

FILED

Department of Real Estate
320 West Fourth Street, #350
Los Angeles, California 90013

OCT -7 2009

(213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: James B. Slon

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) STIPULATION AND AGREEMENT
) AND DECISION AFTER REMAND
)

RICHARD ALLEN GELLERSEN,)

Respondent.)

NO. H-34319 LA
L-2007110102

In the Matter of the Accusation of)

ORETRA USA INC. doing business)
as Enterprise Management, and)
and RICHARD ALLEN GELLERSEN,)
individually and as designated)
officer of Oretra USA Inc.,)

Respondents.)

NO. H-34792 LA
L-2008040750

It is hereby stipulated by and between RICHARD ALLEN GELLERSEN (hereinafter "Respondent") and Respondent's attorney, Frank M. Buda and the Complainant, acting by and through James Demus, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusations filed on September 25, 2007 and May 6, 2008 in these matters:

CASE NO. H-34319 LA

On May 20, 2008 and May 28, 2008 a hearing for Case

1 No. H-34319 LA was held before N. Gregory Taylor, Administrative
2 Law Judge ("ALJ"), Office of Administrative Hearings at Los
3 Angeles, California. Department Counsel, James A. Demus
4 represented the Complainant. Respondent personally appeared at
5 the hearing and was represented by Frank M. Buda, Attorney at
6 Law. Oral and documentary evidence was received, and the matter
7 was submitted.

8 On June 6, 2008 the ALJ issued a Proposed Decision,
9 finding that although cause exists for suspension or revocation
10 of Respondent's real estate broker license, the evidence of
11 rehabilitation was sufficient so that the public interest would
12 adequately be protected with the issuance of a restricted broker
13 license.

14 On July 15, 2008, the Commissioner of the Department
15 of Real Estate issued a Notice indicating that the Proposed
16 Decision of June 6, 2008 was not adopted. A Decision After
17 Rejection, revoking Respondent's broker license, was filed by
18 the Commissioner on November 13, 2008.

19 On December 31, 2008, Respondent filed a Petition for
20 Writ of Mandamus with the Superior Court of California, County
21 of Los Angeles, Case No. BS118454. On September 8, 2009, A Writ
22 of Mandamus was issued by Superior Court Judge James C.
23 Chalfant, commanding the Commissioner to set aside the Decision
24 After Rejection, dated November 13, 2008 and to file a return
25 setting forth compliance with the Writ.

26 CASE NO. H-34792 LA

27 In Case No. H-34792 LA, A Stipulation and Agreement

1 was filed on June 17, 2009. This Stipulation and Agreement
2 settled Case No. H-34792 for Respondent Oretra USA Inc., but did
3 not settle the Case for Respondent RICHARD ALLEN GELLERSEN.

4 In accordance with the September 8, 2009 Writ of
5 Mandaumus, regarding Case No. H-34319 LA and for purposes of
6 settling Case No. H-34792 LA, the parties agree to the following
7 Stipulation and Agreement:

8 1. All issues which were to be contested and all
9 evidence which was to be presented by Complainant and Respondent
10 at a formal hearing on the Accusation for Case No. H-34792 LA,
11 which hearing was to be held in accordance with the provisions
12 of the Administrative Procedure Act (APA), shall instead and in
13 place thereof be submitted solely on the basis of the provisions
14 of this Stipulation and Agreement.

15 2. The Findings of Fact contained in the Decision
16 After Rejection filed on November 13, 2008, in Case No.
17 H-34319 LA are hereby adopted as the findings of the Real Estate
18 Commissioner. All issues and the discipline to be imposed in
19 Case No. H-34319 LA shall be resolved by this Stipulation and
20 Agreement.

21 3. Respondent has received, read and understands the
22 Statement to Respondent, the Discovery Provisions of the APA and
23 the Accusations filed by the Department of Real Estate in these
24 proceedings.

