

*Sando Glas*

**FILED**

JAN 13 2012

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Accusation of  
CHRISTOPHER DAVID CHAVEZ,  
Respondent.

No. H-33884 LA

ORDER DENYING REINSTATEMENT OF LICENSE AND  
GRANTING RIGHT TO A RESTRICTED LICENSE

On December 20, 2007, a Decision revoking Respondent's real estate salesperson license was rendered to become effective January 30, 2008.

On August 2, 2011, Respondent petitioned for reinstatement of Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's real estate salesperson license, in that:

1 I

2 On September 23, 2004, Respondent was convicted of mail fraud. Said crime is  
3 substantially related to the functions, qualifications and duties of a real estate licensee pursuant to  
4 Section 2910, Title 10, Chapter 6, California Code of Regulations ("Regulations").

5 II

6 In the Decision which revoked Respondent's real estate license there were  
7 Determination of Issues made that there was cause to revoke Respondent's real estate license  
8 pursuant to Business and Professions Code ("Code") Sections 490 and 10177(b).

9 III

10 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*  
11 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and  
12 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the  
13 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

14 The Department has developed criteria in Regulation 2911 to assist in evaluating  
15 the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in  
16 this proceeding are:

17 Regulation 2911(a) – Passage of time since conviction

18 A longer period of time is required to assess Respondent's rehabilitation given  
19 Respondent's history of substantially related acts and conduct.

20 Given the violations found and the fact that Respondent has not established that  
21 Respondent has complied with Regulation 2911(a) I am not satisfied that Respondent is  
22 sufficiently rehabilitated to receive a real estate salesperson license.

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

25 I am satisfied, however, that it will not be against the public interest to issue a  
26 restricted real estate salesperson license to Respondent.

1                    A restricted real estate salesperson license shall be issued to Respondent pursuant  
2 to Code Section 10156.5 if Respondent within twelve (12) months from the date hereof  
3 providing Respondent:

4                    (a) qualifies for, takes and passes the written examination required to obtain a real  
5 estate salesperson license;

6                    (b) makes application and pays the appropriate fee for said license;

7                    1. The restricted license issued to Respondent shall be subject to all of the  
8 provisions of Code Section 10156.7 and to the following limitations, conditions and restrictions  
9 imposed under authority of Code Section 10156.6. The restricted license issued to Respondent  
10 may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of  
11 Respondent's conviction or plea of nolo contendere to a crime which is substantially related to  
12 Respondent's fitness or capacity as a real estate licensee.

13                    2. The restricted license issued to Respondent may be suspended prior to hearing  
14 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that  
15 Respondent has violated provisions of the California Real Estate Law, Regulations of the Real  
16 Estate Commissioner or conditions attaching to the restricted license.

17                    3. Respondent shall not be eligible to apply for the issuance of an unrestricted  
18 real estate license nor for the removal of any of the conditions, limitations or restrictions of a  
19 restricted license until two (2) years have elapsed from the effective date of this Decision.

20                    4. Respondent shall submit with any application for license under an employing  
21 broker, or any application for transfer to a new employing broker, a statement signed by the  
22 prospective employing real estate broker on a form approved by the Department of Real Estate  
23 which shall certify:

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

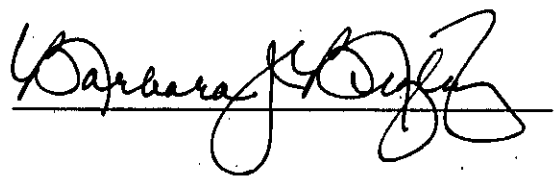
(b) That the employing broker will exercise close supervision over the  
performance by the restricted licensee relating to activities for which a real estate license is  
required.

5. Respondent shall notify the Commissioner in writing within 72 hours of any  
arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post  
Office Box 187000, Sacramento, CA 95818-70-00. The letter shall set forth the date of  
Respondent's arrest, the crime for which Respondent was arrested and the name and address of  
the arresting law enforcement agency. Respondent's failure to timely file written notice shall  
constitute an independent violation of the terms of the restricted license and shall be grounds for  
the suspension or revocation of that license.

