, represented Frank Martinez, who was present at the hearing.

Testimonial and documentary evidence was received, and the matter was submitted at the close of the hearing.

FACTUAL FINDINGS

1. Janice Waddell (Complainant) filed the Accusation in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

2. Frank Richard Martinez (Respondent) is licensed by the Department as a real estate salesperson. He was first licensed in May 2001, and the license has been in full force and effect at all times relevant to the charges in the Accusation.

3. On July 2, 2004, in the Superior Court of the State of California, County of Los Angeles, Respondent was convicted on his plea of nolo contendere of violating Civil Code section 2945.4, subdivision (g) (inducing or attempting to induce any real property owner to enter a contract which does not comply in all respects with the foreclosure consultant requirements).

4. Imposition of sentence was suspended, and Respondent was placed on three years' summary probation, which required Respondent to serve 180 days in the county jail

and pay fines, assessments and/or penalties. Although Respondent pled to a felony, the conviction was later reduced to a misdemeanor pursuant to Penal Code section 19, subdivision (a), and later expunged under the provisions of Penal Code section 1203.4.

5. On June 1, 2004, in the United States District Court, Central District of California, Southern Division, Respondent was convicted on his plea of guilty of violating 18 U.S.C. section 157 (bankruptcy fraud).

6. Respondent was sentenced to serve 13 months in federal prison followed by three years supervised release. He was ordered to pay a fine of \$10,000, which he has done. Respondent was released from prison after serving 10 months and will be on supervised release until 2008.

7. The two convictions arose from a common course of conduct. In 1999, Respondent was introduced to a man, who claimed to be a lawyer. This man convinced Respondent that it was entirely legal for him to assist homeowners against whom foreclosure proceedings had been initiated to delay their foreclosures. The delay was accomplished by having the owner deed an interest in the imperiled property to a third party. In turn, a bankruptcy proceeding, in which the property was listed as an asset, was filed by Respondent's associate in the name of the third party. The bankruptcy filing invoked the automatic stay provision of the bankruptcy law against the foreclosure thereby extending the owner's retention of the subject property.

8. Respondent's responsibility was to locate distressed homeowners, sign them up for the program, and obtain the deed. The bankruptcy proceedings were handled by Respondent's associate.

9. At first, Respondent was convinced that the program simply took advantage of loopholes in the law and was entirely legal. Over time, as he acquired experience and as his associate became more evasive, Respondent came to doubt the legitimacy of the program and decided to stop participating in it. However, there was a period of time between Respondent's recognition that what he was doing was not legal and his discontinuing his participation in late 2000.

10. Respondent then became a real estate salesperson. At first he worked for a Coldwell Banker brokerage. In July 2002, he moved to All California Brokerage, Inc. where he is still working. Respondent engages in residential real estate transactions. Respondent has had no other disciplinary action taken against his license. In fact, according to his broker, she has received many compliments for Respondent, but no complaints.

11. Respondent's employing broker is aware of his convictions and wants to continue to employ Respondent in the future. She is willing to supervise his transactions should a probationary license be issued.

12. Respondent is happily married. The couple is expecting their first child in May 2006. Respondent's wife is an elementary school teacher, but her salary is insufficient to support the family, particularly after the baby arrives.<sup>1</sup>

13. Respondent is very active in his church and attends services twice a week. Respondent's religious dedication was actually enhanced by his incarceration.

14. Since he stopped participating in the scheme in 2000, Respondent has had nothing to do with any individuals associated with his criminal convictions. Since then, he has been employed in residential real estate sales, and his broker reports that Respondent is meticulous in fully and accurately filling out the required paperwork. He is assiduous about complying with applicable laws and regulations.

15. Respondent accepts responsibility for his criminal conduct and is truly repentant and remorseful. Respondent submitted many letters of support which were unanimous in their enthusiastic endorsement of Respondent's efforts to retain his license. All the references were from individuals who were aware of Respondent's convictions, many of whom had known Respondent prior to his convictions. The writers described Respondent as being a person of good character, who had become a better person subsequent to his incarceration. The judgments of the letter writers were endorsed by the in-person testimony of Respondent's witnesses.

#### LEGAL DETERMINATIONS

1. Business and Professions Code section 490 provides:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

2. Business and Professions Code section 10177, subdivision (b), provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following . . . .

[¶ . . . ¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has

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<sup>1</sup> This information is included because it is relevant in assessing the likelihood Respondent would reoffend. The financial consequences of license discipline to a licensee, while often unfortunate, cannot overcome the need to protect the public.

been affirmed on appeal . . . .

