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FILED
May 6, 2008
DEPARTMENT OF REAL ESTATE

By CS

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
MICHAEL JOSEPH CHERNEY,)	NO. H-34041 LA
Respondent.)	L-2007060875

STIPULATION AND AGREEMENT

AND

DECISION AFTER REJECTION

I, MICHAEL JOSEPH CHERNEY, Respondent herein, acknowledge that I have received and read the Accusation filed by the Department of Real Estate ("Department") on June 11, 2007, and the Statement to Respondent sent to me in connection with the Accusation.

I hereby admit that the allegations contained in the Accusation filed against me on June 11, 2007 constitute a basis for the discipline of my real estate broker license.

1 I further acknowledge that the Real Estate
2 Commissioner held a hearing on the Accusation on October 9,
3 2007, before the Office of Administrative Hearings for the
4 purpose of proving the allegations therein. I was present at
5 the hearing and was represented by Frank Buda, Attorney at Law.
6 Further, I have had an opportunity to read and review the
7 Proposed Decision of the Administrative Law Judge dated November
8 2, 2007.

9
10 I understand that pursuant to Government Code Section
11 11517(c), the Real Estate Commissioner has rejected the Proposed
12 Decision of the Administrative Law Judge. I further understand
13 that pursuant to the same Section 11517(c), the Real Estate
14 Commissioner may decide this case upon the record, including the
15 transcript, without taking any additional evidence, after
16 affording me the opportunity to present written argument to the
17 Real Estate Commissioner.

18 I further understand that by signing this Stipulation
19 and Agreement and Decision After Rejection ("Stipulation"), I am
20 waiving my right to obtain a dismissal of the Accusation through
21 proceedings under Government Code Section 11517(c) if this
22 Stipulation and Agreement ("Stipulation") is accepted by the
23 Real Estate Commissioner. However, I also understand that I am
24 not waiving my rights to further proceedings to obtain a
25 dismissal of the Accusation if this Stipulation and Agreement is
26 not accepted by the Real Estate Commissioner.
27

1 IT IS HEREBY STIPULATED by and between Respondent,
2 MICHAEL JOSEPH CHERNEY, represented by Frank M. Buda, Attorney
3 at Law, and the Complainant, acting by and through Martha J.
4 Rosett, Counsel for the Department of Real Estate, as follows
5 for the purpose of settling and disposing of the Accusation.

6 A. It is understood by the parties that the Real
7 Estate Commissioner may adopt the Stipulation as his decision in
8 this matter, thereby revoking Respondent's license but granting
9 a right to apply for a restricted real estate salesperson
10 license, as set forth in the below Decision and Order. In the
11 event the Commissioner in his discretion does not adopt the
12 Stipulation, the Stipulation shall be void and of no effect; and
13 the Commissioner will review the transcript and the evidence in
14 the case, and will issue his Decision After Rejection as his
15 decision in this matter.

16 B. By reason of the foregoing and solely for the
17 purpose of settlement of the Accusation without further
18 administrative proceedings, it is stipulated and agreed that the
19 Commissioner shall adopt the following Order:
20

21 ORDER

22 All licenses and licensing rights of Respondent
23 MICHAEL JOSEPH CHERNEY under the Real Estate Law are revoked;
24 provided, however, a restricted real estate salesperson license
25 shall be issued to Respondent pursuant to Section 10156.5 of the
26 Business and Professions Code if Respondent makes application
27

1 therefor and pays to the Department of Real Estate the
2 appropriate fee for the restricted license within 90 days from
3 the effective dates of this Decision. The restricted license
4 issued to Respondent shall be subject to all of the provisions
5 of Section 10156.7 of the Business and Professions Code and to
6 the following limitations, conditions and restrictions imposed
7 under authority of Section 10156.6 of that Code:

8 1. The restricted license issued to Respondent may be
9 suspended prior to hearing by Order of the Real Estate
10 Commissioner in the event of Respondent's conviction or plea of
11 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
14 suspended prior to hearing by Order of the Real Estate
15 Commissioner on evidence satisfactory to the Commissioner that
16 Respondent has violated provisions of the California Real Estate
17 Law, the Subdivided Lands Law, Regulations of the Real Estate
18 Commissioner or conditions attaching to the restricted license.

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

24 4. Respondent shall submit with any application for
25 license under an employing broker, or any application for
26 transfer to a new employing broker, a statement signed by the
27


1 prospective employing real estate broker on a form approved by
2 the Department of Real Estate which shall certify as follows:

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

6 (b) That the employing broker will exercise
7 close supervision over the performance by the
8 restricted licensee of activities for which a
9 license is required.