This Order shall become effective at 12 o'clock noon on FEB 02 2012

IT IS SO ORDERED 12/16/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED  
JAN 10 2008  
DEPARTMENT OF REAL ESTATE

By C. Bar

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )     NO. H-33884 LA  
  )     L-2007050543  
CHRISTOPHER DAVID CHAVEZ,        )  
  )  
Respondent.                         )

DECISION AFTER REJECTION

This matter came on for hearing before Christopher Ruiz, Administrative Law Judge of the Office of Administrative Hearings at Los Angeles, California, on July 25, 2007.

Lissete Garcia, Counsel, represented the Complainant.

Respondent CHRISTOPHER DAVID CHAVEZ ("Respondent") appeared in person and was represented by Mary E. Work, Attorney at Law.

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

1 On August 16, 2007, the Administrative Law Judge  
2 submitted a Proposed Decision which I declined to adopt as my  
3 Decision herein.

4 Pursuant to Section 11517(c) of the Government Code of  
5 the State of California, Respondent was served with notice of my  
6 determination not to adopt the Proposed Decision of the  
7 Administrative Law Judge along with a copy of said Proposed  
8 Decision. Respondent was notified that the case would be decided  
9 by me upon the record, the transcript of proceedings held on  
10 July 25, 2007, and upon any written argument offered by  
11 Respondent and Complainant.

12 On November 13, 2007, Argument was submitted by  
13 Respondent. On November 15, 2007, Argument was submitted on  
14 behalf of Complainant.

15 I have given careful consideration to the record in  
16 this case including the transcript of proceedings of July 25,  
17 2007. I have also considered the Argument submitted by  
18 Respondent and the Argument submitted on behalf of Complainant.

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

21 FACTUAL FINDINGS

- 22 1. Complainant, Maria Suarez, Deputy Real Estate  
23 Commissioner, brought the Accusation in her official capacity.
- 24 2. Respondent was initially licensed as a real estate  
25 salesperson in May 1998. He presently holds a valid and active  
26 license which is due to expire in May 2010.

1 3. On September 23, 2004, in the United States  
2 District Court, Central District of California, case number  
3 SACR-03-316-GLT, Respondent was convicted, on his plea of  
4 guilty, of violating one count of Title 18 United States Code  
5 Section 1314 (mail fraud), a felony. The underlying events  
6 leading to the conviction were that Respondent, during the  
7 course of handling real estate loans, assisted borrowers in  
8 obtaining false documents to support their claimed income.  
9 Respondent then knowingly used these false documents in  
10 obtaining the loans for the borrowers. Respondent performed  
11 these criminal acts in approximately 1999 or 2000. After he was  
12 indicted, Respondent cooperated with law enforcement.  
13 Respondent was sentenced to three years formal probation with  
14 terms and conditions which included: pay \$5,100 in fines and  
15 not work in the real estate field in any capacity where a  
16 license is required. As part of his criminal probation,  
17 Respondent was ordered to not use his real estate license.  
18 Respondent paid his fines.

19  
20 4. United States Probation Officer Matthew Chheng  
21 supervised Respondent from September 23, 2004, to November  
22 17, 2005. Thereafter, his supervision of Respondent was  
23 terminated because of Respondent's complete compliance with  
24  
25  
26  
27

1 all Court orders and also because of Respondent's community  
2 service.<sup>1</sup>

3 5. Respondent testified that he is married and has  
4 four children, ages 10, 8, 5, and 2. He testified that he is  
5 the sole financial provider for his family. Respondent also  
6 testified that he attends the First Fundamental Bible Church  
7 where he also teaches the Bible to children.