25 4. On April 17, 2008, Respondent filed a Notice of
26 Defense for Case No. H-34792 LA, pursuant to Section 11506 of
27 the Government Code for the purpose of requesting a hearing on

1 the allegations in the Accusation. Respondent hereby freely and
2 voluntarily withdraws said Notice of Defense. Respondent
3 acknowledges that he understands that by withdrawing said Notice
4 of Defense he will thereby waive his right to require the
5 Commissioner to prove the allegations in the Accusation at a
6 contested hearing held in accordance with the provisions of the
7 APA and that he will waive other rights afforded to him in
8 connection with the hearing, such as the right to present
9 evidence in defense of the allegations in the Accusation and the
10 right to cross-examine witnesses.

11 5. This Stipulation is based on the allegations
12 contained in the Accusations above. In the interest of
13 expedience and economy, Respondent chooses not to contest the
14 allegations in Case No. H-34792 LA, but to remain silent and
15 understands that, as a result thereof, these allegations, without
16 being admitted or denied, will serve as a prima facie basis for
17 the disciplinary action stipulated to herein. The Real Estate
18 Commissioner shall not be required to provide further evidence to
19 prove said allegations.

20 6. This Stipulation and Respondent's decision not to
21 contest the Accusation in Case No. H-34792 LA is made for the
22 purpose of reaching an agreed disposition of these proceedings
23 and is expressly limited to these proceedings and any other
24 proceeding or case in which the Department of Real Estate
25 ("Department"), the state or federal government, or any agency of
26 this state, another state or federal government is involved, and
27

1 otherwise shall not be admissible in any other criminal or civil
2 proceedings.

3 7. It is understood by the parties that the Real
4 Estate Commissioner may adopt this Stipulation as his Decision
5 in these matters thereby imposing the penalty and sanctions on
6 Respondents real estate licenses and license rights as set forth
7 in the "Order" herein below. In the event that the Commissioner,
8 in his discretion, does not adopt the Stipulation, it shall be
9 void and of no effect and Respondents shall retain the right to
10 a hearing and proceeding on the Accusation for Case No. H-34792
11 LA under the provisions of the APA and shall not be bound by any
12 stipulation or waiver made herein.

13 8. The Order or any subsequent Order of the Real
14 Estate Commissioner made pursuant to this Stipulation shall not
15 constitute an estoppel, merger or bar to any further
16 administrative or civil proceedings by the Department of Real
17 Estate with respect to any matters which were not specifically
18 alleged to be causes for Accusation in these proceedings but do
19 constitute a bar, estoppel and merger as to any allegations
20 actually contained in the Accusations against Respondent herein.

21 DETERMINATION OF ISSUES

22 By reason of the foregoing stipulations, admissions
23 and waivers and solely for the purpose of settlement of the
24 pending Accusations, it is stipulated and agreed that the
25 following determination of issues shall be made:

26 The conduct of Respondent RICHARD ALLEN GELLERSEN, as
27 set forth in the Accusations, constitutes grounds for suspension

1 or revocation of Respondent's real estate broker license under
2 the provisions of Sections 490, 10177(b) and 10177(h) of the
3 Business and Professions Code.

4 ORDER

5 WHEREFORE, THE FOLLOWING ORDER is hereby made:

6 All licenses and licensing rights of Respondent
7 RICHARD ALLEN GELLERSEN, under the Real Estate Law are revoked;
8 provided, however, a restricted real estate broker license shall
9 be issued to Respondent pursuant to Section 10156.5 of the
10 Business and Professions Code, if Respondent makes application
11 therefor and pays to the Department the appropriate fee within
12 90 days from the effective date of this Decision. The
13 restricted license issued to Respondent shall be subject to all
14 of the provisions of Section 10156.7 of the Business and
15 Professions Code and to the following limitations, conditions
16 and restrictions imposed under authority of Section 10156.6 of
17 that code:

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

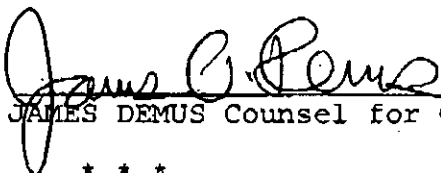
23 2. The restricted license issued to Respondent may be
24 suspended prior to hearing by Order of the Real Estate
25 Commissioner on evidence satisfactory to the Commissioner that
26 Respondent has violated provisions of the California Real Estate
27 Law, the Subdivided Lands Law, Regulations of the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

1 Commissioner, or conditions attaching to this restricted
2 license.

3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions
6 of a restricted license until two (2) years have elapsed from
7 the date of issuance of the restricted license to Respondent.

