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FILED

AUG 12 2009

DEPARTMENT OF REAL ESTATE
BY Jana B. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) No. H-35039 LA
JOHN DAVID REPSTAD,) L-2008070746
Respondent.)

DECISION AFTER RECONSIDERATION

On May 5, 2009, a Decision After Rejection was rendered herein by the Real Estate Commissioner which revoked the real estate salesperson license and license rights of Respondent JOHN DAVID REPSTAD. Said Decision was to become effective on May 26, 2009, and was stayed by separate Order to June 5, 2009.

On May 28, 2009, Respondent petitioned for reconsideration of said Decision. An Order Granting Reconsideration was filed on June 3, 2009, for the limited purpose of determining whether the disciplinary action therein imposed should be reduced.

I have reconsidered said Decision and it is hereby ordered that the disciplinary action therein imposed against the

1 real estate salesperson license of JOHN DAVID REPSTAD be reduced
2 by modifying the Order of said Decision to read as follows:

3 ORDER

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

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

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

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

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

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

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

18 5. Respondent shall, within nine months from the
19 effective date of this Decision, present evidence satisfactory to
20 the Real Estate Commissioner that Respondent has, since the most
21 recent issuance of an original or renewal real estate license,
22 taken and successfully completed the continuing education
23 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
24 for renewal of a real estate license. If Respondent fails to
25 satisfy this condition, the Commissioner may order the suspension
26 of the restricted license until the Respondent presents such
27 evidence. The Commissioner shall afford Respondent the

1 opportunity for a hearing pursuant to the Administrative
2 Procedure Act to present such evidence.

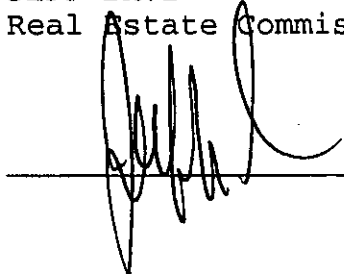
3 6. Respondent shall, within six months from the
4 effective date of this Decision, take and pass the Professional
5 Responsibility Examination administered by the Department,
6 including the payment of the appropriate examination fee. If
7 Respondent fails to satisfy this condition, the Commissioner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

10 7. Any restricted real estate license issued to
11 Respondent pursuant to this Decision and Order shall be suspended
12 for a period of sixty (60) days from the date of issuance of said
13 restricted license.

14 The right to reinstatement of a revoked real estate
15 license is controlled by Section 11522 of the Government Code.
16 A copy of Section 11522 and a copy of the Commissioner's
17 Criteria of Rehabilitation are attached hereto for the
18 information of the Respondent.

19 As hereby modified and amended, the Decision of May 5,
20 2009, shall become effective at 12 o'clock noon on
21 September 1, 2009

22 IT IS SO ORDERED

23 8-6-9
24 JEFF DAVI
25 Real Estate Commissioner
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JUN 03 2009
DEPARTMENT OF REAL ESTATE

By *Laura B. Dim*

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	NO. H-35039 LA
)	L-2008070746
JOHN DAVID REPSTAD,)	
)	
)	
Respondent.)	

ORDER GRANTING RECONSIDERATION

On, May 5, 2009, a Decision After Rejection revoking Respondent's real estate salesperson license was signed in the above-entitled matter. Said Decision was to become effective on May 26, 2009, and was stayed by separate Order to June 05, 2009.

On May 28, 2009, Respondent petitioned for reconsideration of the Decision of May 5, 2009.

I find that there is good cause to reconsider the Decision of May 5, 2009. Reconsideration is granted for the

1 limited purpose of determining whether the action imposed against
2 Respondent by said Order should be reduced.

3 Respondent shall have fifteen (15) days from the date of
4 this Order in which to file written argument in further support of
5 his petition for reconsideration. Counsel for the Department of
6 Real Estate shall submit any written reply to said argument within
7 fifteen(15) days thereafter.

8 IT IS SO ORDERED 6-3, 2009.

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10 JEFF DAVI
11 Real Estate Commissioner
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FILED
MAY 18 2009
DEPARTMENT OF REAL ESTATE

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-35039 LA
JOHN DAVID REPSTAD,) L-2008070746
Respondent.)