8 6. Respondent presented a number of witnesses:  
9 Sergio Hernandez (Respondent's uncle and employing broker);  
10 Edward Chavez, Sr. (Respondent's father); Edward Chavez  
11 (Respondent's brother); and Tom Chavez (a co-worker). All  
12 testified that Respondent is a changed man since his  
13 conviction. Specifically, he has "found the Lord" and he  
14 lives his life as an honest person.

15 7. a. Sergio Hernandez testified to the following:  
16 He is the owner of Platinum Home Realty, Platinum Financial,  
17 and Alpha Omega Escrow (Platinum). He is a licensed real  
18 estate broker and he has been in the real estate business for  
19 18 years. Mr. Hernandez testified that his businesses were  
20 recently audited by both the Internal Revenue Service and the  
21 Department of Real Estate, both of which found no  
22 irregularities. Mr. Hernandez employs Respondent and is  
23 aware of his criminal conviction. He stated that he believes  
24  
25  
26

27 <sup>1</sup> It appears that Respondent's criminal probation was completed in  
November 2005, when his probationary supervision was terminated.



1 that Respondent will not repeat his criminal act. Platinum  
2 employs many of Respondent's friends and family.

3 b. Respondent was not employed by Mr. Hernandez at  
4 the time Respondent committed his crime. Respondent became  
5 employed by Mr. Hernandez during his criminal probation.

6 c. Mr. Hernandez attends the same church as  
7 Respondent. He testified that he believes that Respondent has  
8 learned a valuable lesson as the result of his conviction. Mr.  
9 Hernandez stated that he is willing to place his own license at  
10 risk by agreeing to supervise Respondent if Respondent is  
11 allowed to keep his license.

12 8. Respondent testified that he continues to be  
13 employed at Platinum in a management capacity where he does  
14 not utilize his real estate license. Respondent also  
15 testified that he learned that no amount of money is worth  
16 placing his license at risk.

#### 17 LEGAL CONCLUSIONS

18  
19 1. Cause exists to suspend or revoke Respondent's  
20 real estate salesperson license pursuant to Business and  
21 Professions Code Section 10177, subdivision (b), in conjunction  
22 with Section 490, based on Respondent's conviction. (Factual  
23 Findings 1-3.)

#### 24 Moral Turpitude Discussion

25 A criminal conviction can form the basis for  
26 discipline of a real estate salesperson license if the crime is  
27 a felony or a crime involving moral turpitude. (Bus. and Prof.

1 Code, § 10177, subd. (b).) Respondent's conviction was for a  
2 felony and therefore qualifies.

3 Substantial Relationship

4 California Code of Regulations, Title 10, Section  
5 2910, defines by Regulation instances where acts are deemed to  
6 be substantially related to the qualifications, functions, or  
7 duties of a licensee. Under subsection (a)(1), fraudulently  
8 obtaining property is substantially related to the  
9 qualifications, functions, or duties of a licensee. Under  
10 subsection (a)(4), the employment of deceit to achieve an end is  
11 substantially related to the qualifications, functions, or  
12 duties of a licensee. Respondent's conviction is for a crime  
13 which involved the use of fraud in order to obtain a real estate  
14 loan. Therefore, under each of the above-described subsections,  
15 Respondent's crime is substantially related to the  
16 qualifications, functions, or duties of a real estate  
17 salesperson. (Factual Findings 1-3.)

18  
19 2. Criteria have been developed by the Department  
20 pursuant to Business and Professions Code Section 482,  
21 subdivision (b), for the purpose of evaluating the  
22 rehabilitation of a licensee in considering whether or not to  
23 suspend or revoke the licensee's license on account of a crime  
24 committed by the licensee. These criteria, found at California  
25 Code of Regulations, Title 10, Section 2912, are summarized as  
26 follows:  
27

1           Subdivision (a) passage of at least two years since  
2 the conviction;

3           Subdivision (b) restitution;

4           Subdivision (c) expungement of the conviction;

5           Subdivision (d) expungement of the requirement to  
6 register as a sex offender;

7           Subdivision (e) completion of the criminal probation;

8           Subdivision (f) abstinence from drugs or alcohol that  
9 contributed to the crime;

10           Subdivision (g) payment of any criminal fines or  
11 penalties;

12           Subdivision (h) correction of business practices  
13 responsible in some degree for the crime or crimes of which the  
14 licensee was convicted;