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

20
21 DATED: 10/6/09


JAMES DEMUS Counsel for Complainant

22 * * *

23
24 I have read the Stipulation and Agreement and
25 discussed it with my counsel. Its terms are understood by me
26 and are agreeable and acceptable to me. I understand that I am
27 waiving rights given to me by the California Administrative

1 Commissioner, or conditions attaching to this restricted
2 license.

3 3. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions
6 of a restricted license until two (2) years have elapsed from
7 the date of issuance of the restricted license to Respondent.

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

20
21 DATED: _____ JAMES DEMUS Counsel for Complainant

22 * * *

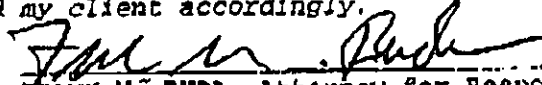
23
24 I have read the Stipulation and Agreement and
25 discussed it with my counsel. Its terms are understood by me
26 and are agreeable and acceptable to me. I understand that I am
27 waiving rights given to me by the California Administrative

1 Procedure Act (including but not limited to Sections 11506,
2 11508, 11509 and 11513 of the Government Code), and I willingly
3 intelligently and voluntarily waive those rights, including the
4 right of requiring the Commissioner to prove the allegations in
5 the Accusation at a hearing at which I would have the right to
6 cross-examine witnesses against me and to present evidence in
7 defense and mitigation of the charges.

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

18
19 DATED: 10/5/2009
20 RICHARD ALLEN GELLERSEN, Respondent
21
22

23 I have read the Stipulation and Agreement as to form and
24 content and have advised my client accordingly.

25
26 DATED: 10/5/2009
27 FRANK M. BUDA, Attorney for Respondent

1 Procedure Act (including but not limited to Sections 11506,
2 11508, 11509 and 11513 of the Government Code), and I willingly,
3 intelligently and voluntarily waive those rights, including the
4 right of requiring the Commissioner to prove the allegations in
5 the Accusation at a hearing at which I would have the right to
6 cross-examine witnesses against me and to present evidence in
7 defense and mitigation of the charges.

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

18
19 DATED: _____

RICHARD ALLEN GELLERSEN, Respondent

20
21
22 *I have read the Stipulation and Agreement as to form and*
23 *content and have advised my client accordingly.*

24 DATED: _____

FRANK M. BUDA, Attorney for Respondent

I have read the Accusations filed herein and the foregoing Stipulation and Agreement signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate broker license to Respondent.

Therefore, IT IS HEREBY ORDERED that a restricted real estate broker license be issued to Respondent, if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in the foregoing Stipulation and Agreement.

The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on October 27, 2009.

IT IS SO ORDERED

JEFF DAVI
REAL ESTATE COMMISSIONER

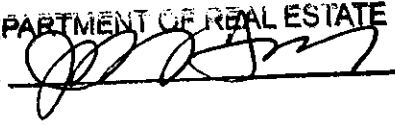
by James H. Baker

7/20/09

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JAN - 2 2009

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

RICHARD ALLEN GELLERSEN,)

Respondent.)

NO. H-34319 LA
L-2007110102

ORDER DENYING RECONSIDERATION

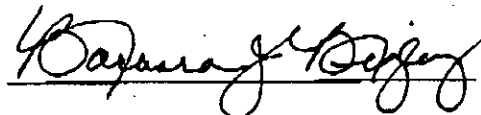
On November 13, 2008, a Decision was rendered in the above-entitled matter. The Decision was to become effective on December 3, 2008, and was stayed by separate Order to January 2, 2009.

On December 4, 2008, Respondent petitioned for reconsideration of the Decision of November 13, 2008.

I have given consideration to the petition of Respondent. I find no good cause to reconsider the Decision of November 13, 2008, and reconsideration is hereby denied.

