

1 Pursuant to Section 11517(c) of the Government Code of
2 the State of California, Respondent was served with notice of my
3 determination not to adopt the Proposed Decision of the ALJ
4 along with a copy of said Proposed Decision. Respondent was
5 notified that I would decide the case upon the record, the
6 transcript of proceedings held on July 30, 2007, and upon any
7 written argument offered by Respondent and Complainant. On
8 December 19, 2007, an Argument was submitted by Respondent.
9 Complainant submitted an Argument on January 4, 2008.

10 I have given careful consideration to the record in this
11 case, including the transcript of proceedings of July 30, 2007.
12 I have also considered the Arguments submitted by Respondent and
13 Complainant. The following shall constitute the Decision of the
14 Real Estate Commissioner in this proceeding:

15 FACTUAL FINDINGS

16 1. Complainant Maria Suarez, made the Accusation in
17 her official capacity as Deputy Real Estate Commissioner of the
18 State of California.

19 2. License

20 Respondent is presently licensed and/or has license
21 rights as a real estate broker. He was first licensed as a real
22 estate salesperson on March 25, 1986. Respondent was first
23 licensed as a real estate broker on August 21, 1992.

24 3. Criminal Conviction

25 On or about June 27, 2005, in the United States
26 District Court, Central District of California (Case no. SACR 03-
27 300-GLT), Respondent was convicted by his plea of guilty to

1 violating 18 U.S.C. §§ 1343 and 2(b) (aiding and abetting wire
2 fraud), and violating two counts of 18 U.S.C. §§ 1010 and 2(b)
3 (aiding and abetting false statements to the Department of
4 Housing and Urban Development). Said crimes involve moral
5 turpitude and are substantially related to the duties, functions
6 and qualifications of a real estate licensee.

7 Respondent was sentenced to four months of custody with
8 the Bureau of Prisons, four months home detention and two years
9 of supervised release. In addition, Respondent was ordered to
10 pay a restitution fine of \$177,362 to the victim, a restitution
11 fine of \$225,000 to the Court and a daily fee for electronic
12 monitoring. The court further ordered that Respondent not be
13 employed in any position requiring local, state or federal
14 licensing without prior approval of his probation officer. On
15 August 28, 2007, United States District Court Judge James Selna
16 terminated Respondent's supervised release.

17 Respondent testified that he participated in a scheme
18 to defraud commercial lenders and the Department of Housing and
19 Urban Development between 1996 and 1999. Respondent referred
20 clients who could not demonstrate their eligibility for home
21 loans to an individual who provided them with false pay stubs and
22 W-2 forms for a fee. Respondent then submitted the false
23 documents to commercial lenders, who would wire the information
24 to HUD without knowledge of the fraudulent information.
25 Respondent claimed he did this to help low income individuals who
26 frequently worked for cash and thus had little documentation

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1 regarding their finances. Respondent also testified that he was
2 unaware if any clients defaulted on this type of loan.

3 4. Prior Discipline

4 On January 21, 1997, Respondent signed a Stipulation
5 and Waiver ordering a 90 day suspension of his broker license.
6 This Order became effective on March 11, 1997. The Stipulation
7 was based on an Accusation filed on September 16, 1996, alleging
8 violations of Sections 10177(d), 10177(h) and 10137 of the
9 Business and Professions Code.

10 The Accusation claimed that Respondent failed to
11 exercise reasonable supervision of salespersons he employed at
12 Golden Financial Services, Inc. This included allowing a person
13 to perform work requiring a license, while not licensed. The
14 Accusation also stated that Respondent did not maintain
15 employment contracts or notify the Department of the employment
16 of two individuals. It was also alleged that Respondent failed
17 to review several documents in loan files prepared by his
18 employees.

19 5. Factors in Mitigation and Rehabilitation

20 Respondent testified and evidence was presented of the
21 following: He has been employed with Progressive Loan Funding in
22 Downey, California for two years. Respondent has received no
23 other complaints during his long real estate career, aside from
24 the above mentioned actions.

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26 6. Respondent has maintained his continuing education
27 requirements in real estate.

1 7. Respondent is the single parent of two daughters.
2 He regularly attends church services at Holy Family Church in
3 Glendale and volunteers for church functions. Respondent also
4 volunteers for New Horizon Family Center, tutoring first and
5 second graders in reading.