15           Subdivision (i) new and different social and business  
16 relationships;

17           Subdivision (j) stability of family life and  
18 fulfillment of parental and familial responsibilities subsequent  
19 to the criminal conviction;

20           Subdivision (k) completion of, or sustained enrollment  
21 in, formal educational or vocational training courses for  
22 economic self-improvement;

23           Subdivision (l) significant involvement in community;  
24  
25 and

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

4 (1) Testimony of applicant.

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

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

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

15 (5) Absence of subsequent felony or misdemeanor  
16 convictions that are reflective of an inability to conform to  
17 societal rules when considered in light of the conduct in ques-  
18 tion.  
19

20 3. Application of the Criteria of Rehabilitation as  
21 set forth in Regulation 2912 reveals the following:

22 Regulation (a): More than two years have passed since  
23 Respondent's conviction.

24 Regulation (b): Respondent has paid all court-ordered  
25 restitution for his conviction.

26 Regulation (c): Respondent's federal conviction  
27 cannot be expunged.

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

4 Regulation (e): It appears that Respondent completed  
5 his criminal probation in November, 2005.

6 Regulation (f): This Regulation is not applicable  
7 because there is no evidence that the criminal conviction was  
8 attributable to the use of a controlled substance.

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

11 Regulation (h): Respondent testified that he is  
12 currently employed as a branch manager for Platinum Financial.  
13 The Administrative Law Judge found that Respondent has changed  
14 his business practices.

15 Regulation (i): Respondent testified that he has new  
16 social friends from church.

17 Regulation (j): Respondent testified that he is a  
18 devoted family man and is involved in his childrens' lives.

19 Regulation (k): Respondent stated that he holds a  
20 bachelor's degree.

21 Regulation (l): Respondent testified that he is  
22 involved in his community by performing voluntary service at his  
23 church.  
24

25 Regulation (m): Respondent testified that he now  
26 understands how valuable his license is and that he would not  
27

1 put his license at risk. I disagree with the Administrative Law  
2 Judge's finding that Respondent has shown a change in attitude.

3 Respondent's testimony is self-serving. Respondent  
4 and his family have a financial interest in maintaining  
5 Respondent's license. Respondent also testified that he  
6 cooperated with law enforcement officials upon learning of his  
7 indictment. Respondent should not benefit from the length of  
8 time that elapsed between the discovery of Respondent's crime  
9 and his eventual conviction. Respondent committed the crime in  
10 his capacity as a real estate licensee. He continued to work in  
11 the same capacity until he learned of his indictment. While  
12 under indictment, Respondent had additional personal incentives  
13 including receiving a more lenient sentence, for cooperating  
14 with the investigation. While under monitored criminal  
15 probation, Respondent also had additional incentives for  
16 avoiding violation of court orders. Moreover, compliance with  
17 probation "does not necessarily prove anything but good sense."  
18 Windham v. Board of Medical Quality (1980) 104 Cal.App.3d 461,  
19 473. Appellate courts have held that "rehabilitation as a  
20 matter of law does not exist. Rehabilitation is a component of  
21 penalty, which is vested in the discretion of the Board 'subject  
22 only to manifest abuse'". Windham v. Board of Medical Quality  
23 Assurance, (1980) 104 Cal.App. 3d 461, 472-473 quoting Cadilla  
24 v. Board of Medical Examiners, (1972) 26 Cal.App.3d 961, at 968.

26 Respondent also testified that following his  
27 conviction, he continued to work in the real estate business

1 with a license and there have been no additional problems.  
2 However, Respondent must have foreseen that a disciplinary  
3 action by the Department would be pending against him following  
4 his criminal conviction. Considering all these factors, a  
5 change in attitude has not been shown.