ORDER STAYING EFFECTIVE DATE

On May 5, 2009, a Decision was rendered in the above-entitled matter to become effective May 26, 2009.

IT IS HEREBY ORDERED that the effective date of the Decision of May 5, 2009, is stayed for a period of 10 days to consider Respondent's petition for reconsideration.

The Decision of May 5, 2009, shall become effective at 12 o' clock noon on June 5, 2009.

DATED: May 18, 2009

JEFF DAVI
Real Estate Commissioner

By: *Phillip Ihde*
PHILLIP IHDE
Regional Manager

[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

JOHN DAVID REPSTAD,

Respondent..

DRE No. H-35039 LA

OAH No. L-2008070746

DECISION AFTER REJECTION

This matter came on for hearing before Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings, State of California, in Los Angeles, California, on October 30, 2008.

James A. Demus, Counsel, represented the Complainant. The Respondent, John David Repstad, appeared in person and was represented by Robert A. Levinson, Esq.

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

On December 1, 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 notified that the case would be decided by the Real Estate Commissioner upon

1 the record, the transcript of proceedings held on October 30, 2008, and upon written argument
2 offered by Respondent and Complainant.

3 Written argument was timely submitted by Respondent on February 17, 2009.
4 Written argument has been submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of October 30, 2008 and written argument offered by Respondent and
7 Complainant.

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

10 FINDINGS OF FACT

11 1. The Administrative Law Judge takes official notice that, on June 16,
12 2008, the Accusation, Case No. H-35039 LA, was made and filed by Robin Trujillo in her
13 official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of
14 California (hereinafter Department).

15 2. On or about January 10, 2002, the Department issued real estate
16 salesperson license no. 1322897 and licensing rights to John David Repstad (hereinafter
17 Respondent). Said license expires on January 9, 2010, and is in full force and effect.

18 Respondent has licensing rights under the Real Estate Law and no prior
19 disciplinary history on his real estate license.

20 3. (A) On or about November 22, 2005, before the United States District
21 Court, Central District of California, in *United States of America v. John Repstad*, Docket
22 Nos. CR05-444-GPS and CR05-445-GPS, Respondent was convicted on his pleas of guilty
23 of two counts of securities fraud in violation of the United States Code, title 15, sections 78j
24 and 78ff and the Code of Federal Regulations, title 17, section 240-10b-5, felonies and
25 crimes involving moral turpitude; and of failing to file a tax return in violation of the United

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1 States Code, title 26, section 7203, a misdemeanor and crime not necessarily involving
2 moral turpitude.

3 (B) As result of his pleas, the United States District Court adjudged
4 Respondent guilty and convicted and then sentenced him to prison for a term of 18 months,
5 which consisted of 12 months for the conviction for failing to file a tax return and 18 months
6 for the conviction for securities fraud. The court ordered that the prison sentences be served
7 concurrently. Upon release from imprisonment, the District Court further ordered that
8 Respondent be placed on supervised release for three years, which consisted of one year for
9 the conviction for failing to file a tax return and three years for each of the two counts of the
10 conviction for securities fraud. The court ordered that these probationary terms be served
11 concurrently.

12 (C) The terms and conditions of the supervised release included that
13 Respondent comply with the rules and regulations of the U.S. Probation Office; participate
14 in an outpatient substance abuse treatment and counseling program if deemed necessary by
15 the U.S. Probation Office; abstain from using illicit drugs, alcohol, and prescription
16 medication; pay the special assessment and restitution in accordance with the court's orders;
17 timely file tax returns and pay taxes owed for the years of conviction and during the period
18 of community supervision; not obtain or possess any form of identification in any name
19 other than his own true and legal name; not work in any position requiring a license or
20 certification without prior approval of the U.S. Probation Officer; and apply monies received
21 from income tax refunds, inheritance, judgments, and other anticipated or unexpected
22 financial gains to payment of any outstanding court-ordered financial obligations.

23 (D) The United States District Court also ordered Respondent to pay a
24 special assessment of \$225 immediately and to pay restitution in the total amount of
25 \$1,243,285.14 to five financial services companies or broker-dealers which incurred losses
26 from Respondent's offenses.