6 8. Sergeant Manuel Radauello, a supervising officer
7 with the Los Angeles Police Department testified on Respondent's
8 behalf. He has known Respondent for 30 years and has known about
9 his criminal case for three or four years. Sergeant Radauello
10 believed that Respondent used poor judgment, but had paid dearly
11 for his mistake and is remorseful. He believed Respondent has a
12 good heart and he would use Respondent for real estate
13 transactions in the future.

14 9. Ronald Marks, Respondent's work supervisor, also
15 testified. He is an Executive Vice President at Progressive Loan
16 Funding and has known Respondent for 15 years. He testified that
17 Respondent was forthright about his legal problems and he has no
18 reservations about Respondent's trustworthiness.

19 10. Respondent also provided over 20 letters of
20 support from a wide array of friends, clients and professional
21 peers.

22 11. Over two years have elapsed since Respondent's
23 criminal conviction.

24 12. Respondent paid restitution to the victim.

25 13. Respondent earned early termination of supervised
26 release.

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1 provides as follows: "The following criteria have been developed
2 by the department pursuant to Section 482(b) of the Business and
3 Professions Code for the purpose of evaluating the rehabilitation
4 of a licensee against whom an administrative disciplinary
5 proceeding for the revocation or suspension of the license has
6 been initiated on account of a crime committed by the licensee."

7 5. Respondent failed to offer evidence that he
8 satisfied the following Rehabilitation Criteria:

9 2912(a) The passage of not less than two years from the
10 most recent criminal conviction that is "substantially related"
11 to the qualifications, functions or duties of a licensee of the
12 department. A longer period is required if there is a history of
13 criminal convictions or acts substantially related to the
14 qualifications, functions or duties of a licensee of the
15 department.

16 6. Although slightly over two years passed between
17 Respondent's June 27, 2005 conviction date and his July 30, 2007
18 hearing date, a longer rehabilitation period is required if there
19 is a history of substantially related acts. Respondent's 1997
20 license suspension was not a conviction. However, it
21 demonstrates a history of substantially related conduct. Section
22 2910(a)(7) of the Commissioner's Regulations finds a substantial
23 relationship for "willfully violating or failing to comply with a
24 statutory requirement that a license, permit or other entitlement
25 be obtained from a duly constituted public authority before
26 engaging in a business or course of conduct." The Accusation
27 which preceded Respondent's license suspension charged Respondent

1 with allowing a salesperson to engage in licensed activities
2 without a valid license. By signing the Stipulation and Waiver,
3 Respondent waived the right to contest the charges contained in
4 the Accusation. Therefore, the charges which led to Respondent's
5 license suspension, coupled with his criminal conviction,
6 demonstrate a history of substantially related acts, which
7 require a longer period of rehabilitation than the two years
8 which passed since Respondent's last conviction.

9 7. It should also be noted that Respondent's
10 supervised release was not terminated until August 28, 2007,
11 nearly one month after the hearing. Therefore, little weight
12 should be given to the fact that Respondent did not commit
13 additional crimes while under the direct supervision of
14 correctional authorities. See In re Gossage, 23 Cal.4th at 1099.
15 A longer evaluation period is needed to determine if Respondent
16 can operate lawfully outside of the criminal justice system.

17 8. Wire fraud is a dishonest act. Honesty and
18 truthfulness are attributes required of a real estate licensee
19 because they are fiduciaries in their dealings with the public.
20 A license to sell real estate by its very nature gives the
21 licensee unfettered access to the personal belongings of those
22 who seek to sell their homes. Clients rely on the licensee's
23 integrity in representing them, disclosing important facts about
24 the properties he or she is privy to and holding monies and other
25 personal property in a fiduciary capacity.

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

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

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

23 There is a risk to the consuming public, if Respondent
24 is allowed to retain a real estate license.

25 11. A restricted license allows a licensee to conduct
26 the same activity as any other licensee and all activity cannot
27 be monitored. Therefore, our most effective means of protecting
the public is to refuse to allow a licensee to retain a license
when there is any doubt about the licensee's rehabilitation.

FILED
OCT 29 2007
DEPARTMENT OF REAL ESTATE

By *Jana B. Allen*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-33755 LA
)	
MANUEL ADRIAN FRIAS,)	L-2007040720
)	
Respondent.)	