IT IS SO ORDERED 12-31-08

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Bigby
Chief Deputy Commissioner

9v Laura B. Clon

* * * *

PHILLIP IHDE
Regional Manager

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DEPARTMENT OF REAL ESTATE

BY: *Henry*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

RICHARD ALLEN GELLERSEN,

Respondent..

DRE No. H-34319 LA

OAH No. L-2007110102

DECISION AFTER REJECTION

This matter came on for hearing before N. Gregory Taylor, Administrative Law Judge, Office of Administrative Hearings, State of California, in Los Angeles, California, on May 20, 2008 and May 28, 2008.

James A. Demus, Counsel, represented the Complainant. The Respondent, RICHARD ALLEN GELLERSEN, appeared in person and was represented by Frank M. Buda, Esq.

Evidence was received, the record was closed, and the matter was submitted.

On June 6, 2008, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was

1 notified that the case would be decided by the Real Estate Commissioner upon the record, the
2 transcript of proceedings held on May 20, 2008 and May 28, 2008, and upon written argument
3 offered by Respondent and Complainant.

4 Written argument was timely submitted by Respondent on September 3, 2008.
5 Written argument has been submitted on behalf of Complainant.

6 I have given careful consideration to the record in this case, including the
7 transcript of proceedings of May 20, 2008 and May 28, 2008 and written argument offered by
8 Respondent and Complainant.

9 The following shall constitute the Decision of the Real Estate Commissioner in
10 these proceedings.

11 FINDINGS OF FACT

12 1. Complainant filed the Accusation in this proceeding in her official
13 capacity.

14 2. Respondent is presently licensed and/or has license rights as a real estate
15 broker under the Real Estate Law (Part I of Division 4 of the Business and Professions
16 Code).

17 3. Respondent initially was licensed by the Department in 1978.

18 4. On November 13, 2006, in the California Superior Court, County of Los
19 Angeles, Respondent, upon his no contest plea, was convicted of: seventeen violations of
20 Corporations Code section 25110, selling unqualified securities; seventeen violations of
21 Corporations Code section 25401, selling securities by misrepresentation or omission of
22 material facts; seven violations of Penal Code section 487, subdivision (a) grand theft; a
23 single violation of Penal Code section 368, subdivision (d), grand theft of an elder; and a
24 single violation of Corporations Code section 25541, selling securities by means of scheme
25 to defraud. Respondent was convicted of forty-three violations - all of them felonies. The
26 court ordered Respondent to serve 351 days in the county jail with credit being given for
27 having already served that amount of time awaiting trial. The court also placed Respondent

1 on formal probation for a period of thirty-six months. Respondent was ordered to pay
2 restitution to the victims in amounts specified by the court. Respondent and his co-defendant
3 paid the restitution as ordered. (Girlfriend's father paid \$140,000, Respondent paid \$58,235
4 and the girlfriend paid approximately \$500.) They also paid fines and fees to the court.

5 5. On March 5, 2008, the Court terminated Respondent's probation, pursuant
6 to Penal Code section 1203.3, reduced the violations to misdemeanors, and set aside
7 Respondent's convictions and guilty pleas. The convictions were expunged pursuant to Penal
8 Code section 1203.4.

9 6. The facts and circumstances leading to Respondent's conviction are as
10 follows: Respondent's girlfriend moved into Respondent's condominium with Respondent,
11 her two children and mother. Respondent discovered that she was very good at day trading
12 on the stock market. She was able to make significant amounts of money doing this.
13 Respondent began giving his girlfriend money to invest. When Respondent and his girlfriend
14 realized how financially rewarding this could be, they decided to invite their friends to join
15 in this effort. They formed a partnership known as "High Quality Investments Limited
16 Partnership." A Placement Memorandum and Limited Partnership Agreement were drafted
17 and copies given to persons interested in investing. These securities were not approved or
18 registered with any governmental agency. Respondent stated that he did not believe that any
19 governmental approval was required although he now admits that this was an incorrect
20 assumption. Investments were made in \$5,000.00 units. The girlfriend did the actual day
21 trading in stocks while Respondent tried to interest friends in investing in the partnership.
22 Initially, profits were forthcoming but after a time this stopped following some bad
23 investments. Respondent endeavored to stem the tide of losses by increasing his investment
24 in the partnership. This effort was not successful and the Partnership ran out of funds.
25 Participants in the partnership began demanding a return of their money. When this was not
26 successful, one group of investors filed a complaint with the police and criminal charges
27 were eventually initiated against Respondent and his girlfriend. Not all of the investors