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1 4. (A) The facts and circumstances of Respondent's conviction for failing
2 to file a tax return were that, in 1999, he lived in Malibu and received a gross income of at
3 least \$241,200 from his job as a stock trader. Respondent was required by law to file a
4 federal income tax return for the year 1999 on or before April 15, 2000. However,
5 Respondent willfully failed to file an income tax return with the Internal Revenue Service at
6 any time as required by law.

7 (B) During the hearing, Respondent admitted that he failed to file a
8 federal tax return for the year 1999 in a timely manner. He is paying the Internal Revenue
9 Service and the Franchise Tax Board the sum of \$14,500 per month for past due tax
10 liabilities. It was not established that Respondent failed to file federal or state tax returns or
11 to pay taxes for any other year.

12 5. (A) According to the Information in Docket No. CR05-445-GPS, the
13 facts and circumstances of Respondent's offenses for securities were that, in or about May
14 2000, Respondent employed a device or scheme to defraud various securities broker-dealers,
15 made untrue statements of material fact and omitted to state material facts necessary to make
16 statements not misleading, and engaged in acts or courses of business that operated as a
17 fraud and deceit upon broker-dealers.¹

18 (B) In or about May 2000, Respondent opened a cash account at a
19 securities broker-dealer under a false name and falsely stated that his company was named
20 Bristol Properties. On or about May 15, 2000, he sent a facsimile transmission to the broker-
21 dealer in which he falsely represented his name, the tax identification number for his
22 purported company, his ownership of a home in Los Angeles, and his annual income. On
23 said date, Respondent instructed a broker at the broker-dealer to purchase 9,000 shares of
24 stock in two companies. He failed to inform the broker-dealer that he did not have the funds
25 to purchase the stock and that, if the price of stock decreased between the purchase date and
26

27 ¹ The facts and circumstances of Respondent's conviction for securities fraud are more
complicated and involve more than one trading account as further described in Findings 8(A) - (E) below.

1 the date that he was required to submit payment for shares, the broker-dealer would have to
2 sell the stock on the open market at a lower price and incur a loss. In reliance on
3 Respondent's representations of his assets and income, on May 15 and 17, 2000, the broker-
4 dealer purchased the 9,000 shares of stock for a total price of \$736,286.

5 (C) On or about May 19, 2000, Respondent continued to deceive the
6 broker-dealer that he had the funds to pay for the stock that the broker-dealer had purchased
7 for him. He sent a letter by facsimile transmission promising to make payment. On or about
8 May 22, 2000, he falsely stated to a broker that \$737,291 in funds had been transferred by
9 wire in payment for the stock. On or about May 23, 2000, he sent two letters to the broker-
10 dealer that the funds for the stock purchase would be coming from two different bank
11 accounts and that he would sell the stock for one of the two companies. On May 23, 2000,
12 the broker-dealer sold all of the stock that it had purchased for Respondent on the open
13 market for approximately \$626,079.03 and sustained a loss of approximately \$110,212.22.

14 (D) As stated in count one of the Information, on May 15, 2000,
15 Respondent caused the use the instrumentalities of interstate commerce or facilities of any
16 national securities exchange to purchase 4,000 shares of stock by the broker-dealer. As
17 stated in count two of the Information, on May 17, 2000, Respondent caused the use of the
18 instrumentalities of interstate commerce or facilities of any national securities exchange to
19 purchase 5,000 shares of stock by the broker-dealer.

20 (E) Respondent's conviction for securities fraud was for crimes
21 substantially related to the qualifications, functions, or duties of a real estate salesperson
22 under the criteria of California Code of Regulations, title 10, section 2910, subdivisions
23 (a)(2), (4), and (8). Respondent uttered false statements; employed fraud, deceit, falsehood,
24 or misrepresentation to achieve an end; and committed unlawful acts with the intent of
25 conferring a financial benefit upon himself or threat of doing substantial injury to the
26 property of another person. Honesty and integrity are qualities expected of a Department
27 licensee. (See *Golde v. Fox* (1979) 98 Cal.App.3d 167.)

1 6. (A) Respondent served 13 and one-half months in the federal prison in
2 Taft for his conviction. He began his prison sentence in February 2006 and was released
3 from prison in or about April 2007. He was then placed on supervised release for three
4 years. He returned to his real estate job at Realty Advisory Group, Inc. (hereinafter Realty
5 Advisory Group), and has continued to make restitution payments of \$2,000 per month. In
6 addition, he is making monthly payments of \$14,500 to the Internal Revenue Service and
7 Franchise Tax Board for past tax liabilities.