10 5. Respondent shall, within nine months from the
11 effective date of this Decision, present evidence satisfactory
12 to the Real Estate Commissioner that Respondent has, since the
13 most recent issuance of an original or renewal real estate
14 license, taken and successfully completed the continuing
15 education requirements of Article 2.5 of Chapter 3 of the Real
16 Estate Law for renewal of a real estate license. If Respondent
17 fails to satisfy this condition, the Commissioner may order the
18 suspension of the restricted license until the Respondent
19 presents such evidence. The Commissioner shall afford
20 Respondent the opportunity for a hearing pursuant to the
21 Administrative Procedure Act to present such evidence.

23 3/20/08
24 DATED _____

23 
24 _____
25 MARTHA J. ROSETT, Counsel
26 Department of Real Estate

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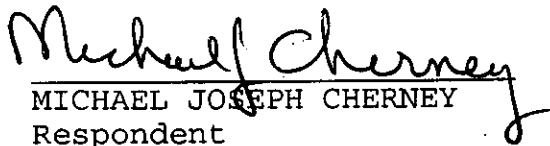
1 * * *

2 I have read the Stipulation and Agreement and
3 Decision After Rejection and have discussed it with my
4 attorney. Its terms are understood by me and are agreeable and
5 acceptable to me. I understand that I am waiving my rights
6 given to me by the California Administrative Procedures Act
7 (including but not limited to Section 11506, 11508, 11059 and
8 11513 of the Government Code), and I willingly, intelligently
9 and voluntarily agree to enter into this Stipulation.
10


11 (Respondent may signify acceptance and approval of the
12 terms and conditions of this Stipulation by faxing a copy of
13 the signature page, as actually signed by Respondent, to the
14 Department at the following fax number: (213) 576-6917.
15 Respondent agrees, acknowledges and understands that by
16 electronically sending to the Department a fax copy of his
17 actual signature as it appears on the Stipulation that receipt
18 of the fax copy by the Department shall be as binding on him
19 as if the Department had received the original signed
20 Stipulation.)
21

22 3-25-2008

23 DATED

24 
MICHAEL JOSEPH CHERNEY
Respondent

25 DATED: 3-20-08

26 
FRANK M. BUDA, Esq.
Counsel for Respondent
27 Approved as to Form

1 * * *

2 I have read the Accusation filed herein, the Proposed
3 Decision of the Administrative Law Judge dated November 2, 2007,
4 and the foregoing Stipulation and Agreement and Decision After
5 Rejection signed by Respondent. I am satisfied that it will not
6 be inimical to the public interest to issue a restricted
7 salesperson license to Respondent.

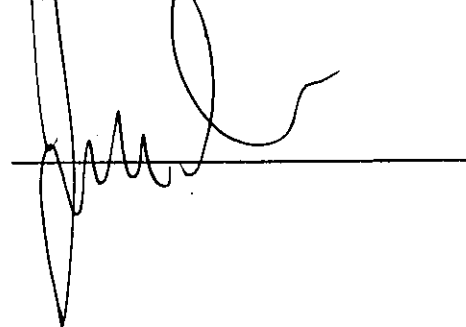
8 Therefore, IT IS HEREBY ORDERED that the real estate
9 broker license of Respondent is revoked; provided, however, that
10 a restricted real estate salesperson license is issued to
11 Respondent if Respondent has fulfilled all the requirements for
12 licensure. The restricted license shall be limited, conditioned
13 and restricted as specified in the foregoing Stipulation and
14 Agreement and Decision After Rejection.

15 This Order shall become effective at 12 O'clock noon
16 on May 29, 2008.

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18 IT IS SO ORDERED 4-29-08

19 JEFF DAVI
20 Real Estate Commissioner

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FILED
JAN 10 2008
DEPARTMENT OF REAL ESTATE

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By C. B.

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BEFORE THE DEPARTMENT OF REAL ESTATE

9

STATE OF CALIFORNIA

10

* * *

11 In the Matter of the Accusation of)
12) No. H-34041 LA
13 MICHAEL JOSEPH CHERNEY,)
14 Respondent.) L-2007060875

15

NOTICE

16 TO: MICHAEL JOSEPH CHERNEY, Respondent, and FRANK M. BUDE, his
17 Counsel.

18 YOU ARE HEREBY NOTIFIED that the Proposed Decision
19 herein dated November 2, 2007, of the Administrative Law Judge is
20 not adopted as the Decision of the Real Estate Commissioner. A
21 copy of the Proposed Decision dated November 2, 2007, is attached
22 for your information.