3. Therefore, grounds would exist for the Department to discipline Respondent's license because of a criminal conviction, provided the conviction was substantially related to his license and was either for a felony or for a misdemeanor that involved moral turpitude.

4. Respondent's state conviction was originally a felony conviction, but it was reduced to a misdemeanor. Because the crime involved real estate transactions, it was substantially related to Respondent's licensed activities. However, for the misdemeanor conviction to be a basis for discipline, it must also involve moral turpitude.

5. Civil Code section 2945.4, subdivision (g), provides:

It shall be a violation for a foreclosure consultant to:

[¶] . . . [¶]

(g) Induce or attempt to induce any owner to enter a contract which does not comply in all respects with Sections 2945.2 and 2945.3.

Therefore, the violation of Civil Code section 2945.4, subdivision (g), does not per se involve moral turpitude. In fact, it is a strict liability crime. However, the facts established that there was a lapse of time between when Respondent realized the program he was involved in was not legal and when he quit participating in it. For that period, Respondent's conduct involved moral turpitude. Therefore, under the provisions of Business and Professions Code sections 490 and 10177, subdivision (b), the state conviction does provide a basis to discipline Respondent's license.

6. Respondent's federal conviction was for a felony. Since fraud is an inherently dishonest act and honesty is an essential characteristic for a Department licensee, Respondent's conviction for bankruptcy fraud is substantially related to Respondent's licensed activities. Therefore, under the provisions of Business and Professions Code sections 490 and 10177, subdivision (b), the federal conviction provides another basis to discipline Respondent's license.

7. California Code of Regulations, title 10, section 2912 sets out the criteria to be considered in assessing a licensee's rehabilitation. That section provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code 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 crime committed by the licensee

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications,

functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

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

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

8. The conduct on which Respondent's convictions were predicated occurred in 2000. However, the criminal complaints, in both cases, were not filed until 2003; and the cases were not resolved until the middle of 2004. Therefore, in this case, the time period during which there was a lack of criminal involvement by Respondent should be measured from the date of commission of the acts on which the convictions were based, not from the dates of conviction.

9. In addition, although Respondent has two convictions on his record, both arose from the same course of conduct. Under these circumstances the existence of the two convictions does not indicate additional misconduct or support an inference of an increased propensity to commit criminal acts by Respondent.

10. With these facts in mind, and applying section 2912 criteria to Respondent's case, the evidence established that he has met criteria a, c, g, h, i, j, k, l, and m. Respondent has partially met criterion e in that his state conviction has been expunged. Federal crimes cannot be expunged; and even if they could be, because Respondent is still on supervised release, he would not be eligible. The rest of the criteria are not applicable to this case.

11. Rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors are just indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone – in fact not all of them together – can guarantee that an individual is truly rehabilitated. Therefore, merely meeting these criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to a license.

12. Ordinarily, the fact that Respondent is still on probation for a crime involving dishonesty would disqualify him from being licensed. The primary reason for this outcome is that honesty is an essential quality for a real estate licensee. A respondent who has refrained from dishonest conduct while on probation or parole may have truly had a change of heart or may be merely reforming his conduct to avoid incarceration. It's difficult to tell which until the criminal probation has terminated.

13. However, for Respondent, this is not a concern. Between 2000 and 2004, Respondent was engaged in the business of real estate, but was not under the imprimatur of a court order; and during that time, Respondent demonstrated his willingness and ability to conform his professional conduct to the standards mandated by the real estate law. Thus, for Respondent there is compelling evidence that his exemplary recent behavior comes from genuine reform.

14. Respondent's testimony was credible concerning his naiveté when he started the foreclosure consulting business, and the evidence established that Respondent did not knowingly become involved in an illegal enterprise. However, at some point, Respondent did know the nature of the program in which he was involved. Respondent's

real malfeasance was in failing to leave the business as soon as he recognized its wrongfulness. This was a painful lesson for Respondent that has left personal and professional scars he will carry for the rest of his life. Given the trauma associated with Respondent's foray into crime and the changes in his life following his conviction, Respondent is unlikely to reoffend. However, the public interest requires that the Department be in a position to review Respondent's conduct for a period of time to doubly ensure that he is conforming to the standards set for a departmental licensee.

### ORDER

All licenses and licensing rights of Respondent, Frank Richard Martinez, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson's 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. 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 Estate 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 or for the removal of any of the conditions, limitations or restrictions of a restricted license until four (4) years have elapsed from the effective date of this Decision.
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:
  - (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

NOT RECORDED

NOT RECORDED

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

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.