8 (B) Respondent is in compliance with the terms and conditions of his
9 supervised release as well as the rules and regulations of the U.S. Probation Office. His
10 random drug tests have been negative and he has no drug problem. He is current with his
11 restitution payments. He has paid approximately \$41,875 in restitution since his discharge
12 from prison. His probation officer has visited Respondent's home and his place of
13 employment, interviewed his employer, and reviewed his court records, probation reports,
14 drug test results, and tax and financial statements and determined that Respondent does not
15 represent a risk of repeating his offenses. Respondent will remain on probation until June
16 15, 2010.

17 (C) In addition to the approximately \$41,875 that he has paid since his
18 imprisonment, Respondent made additional restitution payments prior to the date of his
19 conviction. In September and November 2005, he paid \$182,000 to brokers and/or dealers
20 who incurred losses due to Respondent's securities fraud. After his conviction, in December
21 2005 and February 2006, he paid another \$30,000 in restitution. After his release from
22 prison, he began making monthly restitution payments of \$2,000.

23 7. Respondent admits his conviction and demonstrates remorse and regret
24 for his criminal conduct. He accepts responsibility for his actions and does not blame anyone
25 else for his situation. Respondent has been open and candid about his federal conviction
26 with his employer, brother, and colleagues. When asked by his employer to speak to his son
27 after the young man was arrested for driving under the influence of alcohol, Respondent

1 referred to his own conviction for securities fraud in helping to convince the young man to
2 learn from and accept responsibility for his actions and to take control of his life.

3 Respondent testified in a candid and credible manner.

4 8. (A) Respondent grew up in Minneapolis, Minnesota, where his father
5 worked as an executive for the 3M Company. He attended Christian school. Upon
6 graduation from Minnehaha Academy in Minneapolis in 1988, he matriculated to
7 Northwestern College in St. Paul, a Christian college of 1,700 students. After one year,
8 Respondent transferred to the University of Arizona in Tucson where he studied finance and
9 real estate. After graduating in 1992, he moved to southern California and into the Westlake
10 Village home of a fraternity brother. He then joined the stock brokerage firm of his fraternity
11 brother's father and worked as a stock and hedge fund trader for the next five years.

12 (B) For the first three or four years, the stock market was strong and
13 the stock brokerage firm and Respondent earned income handling initial public offerings for
14 new companies, including internet companies. Respondent had trading accounts and he and
15 the firm shared both profits and losses from stock trades. Beginning in or about 1997,
16 however, the stock market weakened and Respondent began accumulating large losses from
17 stock trades. His firm hesitated to pay for or share in the trades and the losses in his trading
18 accounts grew to \$1 million. Respondent began drinking alcohol to excess. In August 1997,
19 Respondent suffered a conviction for driving under the influence of alcohol.

20 (C) In the fall of 1997, Respondent terminated his employ with the
21 stock brokerage firm and began working with a colleague who left the firm earlier to engage
22 in stock trading on his own. The colleague agreed to supply Respondent with cash for his
23 trades in return for 50 percent of the profits. Still, creditors continued to call Respondent,
24 seeking payments on the large losses in his trading accounts. In order to continue trading
25 stock and to make money, Respondent then opened trading accounts at broker-dealers under
26 false names and false company names. He also began gambling. Eventually, the colleague
27 agreed to pay only for Respondent's profitable trades and refused to pay for trades resulting

1 in losses. In attempts to make gains, Respondent purchased more stock only to incur larger
2 losses. Five of his trading accounts were closed by the broker-dealers in negative balances.
3 Moreover, Respondent continued to gamble and abuse alcohol. In April 1999, Respondent
4 was convicted again for driving under the influence of alcohol.

5 (D) Through 1999 and 2000, Respondent's financial situation worsened
6 and his personal life suffered due to his gambling addiction and excessive drinking. In May
7 2000, Respondent opened the account at the broker-dealer under a false name and committed
8 the acts that were the basis of his securities fraud conviction. In June 2000, Respondent
9 stopped trading in the stock market. One month later, he married his wife whom he had met
10 a year earlier. He continued to abuse alcohol as well as gamble to try to obtain money to pay
11 off the large losses in his stock trading accounts.

