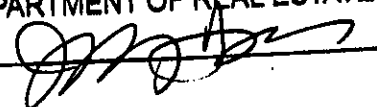


FILED

MAR - 5 2009

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

In the Matter of the Accusation of)

PAUL WAYNE HERBERT,)

Respondent.)

No. H-34797 LA

L-2008050037

DECISION

The Proposed Decision dated January 29, 2009, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

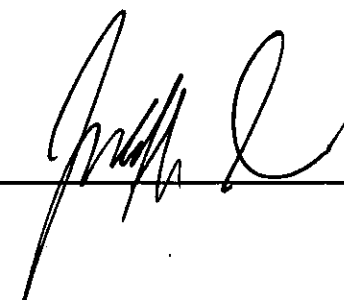
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on March 25, 2009

IT IS SO ORDERED

2/26/09
JEFF DAVI
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAUL WAYNE HERBERT,

Respondent.

Board No. H-34797 LA

OAH No. L2008050037

PROPOSED DECISION

This matter was heard on December 1, 2008, at Los Angeles, California, by Chris. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

Paul Wayne Herbert (Respondent) was present and was represented by Mary E. Work, Esq.

Complainant, Maria Suarez, Deputy Real Estate Commissioner, was represented by Julie To, Counsel for Department of Real Estate (Department).

Oral and documentary evidence was presented and the matter was submitted for decision on December 1, 2008.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent is presently licensed as a real estate broker and was initially licensed in 1987. His broker's license is due to expire in 2012. Respondent previously held a real estate salesperson license from approximately 1984 to 1987. Respondent is 43 years old and he has been licensed by the Department as a real estate salesperson or a broker since he was 18 years old.
3. On December 10, 2007, in the United States District Court, Central District, case number SACR 03-00321-JVS, Respondent was convicted, on his guilty plea, of violating 18 United States Code sections 1343 and 2, subdivision (a) ((wire fraud), a felony. Respondent was placed on probation for a period of two years with terms and conditions which included: pay \$196,000 in restitution. Respondent fully cooperated with law enforcement, paid the restitution, and his criminal probation was terminated early in June of 2008

4. The underlying events leading to Respondent's conviction were as follows. Since a very young age, Respondent has been in the business of buying homes, fixing them, and then re-selling them for a profit. In 1990's, he became employed by Residential Ventures Inc. (Residential). At Residential, Respondent used his broker's license to buy properties in South Central Los Angeles, fix them up, and sell them. In approximately 1998, Residential began having difficulty selling their properties because most of the prospective buyers did not have the required down-payment to qualify for a Federal Housing Administration (FHA) loan. As such, Respondent's company provided the down-payment money to buyers. However, Respondent signed a FHA certification which stated that the seller had not provided any down-payment money to the buyers. Respondent did this act knowing it was wrong, but his wife had just given birth to twins and Respondent was facing large medical bills related to their birth.

5. Respondent was first contacted by the Federal Bureau of Investigation (FBI) in 1999. He immediately began cooperating with the FBI. Respondent was ultimately indicted in 2003 and he was fired by Residential shortly after he was indicted. Even after his conviction, Respondent continued to assist the FBI when they had a question about real estate transactions. Respondent continues to assist the FBI whenever they contact him and ask him to review a case.

6. Respondent appeared remorseful during his testimony. He acknowledged that he allowed his employer to order him to do something that was wrong. In mitigation, in 2000, the FHA began allowing the buyer to give the seller the necessary downpayment. Nevertheless, this does not excuse Respondent's dishonesty and fraudulent conduct.

7. Respondent is heavily involved in the Boy Scouts of America where he volunteers his time. Respondent has been in the real estate business for 25 years. Respondent testified that if he were to lose his license he would have a very difficult time finding employment. First, all he knows is real estate. Second, he is now a convicted felon. Respondent is the sole support for his family of four. Respondent is married and has a stable family life. He no longer wants to be an employee which put him in the position of lying or losing his job. Respondent wants to remain working for himself. Respondent learned his lesson and it was expensive. Respondent paid the \$196,000 in restitution which was the total amount the FHA claimed Residential should pay.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to suspend or revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code section 490 and 10177, subdivision (b) because Respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate salesperson.

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)(8), doing an unlawful act with the intent of conferring a financial benefit upon the perpetrator is substantially related to the qualifications, functions, or duties of a licensee. Therefore, Respondent's conviction for a dishonest act which was intended to benefit Respondent and his company is substantially related to the qualifications, functions, or duties of a real estate salesperson. (Factual Finding 1-4.)

Moral Turpitude

A criminal conviction can form the basis for denial of an application for 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 was convicted of a felony.

2. Criteria have been developed by the Department pursuant to Business and Professions Code, section 482, subdivision (a), for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection(a) passage of at least two years since the conviction;
- Subsection(b) restitution;
- Subsection(c) expungement of the conviction;
- Subsection(d) expungement of the requirement to register as an offender;
- Subsection(e) completion of the criminal probation;
- Subsection(f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection(g) payment of any criminal fines or penalties;
- Subsection(h) stability of family life;
- Subsection(i) enrollment in or completion of educational or training courses;
- Subsection(j) discharge of debts to others;
- Subsection(k) correction of business practices causing injury;
- Subsection(l) significant involvement in community, church or private programs for social betterment
- Subsection(m) new and different social and business relationships; and
- Subsection(n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

3. Respondent's conduct leading to his conviction occurred almost 10 years ago in 1999. Respondent was indicted in 2003, but not convicted until 2007. The "two years since the conviction" criteria seems more appropriate where a person commits a crime and is then charged and convicted within a reasonable time. Respondent's case is very unusual in

that he was not convicted until almost eight years had passed since he committed his criminal act. Respondent immediately paid the \$196,000 in restitution and his extended cooperation with law enforcement shows a change in his attitude. Given the long passage of time, this criteria has been satisfied by Respondent. Respondent has paid restitution, his criminal probation is complete, he has a stable family life, he has corrected his business practices, he has a new attitude, and he is involved in his community. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; 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.) An outright revocation of Respondent's license would be only to punish him and his family whom he supports financially. Respondent established sufficient evidence of this rehabilitation to justify the following order which will sufficiently protect the health, safety, and welfare of the public. (Factual Findings 5-7.)