1 joined in the criminal proceeding. The nonparticipating partners stated that they realized that
2 it was a risky investment and were prepared to take the loss. Respondent is making efforts to
3 pay off this latter group of investors. (The investors whose complaints resulted in the filing
4 of criminal charges were paid off as part of the court ordered restitution.) There were a total
5 of thirty-two to thirty-eight investors in the partnership. Seven of them filed the complaint
6 with the police.

7 7. Shortly after the filing of criminal charges, Respondent was taken into
8 custody. Respondent gave his girlfriend a power of attorney so that she could sell some of
9 his property and raise sufficient funds for his bail. Instead, the girlfriend sold Respondent's
10 condominium and distributed the \$186,915 in proceeds to herself, her father and others. She
11 also took all of Respondent's assets, books and records. She failed to post Respondent's bail
12 and he remained in custody until the completion of the preliminary hearing in the criminal
13 case. At that time the judge hearing the matter released Respondent on his own
14 recognizance. Respondent was in custody for eight months. Upon his release, Respondent
15 was homeless.

16 8. Respondent states that he always warned prospective investors of the risky
17 nature of an investment in the partnership. This was substantiated by two of the witnesses
18 testifying in this proceeding. While this may be true, it is also true from the wording of the
19 Placement Memorandum and partnership agreement that Respondent was clearly seeking
20 investors to join the partnership.

21 9. Respondent initially invested \$40,000 in the partnership. This amount
22 increased to a total of \$260,000. When the partnership began to have financial problems, he
23 invested another \$140,000 trying unsuccessfully to rescue the situation. Respondent finally
24 had to declare bankruptcy. Respondent's girlfriend lost \$140,000.

25 10. Respondent takes full responsibility for what happened with the
26 partnership. He now realizes that he should have registered the transaction. He feels an
27 obligation to return the money to the investors and is slowly doing that as he is able.

1 11. Respondent states that he will never be in such a situation as the
2 partnership again. He believed in his girlfriend and her ability to handle stocks. He was not
3 knowledgeable about stocks. Respondent is very embarrassed about the entire situation. He
4 has not seen his girlfriend since he was arrested.

5 12. Respondent submitted nine letters of recommendation as to his good
6 character. These letters are from two attorneys and the remainder from persons in the real
7 estate field who have known Respondent for many years and in a variety of situations. All of
8 these persons highly praise Respondent as a hard working person with an excellent
9 reputation who is well liked throughout the community. Six of the persons submitting letters
10 are aware of Respondent's conviction and it does not affect their views on his good
11 character.

12 13. Respondent was originally licensed as a real estate salesperson in 1974
13 and he became a broker in 1978. During this time, he has been in the South Bay area of Los
14 Angeles. He specializes in residential properties and new developments. He has had no
15 previous administrative actions filed against him.

16 14. Respondent has just completed forty-eight hours of continuing education
17 for his broker license.

18 CONCLUSIONS OF LAW

19 1. These proceedings are brought under the provisions of Business and
20 Professions Code section 10100 et seq. and Government Code sections 11500 through
21 11528.

22 2. The crimes of which Respondent was convicted involve moral turpitude.
23 All of Respondent's violations are, by virtue of the provisions of the California Code of
24 Regulations, Title 10, section 2910, subdivisions (a) (7) and (8), substantially related to the
25 qualifications, functions or duties of a licensee of the Department in that the violations
26 involved willfully failing to comply with a statutory requirement that an entitlement be
27 obtained from a duly constituted public authority before engaging in a business or course of

1 conduct and involved doing an unlawful act with the intent of conferring a financial or
2 economic benefit on Respondent.

3 3. With regard to Respondent's 2006 criminal conviction, cause exists, by
4 virtue of Business and Professions Code sections 490 and 10177, subdivision (b), to suspend
5 or revoke Respondent's license and license rights from the Department due to Respondent's
6 criminal violations.