Dated: February 3, 2006

*Carolyn D. Magnuson*  
CAROLYN D. MAGNUSON  
Administrative Law Judge  
Office of Administrative Hearings

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

4 (213) 576-6982  
5 (213) 576-6907

**FILED**  
JUL 15 2005  
DEPARTMENT OF REAL ESTATE

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7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \*

11 In the Matter of the Accusation of ) No. H-32078 LA  
12 )  
13 FRANK RICHARD MARTINEZ, ) A C C U S A T I O N  
14 )  
15 Respondent. )

16 The Complainant, Janice Waddell, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against FRANK RICHARD MARTINEZ, aka Frank R. Martinez, Jr., and  
19 Frank Tarantino (hereinafter "Respondent"), is informed and  
20 alleges as follows:

21 1.

22 The Complainant, Janice Waddell, a Deputy Real Estate  
23 Commissioner of the State of California, makes this Accusation in  
24 her official capacity.

25 2.

26 At all times herein mentioned, Respondent was and still  
27 is licensed and/or has license rights under the Real Estate Law

1 (Part 1 of Division 4 of the Business and Professions Code) as a  
2 real estate salesperson. Respondent was first licensed by the  
3 Department on or about May 14, 2001.

4 3.

5 On or about July 2, 2004, in the Superior Court of  
6 California, County of Los Angeles, in Case No. BA249720,  
7 Respondent was convicted of violating Civil Code Section  
8 2945.4(g) (mortgage foreclosure consultant inducing owner to  
9 enter into contract without providing required notice), a crime  
10 which by its circumstances involved moral turpitude and which is  
11 substantially related to the qualifications, functions and duties  
12 of a real estate licensee. Respondent was sentenced to three  
13 years summary probation, to include serving 180 days in county  
14 jail.

15 4.

16 On or about June 1, 2004, in the United States District  
17 Court, Central District of California, Southern Division, in Case  
18 No. SACR 03-61-GLT, Respondent was convicted on his plea of  
19 guilty to count of violating 18 U.S.C. Section 157(1)(3)  
20 (bankruptcy fraud), a crime of moral turpitude which is  
21 substantially related to the qualifications, functions and duties  
22 of a real estate licensee. Respondent was sentenced to 13 months  
23 in prison, followed by three years supervised release, the terms  
24 and conditions of which included payment of a total fine of  
25 \$10,000.00, notification of the Department of Real Estate within  
26 30 days of the fact of the conviction, and obtaining written  
27 approval from the Probation Officer for any employment.

1 5.

2 The facts and circumstances leading to Respondent's  
3 convictions were that between June 2000 and December 2000,  
4 Respondent, acting with the intent to defraud, devised and  
5 executed a scheme to defraud financial institutions and other  
6 creditors which were seeking to foreclose on property owned by  
7 third parties. The scheme was designed to delay foreclosure  
8 proceedings initiated by the creditors by fraudulently  
9 transferring partial interests in the properties at issue to  
10 straw debtors in whose name a bankruptcy proceeding would be  
11 filed. In furtherance of the scheme, Respondent filed or caused  
12 to be filed, bankruptcy petitions and knowingly made and caused  
13 to be made false representations in relation to those bankruptcy  
14 proceedings.

15 6.

16 Respondent's convictions, as set forth in Paragraphs 3  
17 and 4 above, constitute cause for the revocation or suspension of  
18 Respondent's license and/or license rights pursuant to Business  
19 and Professions Code Sections 490 and/or 10177(b).

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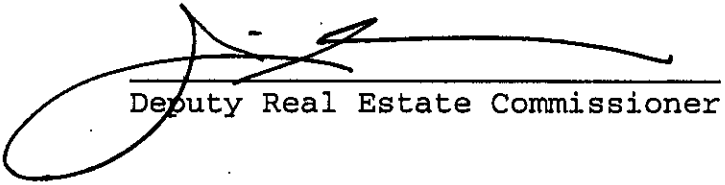
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1           WHEREFORE, the Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a decision be rendered imposing disciplinary  
4 action against all licenses and/or license rights of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

8 Dated at Los Angeles, California  
9 this 13 day of July, 2005.

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12 Deputy Real Estate Commissioner  
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25 cc: Frank Richard Martinez  
26 All California Brokerage, Inc.  
27 Sacto.  
Janice Waddell  
CW