NOTICE

TO: MANUEL ADRIAN FRIAS, Respondent, and MARY WORK, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 30, 2007, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 30, 2007, is attached for your information.

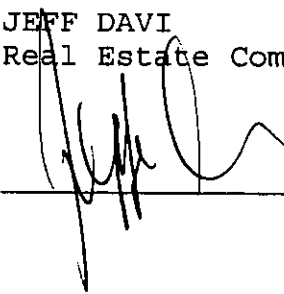
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 30, 2007, any written argument hereafter submitted on behalf of Respondent and Complainant.

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Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 30, 2007, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 10/24/07

JEFF DAVI
Real Estate Commissioner


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

<p>In the Matter of the Accusation of:</p> <p>MANUAL ADRIAN FRIAS,</p> <p>Respondent</p>	<p>Case No. H-33755 LA OAH No. L2007040720</p>
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PROPOSED DECISION

Administrative Law Judge (ALJ), Stephanie E. Thornton-Harris, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on July 30, 2007.

James Demus, Real Estate Counsel, represented complainant, Maria Suarez, (Complainant).

Attorney, Mary Work, represented Respondent, Manual Frias (Respondent).

The ALJ held the record open until August 31, 2007, in order for Respondent to submit an exact copy of the Order of United States District Court Judge James V. Selna, terminating Respondent's supervised release in U.S. District Court Case no. SACR 03-300 on August 28, 2007. Respondent timely submitted an exact copy of the order on August 30, 2007. This document was marked for identification as Respondent's Exhibit "H." As there was no objection to the admission of Respondent's Exhibit "H," it was admitted into evidence.

All evidence being received, the matter was deemed submitted for decision on August 31, 2007.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant, in her official capacity as a Deputy Real Estate Commissioner of the State of California (DRE), caused the Accusation to be served and filed.

2. DRE issued real estate broker license No. B/00924617 to Respondent on or about August 21, 1992. Respondent was licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code as a real estate broker. The license is set to expire on August 20, 2008, unless renewed.

3. On or about June 27, 2005, in United States District Court, Central District of California, in Case no. SACR 03-300-GLT, Respondent was convicted after he entered a plea of guilty to violating two counts of Title 18 United States Code sections 1343 and 2(b) (Aiding and Abetting Wire Fraud) and violating two counts of Title 18 United States Code sections 1010 and 2(b) (Aiding and Abetting False Statements to the Department of Housing and Urban Development). The crimes, by their facts and circumstances, involve moral turpitude and are substantially related to the qualifications, functions, and duties of a real estate broker.

4. The Court sentenced Respondent to four months custodial time with the Bureau of Prisons, four months home detention, and two years supervised release, concurrent time for each of the four counts. Additionally, Respondent was ordered to pay a restitution fine of \$177,362 to the victim, a restitution fine of \$225,000 to the Court, and a daily fee of not more than \$4.97 for electronic monitoring. The Court further ordered that Respondent not be employed in any position that required licensing and/or certification by any local, state or federal agency without prior approval of his probation officer. On August 28, 2007, United States District Court Judge James Selna terminated Respondent's supervised release.

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5. The facts and circumstances underlying the conviction are that Respondent, between 1996 and March 1999, participated in a scheme to defraud commercial lenders and the United States Department of Housing and Urban Development (HUD) by placing false pay stubs and W-2 tax return forms in clients' loan files in order to improve their chances of having their loan applications approved despite their inability to demonstrate a capacity to maintain the payments on their prospective mortgages.¹ Respondent facilitated the inclusion of false information in his clients' files by referring his clients to a person who provided them with false documents/documentation for a fee. Respondent then placed the false documents in their loan files. Commercial lenders, unaware of the fraud, would then approve and fund the loans and wire the Federal Housing Administration (FHA) insurance premiums in support of the loans. The lenders also mailed these loan packages to HUD.

6. Respondent explained that the acts leading to his 2005 conviction occurred between 1996 and 1999. He assisted borrowers by sending them to buy false documentation. He then placed the documents in their loan application files. Respondent was vague about the number of times he did this. However, Respondent ceased assisting borrowers in this fashion when he realized that the majority of his referrals were for these kinds of transactions. Most of the clients Respondent assisted in this manner were minorities who worked on a cash basis and who had no proof of regular income. This type of client was less likely to deposit their money into local banks and therefore often lacked documentation of banking required by lenders. Respondent knew that his clients' incomes, as listed on the forged documentation, were not always an accurate reflection of their actual income.