6 4. I disagree with the Administrative Law Judge's  
7 finding that Respondent has established that a restricted  
8 license will adequately protect the public. The Administrative  
9 Law Judge noted that if Respondent were to again commit a  
10 similar criminal act, he would place his uncle's business at  
11 risk, as well as his own license, and also the employment of  
12 many friends and family members who are currently employed by  
13 Platinum. However, Respondent testified that he committed the  
14 loan fraud while he was working with another relative, Daniel  
15 Hernandez, and it was that relative who introduced Respondent to  
16 the person who falsified the loan documents for Respondent.  
17 Respondent's conviction indicates his propensity to do wrong and  
18 calls into question his honesty and trustworthiness.  
19

20 Holding a license is a privilege. Respondent violated  
21 the Department's trust in him almost immediately after he was  
22 issued a license. If Respondent's license is not disciplined,  
23 the public would not be protected and there would no deterrent  
24 for other licensed real estate salespersons who decide to commit  
25 such acts in the future. Under Business and Professions Code  
26 Section 10177, the degree of discipline is a matter that is  
27 within the discretion of the Real Estate Commissioner. While

1 reasonable minds may differ as to the propriety of penalty  
2 given, the degree of penalty is squarely within the  
3 Commissioner's discretion. Golde v. Fox (1979) 98 Cal.App.3d  
4 167, 189.

#### 5 Licensee Responsibilities

6 Honesty and truthfulness are attributes required of a  
7 real estate licensee because they are fiduciaries in their  
8 dealings with the public. A real estate license by its very  
9 nature gives the licensee access to the personal information,  
10 funds, and property of those who seek the licensee's services.  
11 Clients rely on the licensee's integrity in representing them,  
12 disclosing important facts about the properties and information  
13 he or she is privy to and holding monies and other personal  
14 property in a fiduciary capacity.

15 The Legislature intended to ensure that real  
16 estate brokers and salespersons will be honest,  
17 truthful and worthy of the fiduciary responsibilities  
18 which they will bear. (Ring v. Smith (1970)  
19 5 Cal.App.3<sup>rd</sup> 197, 205, Golde v. Fox (1976) 98  
20 Cal.App.3d, 167, 177.). Harrington v. Department  
21 of Real Estate (1989) 214 Cal.App.3d, 394, 402.

22 5. The Real Estate Law and the disciplinary  
23 procedures provided for in the Real Estate Law are designed to  
24 protect the public and to achieve the maximum protection for the  
25 purchasers of real property and those dealing with real estate  
26 licensees (Business and Professions Code Section 10050 and  
27 Handeland v. Department of Real Estate (1976) 58 Cal.App.3d  
513.)

6. Real estate licensees occupy a unique position of  
trust and responsibility toward the consuming public. They



1 function with little supervision. The possession of a real  
2 estate license, even a license issued on a restricted basis,  
3 entitles the holder access to the homes and property of others  
4 without supervision. Such licensees must be trustworthy. The  
5 public is entitled to reasonable assurance that persons to whom  
6 real estate licenses are issued are persons that can be relied  
7 upon and that they can be trusted with such access and that  
8 their personal property is safe with licensees.

9 7. Temptations to "bend the rules" or otherwise  
10 engage in dishonest dealing abound. We cannot know with  
11 certainty that Respondent will not commit another offense; thus,  
12 his licensure poses a risk to the public interest. Respondent  
13 was convicted for a crime he committed in his capacity as a  
14 licensed real estate agent. Respondent's real estate license  
15 was his means of support and yet he willingly chose to put his  
16 license in jeopardy for his own financial gain. Respondent's  
17 crime is the very type of crime which the Department aims to  
18 prevent.

19 Respondent was a licensed real estate salesperson when  
20 he committed the acts leading to his conviction. Even if  
21 Respondent is granted a restricted real estate salesperson  
22 license, it is not certain that the required broker oversight  
23 would control Respondent's activities and protect the public. A  
24 restricted license allows licensees to perform the same acts as  
25 a non-restricted licensee including the same access into homes  
26 of members of the public. A restricted licensee cannot be  
27 monitored at all times.