23 In accordance with Section 11517(c) of the Government
24 Code of the State of California, the disposition of this case
25 will be determined by me after consideration of the record herein
26 including the transcript of the proceedings held on October 9,

27 ///

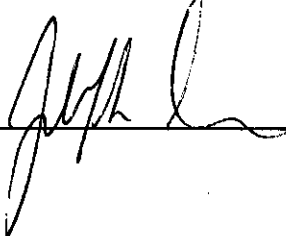
1 2007, any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

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 October 9, 2007, at the Los Angeles office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

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

13 DATED: 1-2-08

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15 JEFF DAVI
16 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 11 2007
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of:

MICHAEL JOSEPH CHERNEY,

Respondent.

Case No.: H-34041 LA

OAH No.: L2007060875

By C.R.

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on October 9, 2007.

Martha J. Rosett, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Frank M. Buda, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in her official capacity.

2. At all times herein mentioned, Michael Joseph Cherney, Respondent herein, was and still is 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. Respondent was first licensed by the Department as a real estate broker on or about January 28, 1991.

Criminal Conviction

3. On February 9, 2006, in the United States District Court, Central District of California, in Case No. SA CR 04-309(B) DOC, Respondent was convicted, pursuant to a Plea Agreement, of violating 18 U.S.C. section 1001 (false statement), a felony and crime of moral turpitude.

4. The Factual Basis section of the Plea Agreement sets forth the salient facts of the conviction as follows:

* * *

Defendant (Respondent in this proceeding) has been in the real estate business for over 30 years and is licensed a real estate broker. In 1999 Defendant purchased 802-816 11th Street, Huntington Beach, California. Defendant approached co-defendant Phillip Benson and requested that he assist him in converting these apartments to condominiums. Defendant Benson agreed to assist Defendant in completing the conversion.

As part of the conversion process Benson requested Defendant sign numerous false documents. For example, Defendant agreed with Benson to sign as though he was the president of certain corporations, when, in truth and in fact, as Defendant well knew, he was not the president of these corporations. In addition to these false documents, Defendant had to falsely claim that the apartments were held as stock cooperatives when, in truth and in fact, as Defendant well knew, they were not.

On Defendant September 28, 2004, Defendant was interviewed by detectives with the Huntington Beach Police Department at his office in Orange County, within the Central District of California. Defendant knew the police officers were participating in a joint investigation with the Santa (sic) Office of the FBI. Defendant false told these officers that he had operated the apartments described in this factual basis as stock cooperatives. When Defendant told the officers this, he knew it was false and was intended to influence, and could have influenced, the previously described joint investigation.

5. Respondent's crime set forth in Finding 3 and conduct set forth in Finding 4 constitutes the employment of deceit to achieve an end; the doing of unlawful acts with the intent of conferring an economic benefit upon Respondent; the uttering of false statements.

Rehabilitation

6. Within a week of his conduct set forth in Finding 4, Respondent – with remorse and in an act of contrition – recanted his wrongful conduct to the authorities and admitted his lies and deception. The criminal prosecution of Respondent continued despite his recantation.

7. As a result of the conviction Respondent was sentenced to one year probation, the terms and conditions of which included payment of a fine of \$5,000.00. Respondent timely paid the fine and successfully and timely completed probation on February 5, 2007. Respondent has suffered no other convictions.

8. For most of his professional life as a real estate licensee – sixteen years as a salesperson and sixteen years as a real estate broker – Respondent has been active in community affairs. He has served as an assistant coach at Vanguard University; he has donated his time, energy and money while coaching youth basketball teams, including club teams, resulting in a championship team at the Youth Basketball of America National Championships in Florida. Some of the youth he has coached and inspired have gone on to play basketball at four-year universities.

Additionally, Respondent has donated and continues to donate his time, energy and money while participating in fund raisers for the less fortunate and has, with others, initiated a recovery center, for substance abusers in Huntington Beach. In sum, Respondent has, and continues to have, significant and conscientious involvement in community and privately – sponsored programs designed to provide social benefits and to ameliorate social problems.

9. Respondent has been married for 32 years and he and his wife are the parents of two adult children, aged 29 and 26. Respondent has been and continues to be a faithful husband and a caring father. His wife and children have provided emotional support to Respondent during his criminal travails brought about by his wrongdoing. Despite such travails Respondent has stability of family life and does fulfill parental and familial responsibilities.

10. Respondent has a change in attitude from that which existed at the time of the criminal conduct. That change - evidenced by the credible testimony of Respondent, a number of business associates and his wife - was brought about by a number of factors:

- the negative impact on him, both emotionally and physically, caused by his wrongdoing;

- the support of his colleagues, his managing broker and his family;
- the shame of the criminal proceeding and the credible pledge, in paraphrase, "I will never do anything like that again"
- the realization that what he did was wrong and dishonest, and contrition for his wrongful conduct.