7. Respondent testified that he was unaware of any clients who defaulted on this type of loan. He believed at the time that he was not placing borrowers in a position where they would lose their homes. He also did not believe his clients would incur legal problems as a consequence of engaging in these acts. Respondent credibly testified that, at the time, he thought he was just helping out minorities and lower income people because there was no variation of his regular fees on these types of transactions. He has now changed his way of thinking and understands that his previous actions and beliefs regarding the offense were wrong.

¹ The Federal Housing Administration (FHA) was a division of HUD created to provide mortgage insurance to commercial lenders so that prospective home buyers with modest incomes could get financing to purchase homes for better terms than available in the commercial market. Qualification for this program required the lender to wire, among other things, mortgage insurance premiums and the loan file to HUD and that the prospective borrowers provide sufficient documentation to support their ability to pay their mortgage.

8. On September 16, 1996, the DRE served Respondent with an accusation seeking revocation of Respondent's real estate license on the grounds that Respondent, while serving as broker of record for Golden Financial Services, Inc. (Golden), willfully disregarded real estate laws when he failed to exercise reasonable supervision of salespersons he employed or compensated in violation of Business and Professions Code 10177, subdivision (d) and (h). The accusation further alleged that Respondent permitted a person to perform acts for which a real estate license is required while the person was not licensed as a real estate broker or salesperson in violation of Business and Professions Code section 10137. Respondent did not ensure that Golden maintained, dated, and signed employment contracts with two of its salespersons. Nor did he notify the Department of their employment. Nor did he ensure the provision of mortgage loan disclosure statements to five borrowers. Additionally, the accusation alleged that Respondent failed to review, initialize, and date documents contained in the loan files (including loan applications, records of earnest money deposits and good faith estimates), prepared by real estate licensees in the employ of Golden.

9. On January 21, 1997, Respondent waived his right to a formal hearing on the Accusation and instead signed a Stipulation and Agreement in which he neither denied nor admitted to the truth of the allegations contained in the Accusation. Respondent agreed to a 90 day suspension of his licensing rights with 60 of those 90 days stayed pursuant to various terms and conditions including a monetary penalty of \$1,500.

10. At the instant hearing, Respondent acknowledged the suspension of his broker license explaining that he was broker of record, but he did not actually work on the premises. He further acknowledged that he had failed to closely supervise Golden's business practice. He stated that he had learned from this disciplinary action that he needed to be on the premises when acting as a broker of record in order to properly supervise the business practices.

11. Respondent is 43 years old. He was born in Manzanillo, Cuba and immigrated to this country with his family in 1966 for political reasons. He attended Pater Noster High School in Los Angeles and California State University at Los Angeles. He has worked in the real estate field since 1984 when he started with Trans America, working on personal and real estate loans in customer service. Respondent became a branch manager for Trans America within four years. In 1988, he worked as Branch Manager for Long Beach Mortgage. In 1990, Respondent started his own Mortgage Company, Mama Inc. He also obtained his real estate salesperson license at that time. In 1992, he obtained his real estate broker license. In 1996, he opened Whittier Mortgage, Inc., which is now inactive. In the late 1990's, he worked with Milestone Mortgage doing conventional and FHA loans. In the late 1990's, he also served as Broker of Record for Golden Financial in Montebello, California.

12. Respondent has been employed with Progressive Loan Funding in Downy California, with permission from his probation officer, for the last two years. As demonstrated by his work history (aside from the conviction and disciplinary action), Respondent enjoyed a long and rewarding career in real estate. He has received no other complaints aside from the above mentioned actions.

13. Respondent maintained his continuing education requirements in real estate. On July 17, 2007, he completed a Risk Management course. On July 18, 2007, he completed an Ethics Course.

14. Respondent and his wife recently divorced. He is a single parent of two daughters. One is 24 and lives out the home, and the other is 17 and lives with him. He attends church services regularly at Holy Family Church in Glendale, California. Respondent volunteers regularly for church functions such as the carnival and bingo. He also volunteers regularly for New Horizon Family Center in Glendale, California. This organization provides services to single parents and the homeless. There, Respondent works as a teacher's aid tutoring first and second graders in reading. Respondent has a history of being a stable parent and continually involved in charitable programs designed to assist others in the community.