7 4. The Department's Criteria of Rehabilitation, set forth in California Code of
8 Regulations, Title 10, section 2912, provides factors to be considered in evaluating the
9 rehabilitation of a licensee against whom an administrative disciplinary proceeding for
10 revocation or suspension of the license has been initiated on account of a crime committed
11 by the licensee. The criteria require the passage of at least two years from the time of the
12 most recent criminal conviction. It has been nearly two years since Respondent's conviction.
13 The court has terminated Respondent's probation early, reduced his violations to
14 misdemeanors and expunged the conviction. Respondent has satisfied the restitution ordered
15 by the court and is working on repaying those investors who were not covered by the court
16 order. He has completed the necessary course work to meet the Department's continuing
17 education requirements. Respondent has been a realtor in his community over many years.
18 Respondent has not seen his former girlfriend since he was arrested in 2006.

19 5. However, Respondent was convicted of many significant violations of law,
20 including crimes involving theft, fraud and dishonesty. Under these circumstances, it is
21 appropriate, in order to protect the public, for the Department to revoke Respondent's
22 license.

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ALLEN GELLERSEN under the Real Estate Law are revoked.

IT IS SO ORDERED 11/13/08

[Handwritten signature]

- 7 -

Handwritten signature: Laura B. Allen

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

No. H-34319 LA

RICHARD ALLEN GELLERSEN,)

L-2007110102

Respondent.)

NOTICE

TO: RICHARD ALLEN GELLERSEN, Respondent, and FRANK M. BUDA, his
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated June 6, 2008, of the Administrative Law Judge is not
adopted as the Decision of the Real Estate Commissioner. A copy
of the Proposed Decision dated June 6, 2008, 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 May 20 and

///

1 28, 2008, and any written argument hereafter submitted on behalf
2 of Respondent and Complainant.

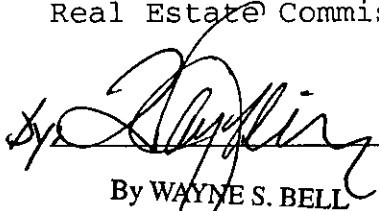
3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of May 20 and 28, 2008, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

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:

7/11/2008

14
15 JEFF DAVI
Real Estate Commissioner

16
17 
18 By WAYNE S. BELL
19 Chief Counsel
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RICHARD ALLEN GELLERSEN,

Respondent.

Case No. H-34319 LA

OAH No. L2007110102

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on May 20 and 28, 2008.

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

Frank M. Buda, Attorney at Law, represented Richard Allen Gellersen (Respondent) who was present throughout the proceedings.

Oral and documentary evidence was received and the matter argued.

The case was submitted for decision on May 28, 2008.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. Respondent is presently licensed and/or has license rights as a real estate broker under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code).
3. Respondent initially was licensed by the Department in 1978. His broker license expired on May 25, 2008. (The Department retains jurisdiction over lapsed licenses. Business and Professions Code section 10103.)

4. On November 13, 2006, in the California Superior Court, County of Los Angeles, Respondent, upon his no contest plea, was convicted of: seventeen violations of Corporations Code section 25110, selling unqualified securities; seventeen violations of Corporations Code section 25401, selling securities by misrepresentation or omission of material facts; seven violations of Penal Code section 487, subdivision (a) grand theft; a single violation of Penal Code section 368, subdivision (d), grand theft of an elder; and a single violation of Corporations Code section 25541, selling securities by means of scheme to defraud. Respondent was convicted of forty-three violations – all of them felonies. The court ordered Respondent to serve 351 days in the county jail with credit being given for having already served that amount of time awaiting trial. The court also placed Respondent on formal probation for a period of thirty-six months. Respondent was ordered to pay restitution to the victims in amounts specified by the court. Respondent and his co-defendant paid the restitution as ordered. (Girlfriend's father paid \$140,000, Respondent paid \$58,235 and the girlfriend paid approximately \$500.) They also paid fines and fees to the court.

5. On March 5, 2008, the Court terminated Respondent's probation, pursuant to Penal Code section 1203.3, reduced the violations to misdemeanors, and set aside Respondent's convictions and guilty pleas. The convictions were expunged pursuant to Penal Code section 1203.4.