1 8. Respondent argued that his real estate license is  
2 the primary means to earn a livelihood. However, the  
3 Department's role is to protect the public interest and not to  
4 provide Respondent the ability to earn a living. There are  
5 other employment opportunities and jobs available. Respondent's  
6 self-serving testimony about his rehabilitation does not  
7 diminish the risk posed to the public by allowing licensees  
8 already convicted of fraud to continue to work in the same  
9 capacity.

10 ORDER

11 WHEREFORE, THE FOLLOWING ORDER is hereby made:

12 All licenses and licensing rights of Respondent  
13 CHRISTOPHER DAVID CHAVEZ under the Real Estate Law are revoked.

14 This Decision shall become effective at 12 o'clock noon  
15 on January 30, 2008.

16 IT IS SO ORDERED

17 12/24/07  
18 JEFF DAVI  
19 Real Estate Commissioner  
20  
21  
22  
23  
24  
25  
26  
27

SAC

FILED  
SEP 20 2007  
DEPARTMENT OF REAL ESTATE

By \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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

In the Matter of the Accusation of )	
CHRISTOPHER DAVID CHAVEZ, )	No. H-33884 LA
Respondent. )	L-2007050543

NOTICE

TO: CHRISTOPHER DAVID CHAVEZ, Respondent, and MARY WORK, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 16, 2007, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 16, 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 25,

///

1 2007; 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 July 25, 2007, at the Los Angeles office of  
6 the Department of Real Estate unless an extension of the time is  
7 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: \_\_\_\_\_

14  
15 JEFF DAVIS  
16 Real Estate Commissioner  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHRISTOPHER DAVID CHAVEZ,

Respondent.

Case No. H-33884 LA

OAH No. L2007050543

**PROPOSED DECISION**

This matter was heard on July 25, 2007, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Christopher David Chavez (Respondent) was present and was represented by Mary Work, Esq.

Complainant Maria Suarez, Deputy Real Estate Commissioner (Complainant), was represented by Lissete Garcia, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received, and the matter was argued and submitted for decision on July 25, 2007. This decision is due by August 24, 2007.

**FACTUAL FINDINGS**

1. Complainant brought the Statement of Issues in her official capacity.
2. Respondent was initially licensed as a real estate salesperson in May 1998. He presently holds a valid and active license which is due to expire in May 2010.
3. On September 23, 2004, in the United States District Court, Central District of California, case number SACR-03-316-GLT, Respondent was convicted, on his plea of guilty, of violating one count of title 18 United States Code section 1314 (mail fraud), a felony. The underlying events leading to the conviction were that Respondent, during the course of handling real estate loans, assisted borrowers in obtaining false documents to support their claimed income. Respondent then knowingly used these false documents in obtaining the loans for the borrowers. Respondent performed these criminal acts in approximately 1999 or 2000. After he was indicted, Respondent cooperated with law enforcement. Respondent was sentenced to three years formal probation with terms and conditions which included: pay \$5,100 in fines and not work in the real estate field in any capacity where a license is required. As part of his criminal probation, Respondent was ordered to not use his real estate license. Respondent paid his fines.

4. United States Probation Officer Matthew Chheng supervised Respondent from September 23, 2004, to November 17, 2005. Thereafter, his supervision of Respondent was terminated because of Respondent's complete compliance with all Court orders and also because of Respondent's community service.<sup>1</sup>

5. Respondent is married and has four children, ages 10, 8, 5, and 2. He is the sole financial provider for his family. Respondent attends the First Fundamental Bible Church where he also teaches the Bible to children.

6. Respondent presented a number of witnesses: Sergio Hernandez (Respondent's uncle and employing broker); Edward Chavez, Sr. (Respondent's father); Edward Chavez (Respondent's brother); and Tom Chavez (a co-worker). All testified that Respondent is a changed man since his conviction. Specifically, he has "found the Lord" and he lives his life as an honest person.