15. Sergeant Manuel Radauello, a supervising police officer with the Los Angeles Police Department, testified on Respondent's behalf. The two men attended high school together in 1977. They have remained good friends who talk approximately one time a month. He has known Respondent's family as well. Radauello described Respondent as a good parent. He has also used Respondent's expertise as a real estate professional. Sgt. Radauello has known about the criminal case for three or four years. Although he believes Respondent used poor judgment, he has nevertheless known him to be a good hearted person who related to the minorities he was trying to help purchase homes. Sgt. Radauello believes Respondent has paid dearly for his mistake and should be given a second chance. He views Respondent as remorseful and would continue to transact business with him and refer clients to him should he be given another chance. Radauello further supported Respondent by submitting a lengthy and positive letter of reference. The testimony of the Sgt. Radauello was credible and added mitigating evidence to Respondent's case.

16. Respondent's supervisor at work, Ronald Marks, testified as well. He is an Executive Vice President at Progressive Loan Funding. He has known Respondent for 15 years and hired him for a position in recruiting and marketing that does not require a DRE license. Mr. Marks testified that Respondent was forthright about his legal problems. He felt comfortable with Respondent's integrity and expertise. There have been no complaints against Respondent and Marks has no reservations about Respondent's trustworthiness.

While there is the hope and expectation that Respondent will retain his real estate broker license status, Marks would nevertheless continue to employ Respondent in a position that requires no DRE license if the license is revoked. Marks additionally submitted a letter on behalf of Respondent. The fact that Marks expects to employ Respondent regardless of the outcome of the hearing further supports Respondent's assertion that he has rehabilitated himself.

17. Respondent provided over 20 letters of support from a wide array of friends (many from his high school years), clients, and professional peers. This correspondence included but was not limited to letters from an accountant, a priest, an attorney, a retired District Director for Environmental Health for the County of Los Angeles, and a Deputy Chief Officer of Public Safety for the Department of General Services, City of Los Angeles. These letters were generally lengthy and detailed. No one approved of Respondent's prior actions, but almost all believed that his record of professionalism, caring, community service, and his change in attitude made a second chance appropriate for their friend and peer. They indicated that they would be happy to do business with him again despite the seriousness of his mistake. The majority of the letters made clear that the various authors were aware of Respondent's conviction. For example:

(a) For instance, Respondent's friend of nearly 10 years, Darlene Reysnosa, wrote that Respondent was an excellent single parent and that he had helped both she and her fiancé when preparing to purchase a home. She visited him in custody and believed that he learned from the corrective classes that he was required to take, writing, "His outlook and perspective on life have changed with a renewed sense of priorities in leading an honest and dignified life."

(b) Peter Licon, a friend and former client since 1999 wrote, "In discussing with Mr. Frias his conviction and community service, I have been encouraged to hear his remorseful tone and eagerness to assure the upholding of the law in in his real estate practice both now and in the future. I have appreciated Mr. Frias' forthrightness in discussing the situation with me and I feel convinced he will not compromise the integrity our industry requires."

(c) George Haider, the manager of the Wilshire Comstock in West Los Angeles, wrote that he has known Respondent for 30 years. He visited Respondent in prison, and wrote, "Manuel's incarceration pressed upon him the need to follow the highest of moral and ethical standards . . . it is inconceivable that Manuel would ever deviate from any law or rules again. In light of this, I would continue to call upon him for help or refer him to a person in need."

(d) Another friend of thirty years, Miguel Mora writes, "I understand why the Department of Real Estate has filed a case against Manuel's license. . . . He has remorse. But from that remorse he has gained humility and has remained humble. I hear it in his voice and see it in his character."

(e) Reverend Marcos J. Gonzales, Pastor of St. John Chrysostom Church in Inglewood, California, wrote that he has known Respondent for 30 years, and their friendship has remained in tact for the 13 years the Reverend has been a priest. He viewed Respondent's crime as an isolated one born out of a desire to help people. He notes, ". . . when one looks at the whole of Mr. Frias' life, both personal and professional, one sees a life of integrity and responsibility. . . .he has learned from his mistake and has come out a better man as a result. He has given back to society through his many volunteer hours of service as well as his involvement and contribution to charity."