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Paul Wayne Herbert 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 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, 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.

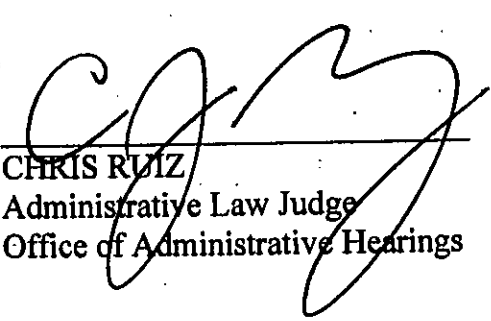
5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent fails to satisfy this condition, the Commissioner may order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

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

7. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in the custody and control of Respondent and periodic summaries of salient information concerning each real estate transaction in which the Respondent engaged during the period covered by the report.

8. Respondent is suspended from using his restricted real estate broker's license for a total of 14 days, which is to begin on the effective date of this decision.

DATED: January 28 2009.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

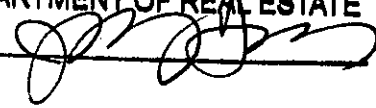
7/8/08
JULIE L. TO, Counsel (SBN 219482)
Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6982
(Direct) (213) 576-6916

FILED

JUN 27 2008

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-34797 LA
)	L-2008050037
)	FIRST AMENDED
PAUL WAYNE HERBERT,)	<u>ACCUSATION</u>
)	
Respondent.)	
)	

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

1.

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

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code"), as a real estate broker. Respondent's license expired on February 6,

1 2007. Pursuant to Code Section 10201 Respondent retains renewal
2 rights. Pursuant to Section 10103 the Department retains
3 jurisdiction.

4 3.

5 (CRIMINAL CONVICTION)

6 On or about December 10, 2007, in the United States
7 District Court for the Central District of California, in case
8 no. SACR 03-00321-JVS, Respondent was convicted of violating 18
9 U.S.C.1343 (wire fraud) and 2(a)(principal), a felony. This
10 crime, by its facts and circumstances, involves moral turpitude,
11 which bears a substantial relationship under Section 2910, Title
12 10, Chapter 6, California Code of Regulations to the
13 qualifications, functions or duties of a real estate licensee.

14 4.

15 (SPECIAL SENTENCING CONDITION)

16 Respondent's sentence for the crime of which
17 Respondent was convicted, as described in Paragraph 3 above,
18 includes the condition that Respondent, prior to seeking
19 employment or licensing as a real estate agent, mortgage loan
20 broker, or any other related position, or prior to establishing
21 any related business as whole or partial owner, notify the
22 California Department of Real Estate of the conviction and to
23 comply with the Department's orders, including employment or
24 business restrictions.

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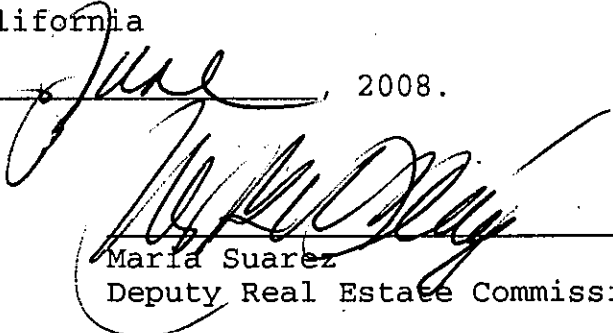
27 ///

The crime of which Respondent was convicted, as described in Paragraph 3 above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent, PAUL WAYNE HERBERT, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 26th day of June, 2008.



Maria Suarez
Deputy Real Estate Commissioner

cc: PAUL WAYNE HERBERT
Maria Suarez
Sacto.
Mary e. work, Esq.
OAH

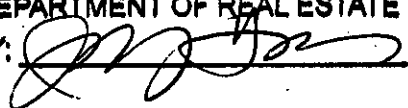
1 JULIE L. TO, Counsel (SBN 219482)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916

FILED

APR - 7 2008

DEPARTMENT OF REAL ESTATE

BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 34797 LA
12 PAUL WAYNE HERBERT,)
13 Respondent.) ACCUSATION
14

15
16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against PAUL WAYNE HERBERT, ("Respondent"), alleges as follows:

19 1.

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

23 2.

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 California Business and Professions Code ("Code"), as a real
27 estate broker. Respondent's license expired on February 6,

1 2007. Pursuant to Code Section 10201 Respondent retains renewal
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3 jurisdiction.

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7 District Court for the Central District of California, in case
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18 includes the condition that Respondent, prior to seeking
19 employment or licensing as a real estate agent, mortgage loan
20 broker, or any other related position, or prior to establishing
21 any related business as whole or partial owner, notify the
22 California Department of Real Estate of the conviction and to
23 comply with the Department's orders, including employment or
24 business restrictions. To date, the Department has received no
25 notice of this conviction from Respondent.

26 ///

27 ///

The crime of which Respondent was convicted, as described in Paragraph 3 above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

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Dated at Los Angeles, California

this 1st day of April, 2008.

Maria Suarez
Deputy Real Estate Commissioner

cc: PAUL WAYNE HERBERT
Maria Suarez
Sacto.