11. Respondent has been a long time licensee of the Department and has been, while performing licensed duties and obligations, a diligent, honest and trustworthy licensee. He was open, honest and candid during the Department's investigation of his wrongful conduct and was open, honest and candid in his testimony. Scores of character letters were received on behalf of Respondent attesting to his character traits, in his professional and social life, of honesty, integrity, compassion, competence and trustworthiness. During the course of his three decades as a licensee Respondent has handled in excess 700 real estate transactions, ethically and professionally. In the testimony of his managing broker at Star Real Estate: "I have personally known Mr. Cherney for about 25 years and have worked with him very closely. I knew Michael to be a person with great ethics and extremely professional . . . he has always been honest and truthful."

LEGAL CONCLUSIONS

Applicable Authority

1. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and sections 11500 through 11528 of the Government Code.

2. Business and Professions Code section 490 provides in pertinent part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.

- - -

3. Business and Professions Code section 10177 provides in part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following.

- - -
- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

4. California Code of Regulations, title 10, section 2910, provides in part:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of sections 480 and 490 of the Code if it involves:

- (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

- - -
- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

- - -
- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.
- - -

Violations

5. Respondent's conviction, as set forth in Finding 3, constitutes cause for discipline of Respondent's license pursuant to Business and Professions Code section 10177, subdivision (b) in that the crime is a crime of moral turpitude.

6. The crime set forth in Finding 3 is substantially related to the qualifications, functions and duties of a licensee of the Department under California Code of Regulations, title 10, section 2910, subdivision (a)(2), (a)(4) and (a)(8), by reason of Finding 5, and therefore cause exists for discipline of Respondent's license under Business and Professions Code section 490.

Licensing Considerations

7. California Code of Regulations, title 10, section 2912, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (b), to evaluate the rehabilitation of a licensee for the conviction of a crime. Respondent's conviction is less than two years remote. However, Respondent, by hard work and perseverance, as is reflected in Findings 6 through 11, has substantially complied with the other applicable criteria. Further, the crime – a serious crime of moral turpitude – was out of character for Respondent considering his long term professional life and his good work as a benefactor of the community. The wrongful conduct is an aberration in an otherwise professionally and socially responsible life. The objective of an administrative proceeding relating to licensing is to protect the public interest. Such proceedings are not for the primary purpose of punishment: *Fahmy v. MBC* (1995) 38 Cal.App.4th 810; 817; *Ex Parte Brounsell* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385. Given Respondent's good character and rehabilitation to date, the issuance of a properly conditioned restricted license is consistent with the public interest.

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ORDER

All licenses and licensing rights of Respondent Michael Joseph Cherney under the Real Estate Law are revoked; provided, however, a restricted real estate license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

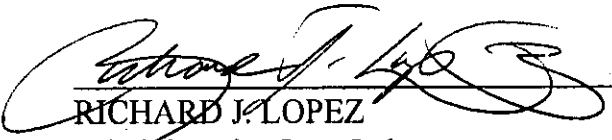
2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner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

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

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Not adopted

Dated: November 2, 2007


RICHARD J. LOPEZ

Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

Suarez

FILED

JUN 17 2007

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

DEPARTMENT OF REAL ESTATE
BY: *Jana B. Dean*

4 (213) 576-6982
5 (213) 620-6430

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * *

11	In the Matter of the Accusation of)	No. H-34041 LA
12	MICHAEL JOSEPH CHERNEY,)	<u>A C C U S A T I O N</u>
13	Respondent.)	
14)	

15
16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against MICHAEL JOSEPH CHERNEY (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 1.

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

24 2.

25 At all times herein mentioned, Respondent was and still
26 is licensed and/or has license rights under the Real Estate Law
27 (Part 1 of Division 4 of the Business and Professions Code) as a

1 real estate broker. Respondent was first licensed by the
2 Department as a real estate broker on or about January 28, 1991.

3 3.

4 On or about February 9, 2006, in the United States
5 District Court, Central District of California, in Case No. SA CR
6 04-309(B) DOC, Respondent was convicted of violating 18 U.S.C.
7 Section 1001 (false statement), a felony and crime of moral
8 turpitude which is substantially related to the qualifications,
9 functions and duties of a real estate licensee. Respondent was
10 sentenced to one year probation, the terms and conditions of
11 which included payment of a fine of \$5,000.00.

12 4.

13 Respondent's conviction, as set forth in Paragraph 3
14 above, constitutes cause for the revocation or suspension of
15 Respondent's license and/or license rights pursuant to Business
16 and Professions Code Sections 490 and/or 10177(b).

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

8 Dated at Los Angeles, California
9 this 8th day of June, 2007.

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12 Deputy Real Estate Commissioner
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21 cc: Michael Joseph Cherney
22 Sacto.
23 Maria Suarez
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