18. Despite his extremely serious conviction, Respondent's friends, and peers have supported his rehabilitation and continue to support him as demonstrated by their correspondence. The letters of support are considered solely pursuant to the administrative hearsay rule (Govt. Code § 11513, subd. (d)) and are considered to further explain and supplement Respondent's evidence of rehabilitation.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions.

1. Cause exists to revoke or suspend Respondent's real estate broker's license pursuant to Business and Professions Code section 10177, subdivision (b) (conviction of a crime), as that section interacts with section 490, as set forth in Findings 3 through 10.

2. Cause exists to revoke or suspend Respondent's real estate broker's license pursuant to Business and Professions Code sections 10137, 10177, subdivision (d), 10177 (h) and California Code of Regulations, title 10, chapter 6, for suffering prior discipline, as set forth in findings 8 through 10.

3. The DRE generally looks to 12 criteria in determining whether one of its licensees is sufficiently rehabilitated to maintain his/her license following a conviction of a crime (Cal. Code Regs., tit. 10 § 2912). Several of the criteria apply to Respondent, and Respondent has fulfilled many of the criteria. For example, two years have elapsed since the conviction (However, at least seven years have elapsed since the underlying criminal conduct.)

[subd. (a)], Respondent paid restitution to the victim [subd. (b)], Respondent earned early termination of supervised release [subd. (d)], he paid all required fines and restitution in connection with the conviction [subd. (f)], he has changed his business practices and relationships [subd. (g) & (h)], he has a stable family life and supports his daughter [subd. (i)], he has maintained and exceeded continuing education requirements in the real estate field [subd. (j)], and he participates regularly in community and church sponsored programs to contribute and to ameliorate social problems [subd. (k)]. He has been accountable for his offense, and demonstrated a genuine change in attitude, [subds. (l)(1), (l) (2), (l) (3)]. Based on the applicable criteria, Respondent has made significant strides toward rehabilitation since his conviction in 2005.

4. Respondent has demonstrated a strong determination to change his life and to recover from what certainly seems to be an uncharacteristic period of time given his criminal act in combination with the disciplinary action on his license. His commitment to his family, to his church, to his work, and to his continuing education, and to the amelioration of the conditions of others through his charitable work represent commendable signs of rehabilitation. He has clearly made a demonstrable effort to understand and learn from his past mistakes. Finally, Respondent displays a genuine attitude of remorse towards the circumstances that led to his conviction.

5. Although it is clear that Respondent wholeheartedly regrets his actions in *Harrington v. Department of Real Estate* (1989) 214 Cal. App.3d 394, 406 [263 Cal Rptr.528], the appellate court quoted the Administrative Law Judge in the case stating, ““One’s character trait for honesty and integrity is an important qualification to be a real estate salesperson inasmuch as clients rely on the licensee’s integrity in representing them, disclosing important facts about the properties he is privy to and holding monies in a fiduciary capacity.”” Respondent did not show honesty or truth in the underlying matter in that he was willing on at least two occasions to misrepresent the status of his clients in order to secure the grant of their loans. His clients trusted him as did the commercial institutions which transacted business with him, to act with honesty and integrity. Instead, Respondent’s actions made for risky loans for both the consumer and the lender. As a real estate sales person or broker, Respondent could face similar situations involving people who desperately desire to be a part of the American dream and who may not fully comprehend the financial and potentially criminal consequences they face by obtaining lending through fraudulent means. Certainly the lending institutions had a right to know the potential exposure faced when lending to families of modest means.

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6. Due to the specifics of the conviction, a serious concern that Respondent might not deal honestly with the public at large persists. During his period of criminal probation, one could expect Respondent to essentially be on his best behavior. As such, the period of time on probation should not be given the same weight as unsupervised time particularly when the facts of a case demonstrate such a strong substantial relationship between the conviction and the qualifications, functions and duties of a real estate broker. *See In re Gossage* 2000, 23 Cal. 4th 1080, 1099, [99 Cal. Rptr. 2d 130], (“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continued addictive behavior while in prison or parole. . . .good conduct generally is expected from someone who has applied for admission with, and whose character is under scrutiny, by the state bar.”) Despite the fact that the conduct occurred over seven years ago, it must be noted that Respondent underwent the disciplinary action on his license during the same period of time as the criminal conduct, resulting in a suspension of his license privileges. Accordingly, Respondent would most likely benefit from the passage of more time to establish public trust over a period of time when he is not on criminal probation or undergoing administrative disciplinary action. His supervised release was only recently terminated. Respondent has not sufficiently established that he has rehabilitated to the point where the public interest will be adequately protected if his license were maintained without restriction. Finally, for the general safety of the public, it is appropriate that Respondent be limited to a salesperson license as brokers work without supervision, whereas salespersons must work under a broker’s supervision.