6. The facts and circumstances leading to Respondent's conviction are as follows: Respondent's girlfriend moved into Respondent's condominium with Respondent, her two children and mother. Respondent discovered that she was very good at day trading on the stock market. She was able to make significant amounts of money doing this. Respondent began giving his girlfriend money to invest. When Respondent and his girlfriend realized how financially rewarding this could be, they decided to invite their friends to join in this effort. They formed a partnership known as "High Quality Investments Limited Partnership." A Placement Memorandum and Limited Partnership Agreement were drafted and copies given to persons interested in investing. These securities were not approved or registered with any governmental agency. Respondent stated that he did not believe that any governmental approval was required although he now admits that this was an incorrect assumption. Investments were made in \$5,000.00 units. The girlfriend did the actual day trading in stocks while Respondent tried to interest friends in investing in the partnership. Initially, profits were forthcoming but after a time this stopped following some bad investments. Respondent endeavored to stem the tide of losses by increasing his investment in the partnership. This ~~was~~ effort was not successful and the Partnership ran out of funds. Participants in the partnership began demanding a return of their money. When this was not successful, one group of investors filed a complaint with the police and criminal charges were eventually initiated against Respondent and his girlfriend. Not all of the investors joined in the criminal proceeding. The nonparticipating partners stated that they realized that it was a risky investment and were prepared to take the loss. Respondent is making efforts to pay off this latter group of investors. (The investors whose complaints resulted in the filing of criminal charges were paid off as part of the court ordered restitution.) There were a total

of thirty-eight to thirty-two investors in the partnership. Seven of them filed the complaint with the police.

7. Shortly after the filing of criminal charges, Respondent was taken into custody. Respondent gave his girlfriend a power of attorney so that she could sell some of his property and raise sufficient funds for his bail. Instead, the girlfriend sold Respondent's condominium and distributed the \$186,915 in proceeds to herself, her father and others. She also took all of Respondent's assets, books and records. She failed to post Respondent's bail and he remained in custody until the completion of the preliminary hearing in the criminal case. At that time the judge hearing the matter released Respondent on his own recognizance. Respondent was in custody for eight months. Upon his release, Respondent was homeless.

8. Respondent states that he always warned prospective investors of the risky nature of an investment in the partnership. This was substantiated by two of witnesses testifying in this proceeding. While this may be true, it is also true from the wording of the Placement Memorandum and partnership agreement that Respondent was clearly seeking investors to join the partnership.

9. Respondent initially invested \$40,000 in the partnership. This amount increased to a total of \$260,000. When the partnership began to have financial problems, he invested another \$140,000 trying unsuccessfully to rescue the situation. Respondent finally had to declare bankruptcy. Respondent's girlfriend lost \$140,000.

10. Respondent takes full responsibility for what happened with the partnership. He now realizes that he should have registered the transaction. He feels an obligation to return the money to the investors and is slowly doing that as he is able.

11. Respondent states that he will never be in such a situation as the partnership again. He believed in his girlfriend and her ability to handle stocks. He was not knowledgeable about stocks. Respondent is very embarrassed about the entire situation. He has not seen his girlfriend since he was arrested.

12. Respondent submitted nine letters of recommendation as to his good character. These letters are from two attorneys and the remainder from persons in the real estate field who have known Respondent for many years and in a variety of situations. All of these persons highly praise Respondent as a hard working person with an excellent reputation who is well liked throughout the community. Six of the persons submitting letters are aware of Respondent's conviction and it does not affect their views on his good character.

13. Respondent was originally licensed as a real estate salesperson in 1974 and he became a broker two years later in 1976. During this time, he has been in the South Bay area of Los Angeles. He specializes in residential properties and new developments. He has had no previous administrative actions filed against him.

14. Respondent has just completed forty-eight hours of continuing education for his broker license.

LEGAL CONCLUSIONS

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

2. The crimes of which Respondent was convicted involve moral turpitude. All of Respondent's violations are, by virtue of the provisions of the California Code of Regulations, title 10, section 2910, subdivisions (a) (7) and (8), substantially related to the qualifications, functions or duties of a licensee of the Department in that the violations involved willfully failing to comply with a statutory requirement that an entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct and involved doing an unlawful act with the intent of conferring a financial or economic benefit on Respondent.

