

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

DAVID ALFONSO MAGARIN,

Respondent.

Case No. H - 32782 LA

OAH No. L 2006090726

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 15, 2006.

James R. Peel, Staff Counsel, represented Maria Suarez (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

David Alfonso Magarin (Respondent) was present throughout the hearing and represented himself.

Oral and documentary evidence was received, and the matter was argued. The case was submitted for decision on December 15, 2006.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. 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 referred to as the "Code").
3. Respondent was licensed by the Department as a real estate broker from June 8, 1994 through November 15, 2004. Respondent's license was restricted, effective

November 15, 2000, as a result of the Decision in case No. H-28521 LA. Respondent's restricted license expired in 2004.¹

4. The Department's 2000 disciplinary action against Respondent concerned Respondent's failure to maintain his books and records in the manner prescribed by the Department. Respondent has satisfied the conditions set forth in the Department's 2000 restricted license.

5. On July 9, 2004, in the United States District Court for the Central District of California, Respondent pled guilty and was convicted of a violating 18 USC 1343, subdivision 2 (b), wire fraud. The court placed Respondent on formal probation for a period of three years, upon certain terms and conditions, including his serving three months of home confinement and paying \$27,000 in restitution. Respondent has completed his home confinement and has paid the restitution in full, but remains on probation until November 2007.

6. The facts and circumstances concerning Respondent's 2004 criminal conviction are as follows: Respondent was involved in a real estate transaction where the purchaser of the property needed a W-2 form showing sufficient income to qualify for the loan to finance the sale. Respondent prepared a false W-2 form and a "paste up" so that the purchaser had documentation to falsely show sufficient income to qualify. Respondent received \$75 for preparing the documents. The real estate transaction closed and the purchaser subsequently defaulted on the loan. The federal agency which financed the sale initiated the criminal action against Respondent and others involved in the transaction.

7. Respondent came to the United States from El Salvador in 1979. After establishing himself in Los Angeles, he saved enough money to bring his wife to this country, as well. They have two children who are now grown.

8. Respondent is active in his church. He regularly attends services. In the past, he has been an instructor in English as a second language.

9. In 1989 Respondent obtained a real estate salesperson license from the Department and, subsequently, a broker license. Thereafter, Respondent opened his own real estate office. During pre trial interviews with the Department representatives, Respondent disclosed having been involved in two lawsuits where his agents had been accused of mishandling funds and negligence.

10. As a condition of his probation, Respondent presently must have his probation officer's permission to conduct real estate transactions. For this reason,

¹ The Board retains jurisdiction over lapsed licenses. Business and Professions Code section 10103.

Respondent did not renew his broker license when its term ended. Respondent is interested in renewing his real estate broker license in the future.

11. At the present time, Respondent is employed as a truck driver.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Respondent's 2004 federal criminal conviction for wire fraud involved moral turpitude.

3. Respondent's 2004 federal criminal conviction is substantially related to the qualifications, functions, or duties of a licensee of the Department, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a) (8), in that it involved doing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.

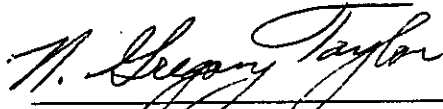
4. Cause exists, under the provisions of Business and Profession Code sections 490 and/or 10177, subdivision (b), to revoke or suspend Respondent's real estate broker license by virtue of his criminal conviction.

5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered in 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. It has been more than two years since Respondent's criminal conviction. However, he remains on probation until later this year. Given the seriousness of the crime of which Respondent has been convicted and the prior administrative action against him by the Department, more time is needed to evaluate Respondent's rehabilitation.

ORDER

All licenses and licensing rights of Respondent David Alfonso Magarin derived from the Department are revoked.

DATED: January 22, 2007.



N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

S.M.T.O.

FILED
MAY - 2 2006
DEPARTMENT OF REAL ESTATE

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By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of) No. H-32782 LA
12 DAVID ALFONSO MAGARIN,) ACCUSATION
13 Respondent.)
14

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against DAVID ALFONSO MAGARIN, alleges as follows:

I

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

II

23 DAVID ALFONSO MAGARIN (hereinafter referred to as
24 "Respondent") is presently licensed and/or has license rights
25 under the Real Estate Law (Part 1 of Division 4 of the Business
26 and Professions Code, hereinafter referred to as the "Code").

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1 III

2 Respondent was licensed by the Department of Real
3 Estate of the State of California as a real estate broker from
4 June 8, 1994, through November 15, 2004. Respondent had his
5 license restricted effective November 16, 2000, as a result of
6 the Decision in case no. H-28521 LA.

7 IV

8 On or about July 9, 2004, in the US District Court for
9 the Central District of California, in case no. SACR 02-149-GLT,
10 Respondent was convicted of the offenses of Wire Fraud, Causing
11 an Act to be Done, in violation of 18 USC 1343, 2(b), crimes
12 involving moral turpitude.

13 V

14 The matter referred to in Paragraph IV is
15 substantially related to the duties, functions, and
16 responsibilities of a real estate licensee.

17 VI

18 The above referenced matter is cause to suspend or
19 revoke the license rights of Respondent under Sections 490 and
20 10177(b) of the Business and Professions Code.

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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 DAVID ALFONSO MAGARIN 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 2nd day of December 2005.

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14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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24 cc: David Alfonso Magarin
25 Maria Suarez
26 Sacto.
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