ORDER

Wherefore the following order is hereby made:

All licenses and licensing rights of Respondent, Manuel Frias, under the Real Estate Law are revoked; provided however, a restricted real estate **salesperson** license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the DRE 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:

not adopted

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 Land 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 nor for the removal of any of the conditions, limitations or restriction of a restricted license until **four** 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 DRE which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(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 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

not adopted

*most
adopted*

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

Dated: September 30, 2007

Stephanie E. Thornton-Harris
STEPHANIE E. THORNTON-HARRIS
Administrative Law Judge
Office of Administrative Hearings

Scanned

JAMES DEMUS, Counsel (SBN 225005)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

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

FILED

FEB 26 2007

DEPARTMENT OF REAL ESTATE
BY: *Jane B. Stone*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-33755 LA
MANUEL ADRIAN FRIAS,)	<u>A</u> <u>C</u> <u>C</u> <u>U</u> <u>S</u> <u>A</u> <u>T</u> <u>I</u> <u>O</u> <u>N</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against MANUEL ADRIAN FRIAS, ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation 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 California Business and Professions Code ("Code"), as a real estate broker.

1 3.

2 On or about June 27, 2005, in the United States
3 District Court, Central District of California, in case no. SACR
4 03-300-GLT, Respondent was convicted of violating 18 U.S.C. §§
5 1343 and 2(b) (Aiding and Abetting Wire Fraud), and violating two
6 counts of 18 U.S.C. §§ 1010 and 2(b) (Aiding and Abetting False
7 Statements to the Department of Housing and Urban Development).
8 The underlying facts of these crimes involve moral turpitude,
9 which bears a substantial relationship under Section 2910, Title
10 10, Chapter 6, California Code of Regulations to the
11 qualifications, functions or duties of a real estate licensee.

12 4.

13 (PRIOR LICENSE DISCIPLINE)

14 On or about September 16, 1996, the State of
15 California, Department of Real Estate, in case no. H-26812 LA,
16 sought revocation of Respondent's real estate broker license.
17 As more fully set forth in the Accusation for the above-
18 mentioned case, The Department of Real Estate established that
19 grounds existed for the suspension or revocation of Respondent's
20 real estate license based on his violations of Sections
21 10177(d), 10177(h) and 10137 of the Business & Professions Code,
22 and Section 2725 of Title 10, Chapter 6, in the California Code
23 of Regulations.

24 On January 21, 1997, Respondent signed a Stipulation
25 and Agreement agreeing to a 90 day suspension of his licensing
26 rights, based on the violations stated above. An Order approving
27 the suspension, was adopted by the California Real Estate

1 Commissioner on February 18, 1997. The Order became effective
2 March 11, 1997.

3 5.

4 The crimes of which Respondent was convicted, as
5 alleged herein above in Paragraph 3 constitute cause under
6 Sections 490 and 10177(b) of the Code for the suspension or
7 revocation of the license and license rights of Respondent under
8 the Real Estate Law.

9 These proceedings are brought under the provisions of
10 Section 10100, Division 4 of the Business and Professions Code
11 of the State of California and Sections 11500 through 11528 of
12 the California Government Code.

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all the licenses and license rights of
17 Respondent, MANUEL ADRIAN FRIAS, under the Real Estate Law (Part
18 1 of Division 4 of the Business and Professions Code) and for
19 such other and further relief as may be proper under other
20 applicable provisions of law.

21 Dated at Los Angeles, California

22 this 2nd day of February, 2007.

23

24



Maria Suarez
Deputy Real Estate Commissioner

25

26 cc: MANUEL ADRIAN FRIAS
27 Maria Suarez
Sacto.