3. With regard to Respondent's 2006 criminal conviction, cause exists, by virtue of Business and Professions Code sections 490 and 10177, subdivision (b), to suspend or revoke Respondent's license and license rights from the Department due to Respondent's criminal violations.

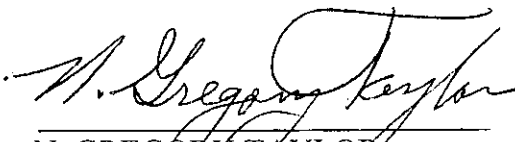
4. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee. The criteria require the passage of at least two years from the time of the most recent criminal conviction. It has been nearly two years since Respondent's conviction. Significantly, the court has early terminated Respondent's probation, reduced his violations to misdemeanors and expunged the conviction. Respondent has satisfied the restitution ordered by the court and is working on repaying those investors who were not covered by the court order. Respondent learned a significant lesson on the necessity of registering such offerings and will not repeat it. He has completed the necessary course work to meet the Department's continuing education requirements. Respondent has been a respected realtor in his community over many years. Respondent has not seen his former girlfriend since he was arrested in 2006. All of this being said Respondent was convicted of significant violations of law. Under these circumstances, it is appropriate for the Department to monitor Respondent's activities to insure that the public is protected. A restricted license is appropriate.

ORDER

All licenses and licensing rights of Respondent Richard Allen Gellersen under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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 Profession 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 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 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.

DATED: June 6, 2008.


N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

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7

FILED

SEP 25 2007

DEPARTMENT OF REAL ESTATE

BY: Laura B. Oum

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-34319 LA
12 RICHARD ALLEN GELLERSEN,) A C C U S A T I O N
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 RICHARD ALLEN GELLERSEN, ("Respondent") alleges as
19 follows:

20 1.

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

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
27

1 California Business and Professions Code ("Code"), as a real
2 estate broker.

3 3.

4 On or about November 13, 2006, in the Superior Court
5 of California, County of Los Angeles, in case no. BA267037,
6 Respondent was convicted of violating 17 counts of California
7 Corporations Code Sections 25110-25540(a) (sale of unqualified
8 securities) and violating 17 counts of California Corporations
9 Code Sections 25401-25530(b) (false statement on securities).
10 Respondent was also convicted of violating 1 count of California
11 Corporations Code 25541 (sale of a security by use of fraudulent
12 practice). In addition, Respondent was convicted of violating 7
13 counts of California Penal Code Section 487(a) (grand theft of
14 property over \$400), and 1 count of California Penal Code
15 Section 368(d) (theft of an elder's property). All of these
16 crimes were felonies. The underlying facts of these crimes
17 involve moral turpitude, which bear a substantial relationship
18 under Section 2910, Title 10, Chapter 6, California Code of
19 Regulations to the qualifications, functions or duties of a real
20 estate licensee.

21 4.

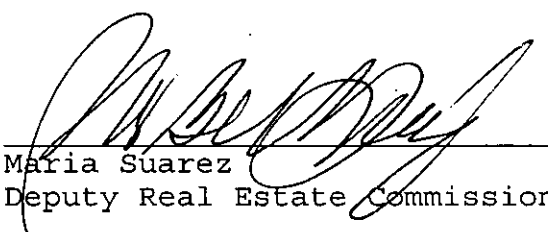
22 The crimes of which Respondent was convicted, as
23 described in Paragraph 3 above, constitute cause under Sections
24 490 and 10177(b) of the Code for the suspension or revocation of
25 the license and license rights of Respondent under the Real
26 Estate Law.

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 the licenses and license rights of
5 Respondent, RICHARD ALLEN GELLERSEN, under the Real Estate Law
6 (Part 1 of Division 4 of the Business and Professions Code) and
7 for such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 21st day of September, 2007.

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13 
14 Maria Suarez
15 Deputy Real Estate Commissioner
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25 cc: RICHARD ALLEN GELLERSEN
26 Maria Suarez
27 Sacto.