7. a. Sergio Hernandez is the owner of Platinum Home Realty, Platinum Financial, and Alpha Omega Escrow (Platinum). He is a license real estate broker and he has been in the real estate business for 18 years. Mr. Hernandez's businesses were recently audited by both the Internal Revenue Service and the Department of Real Estate, both of which found no irregularities. Mr. Hernandez employs Respondent and is aware of his criminal conviction. He believes that Respondent will not repeat his criminal act. Platinum employs many of Respondent's friends and family.

b. Respondent was not employed by Mr. Hernandez at the time Respondent committed his crime. Respondent became employed by Mr. Hernandez during his criminal probation. Respondent continues to be employed at Platinum in a management capacity where he does not utilize his real estate license.

c. Mr. Hernandez attends the same church as Respondent. He believes that Respondent has learned a valuable lesson as the result of his conviction. The lesson learned by Respondent is that no amount of money is worth placing his license at risk. Most importantly, Mr. Hernandez is willing to place his own license at risk by agreeing to supervise Respondent if Respondent is allowed to keep his license.

#### LEGAL CONCLUSIONS AND DISCUSSION

1. Cause does not exist to suspend or revoke Respondent's real estate salesperson license solely under Business and Professions Code section 490 based on the holding in *Petropoulos v. Department of Real Estate* (2006) 142 CA4th 554. In *Petropoulo*, the court held Business and Professions Code section 490 alone does not provide independent

---

<sup>1</sup> It appears that Respondent's criminal probation was completed in November 2005, when his probationary supervision was terminated.

statutory authority for the Department to discipline Respondent's license based on his conviction. (Factual Findings 1-3.)

2. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), in conjunction with section 490, based on Respondent's conviction. (Factual Findings 1-3.)

#### Moral Turpitude Discussion

A criminal conviction can form the basis for discipline of a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. (Bus. and Prof. Code, § 10177, subd. (b).) Respondent's conviction was for a felony and therefore qualifies.

#### Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subsection (a)(1), fraudulently obtaining property is substantially related to the qualifications, functions, or duties of a licensee. Under subsection (a)(4), the employment of deceit to achieve an end is substantially related to the qualifications, functions, or duties of a licensee. Respondent's conviction is for a crime which involved the use of fraud in order to obtain a real estate loan. Therefore, under each of the above-described subsections, Respondent's crime is substantially related to the qualifications, functions, or duties of a real estate salesperson. (Factual Findings 1-3.)

3. Criteria have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (b), for the purpose of evaluating the rehabilitation of a licensee in considering whether or not to suspend or revoke the licensee's license on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2912, are summarized as follows:

- Subdivision (a) passage of at least two years since the conviction;
- Subdivision (b) restitution;
- Subdivision (c) expungement of the conviction;
- Subdivision (d) expungement of the requirement to register as a sex offender;
- Subdivision (e) completion of the criminal probation;
- Subdivision (f) abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g) payment of any criminal fines or penalties;
- Subdivision (h) correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted;
- Subdivision (i) new and different social and business relationships;
- Subdivision (j) stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction;
- Subdivision (k) completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement;

Subdivision (l) significant involvement in community; and  
Subdivision (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.

4. Respondent has addressed, and satisfied, most of these criteria of rehabilitation. Two years have passed since his conviction.<sup>2</sup> Respondent has paid his criminal fines. Respondent has changed his business practices and has new social friends from church. Respondent is a devoted family man and is involved in his childrens' lives. He is involved in his community by performing voluntary service at his church. Respondent has changed his attitude in that he now understands how valuable his license is and that no amount of money is worth placing his license at risk. (Factual Findings 4-7.)

5. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) In this case, the Department argued that insufficient time has passed in order to fully evaluate Respondent's rehabilitation. However, the rehabilitation criteria only reference a passage of at least two years. Had the Department brought this Accusation during the two year period following Respondent's conviction, that argument would carry more weight. However, Respondent has presently been working in the real estate business, with a license, and there have been no additional problems. If Respondent were to again commit a similar criminal act, he would place his uncle's business at risk, as well as his own license, and also the employment of many friends and family members who are currently employed by Platinum. On the other hand, holding a license is a privilege. Respondent violated the Department's trust in him almost immediately after he was issued a license. If Respondent's license is not disciplined, the public would not be protected and there would no deterrent for other licensed real estate salespersons in the future. Respondent has established proven that a restricted license will adequately protect the public. Additionally, a significant period of suspension will adequately deter Respondent and others from engaging in any misconduct in the future. (Factual Findings 4-7.)

---

<sup>2</sup> The record is unclear as to why the Department did not file an Accusation until April 2007, more than two years after Respondent's conviction.



ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Christopher David Chavez 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 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 nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three 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
  - (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

*not adopted*

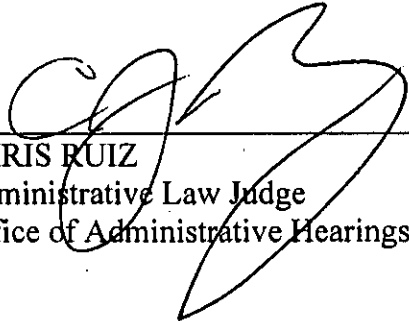
*not  
adopted*

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.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department 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.

7. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 180 days from the date of issuance of said restricted license.

DATED: August 16, 2007.

  
CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings

570  
1 LISSETE GARCIA, Counsel (SBN 211552)  
2 Department of Real Estate  
3 320 West 4th Street, Suite 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982  
6 (Direct) (213) 576-6914

FILED  
APR - 6 2007  
DEPARTMENT OF REAL ESTATE

By Ca

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) NO. H-33884 LA  
12 CHRISTOPHER DAVID CHAVEZ, ) A C C U S A T I O N  
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 CHRISTOPHER DAVID CHAVEZ ("Respondent") is informed and  
18 alleges in her official capacity as follows:

19 I

20 At all times herein mentioned, Respondent was and is  
21 presently licensed by the Department of Real Estate of the State  
22 of California ("Department") as a real estate salesperson under  
23 the Real Estate Law, Part 1 of Division 4 of the California  
24 Business and Professions Code ("Code").

25 ///

26 ///

II

1  
2 Respondent, pursuant to the provisions of Code Section  
3 10153.3, was originally licensed as a salesperson with the  
4 Department on or about May 23, 1998.

5  
6 III

7 On or about September 23, 2004, in the United States  
8 District Court, Central District of California, Case No. SACR-  
9 03-316-GLT, as part of a plea bargain, Respondent pled guilty to  
10 and was convicted of violating one count of mail fraud (18 USC §  
11 1314), a felony. In the course of his employment as a real  
12 estate salesperson, Respondent knowingly participated in a  
13 scheme to defraud through forgery to obtain money or property by  
14 false pretenses, representations or promises. Said crime  
15 involves moral turpitude and bears a substantial relationship  
16 under Section 2910, Title 10, Chapter 6, California Code of  
17 Regulations, to the qualifications, functions or duties of a  
18 real estate licensee.

19  
20 IV

21 The crime of which Respondent was convicted, as  
22 alleged in Paragraph III above, constitutes cause under Code  
23 Sections 490 and 10177(b) for the suspension or revocation of  
24 all licenses and license rights of Respondent under the Real  
25 Estate Law.

26 ///  
27 ///  
///

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/or license rights of Respondent,  
5 CHRISTOPHER DAVID CHAVEZ, 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 3rd day of April, 2007.

11  
12  
13   
14 Deputy Real Estate Commissioner  
15  
16  
17  
18  
19  
20  
21  
22  
23

24 cc: Christopher David Chavez  
25 Hernandez-Chavez Platinum Financial, Inc.  
26 Sacto.  
27 Maria Suarez