12 (E) At home, Respondent's drinking and gambling caused him to have
13 frequent arguments with his wife, who told him to seek treatment to address his drinking and
14 gambling. In March 2001, Respondent's wife and parents convinced him to get treatment
15 and he entered the Custer Center, a residential treatment center in Indianapolis, Indiana.
16 During his one-month stay, Respondent realized that he had drinking and gambling problems
17 and that he needed to change his life. Upon discharge from the treatment center, he returned
18 to his wife in Los Angeles. In May 2001, he filed a petition for bankruptcy protection and
19 began looking for a job. Respondent began attending meetings of Gamblers Anonymous in
20 Santa Monica for the next several months and received counseling on gambling addiction
21 from a psychologist at UCLA. The psychologist found that Respondent was unlikely to
22 repeat his behavior as long as he abstained from gambling. Nevertheless, in September 2001,
23 Respondent and his wife separated and lived apart for the next four months. They sought
24 family and spiritual guidance from their church pastor who referred them to a marriage and
25 family therapist in Sherman Oaks. From in or about October 2001 through March 2002, the
26 couple participated in marriage counseling with a therapist. The therapist found Respondent
27 willing to do anything to save his marriage. In early 2002, Respondent and his wife

1 reconciled and they began living together again. She was pregnant with their first child. By
2 this time, he has stopped abusing alcohol and gambling since his residential treatment
3 program in March and April 2001 and obtained a new job at the commercial real estate firm.
4 In 2001, he entered into an 18-month alcohol treatment program for offenders with multiple
5 convictions for driving under the influence of alcohol. He completed the alcohol treatment
6 program in January 2003. Slowly, Respondent began rebuilding his life and marriage based
7 on a return to his Christian faith and values.

8 (F) In July 2001, Respondent was hired by Realty Advisory Group, a
9 commercial real estate brokerage company in Los Angeles. Six months later, he was issued a
10 real estate salesperson's license in the employ of Realty Advisory Group. In or about May,
11 2002, Respondent first learned that he was being investigated for securities fraud based on
12 the disclosures and information that he provided in his bankruptcy petition. He immediately
13 advised the broker at Realty Advisory Group of the investigation. Over the next three years,
14 Respondent cooperated with the federal authorities. He explained the facts and
15 circumstances that caused him to engage in the stock trades. He revealed the accounts
16 opened, debts incurred, and the losses caused to broker-dealers. He "candidly admitted the
17 offense conduct during a proffer session in a pre-indictment meeting." Before being
18 sentenced in November 2005, Respondent made restitution to the victims of his offenses as
19 described in Finding 6(C) above.

20 9. (A) On November 7, 2005, the U.S. Probation Officer submitted a
21 presentence report and recommendation to the federal court for purposes of Respondent's
22 sentencing for securities fraud. The probation officer recommended that Respondent receive
23 a 21-month prison sentence, which was a six-month variance below the low end of the
24 sentencing guidelines based on his personal history and characteristics. Respondent was
25 described as an "atypical defendant" who had made "exceptional efforts over the past five
26 years to rehabilitate himself and repair some of the damage caused by his behavior."

27 (B) The federal probation officer noted that Respondent had overcome

1 or controlled a gambling addiction, repaired and recommitted himself to his marriage, and
2 completed an 18-month alcohol treatment program for his two convictions for driving under
3 the influence of alcohol. Respondent then obtained his real estate license, obtained a job at a
4 commercial real estate office, and had achieved "extraordinary success" in the business. His
5 transformation from an alcoholic gambling addict to a successful real estate agent was
6 termed a significant factor in mitigation. The probation officer found it "truly remarkable"
7 that Respondent was able to extricate himself from financial and emotional difficulties and
8 become a valuable member of society. Respondent expressed genuine remorse for all of the
9 damage that he had caused and expressed a desire to repay the victims of his offenses. His
10 wife stated that Respondent had changed greatly from the time when they were first married.

11 10. In a sentencing memorandum filed with the federal court on or about
12 October 28, 2005, the Assistant U.S. Attorney noted that Respondent had submitted a
13 lengthy letter in which:

14 "he detail[ed] the events which led up to his involvement in the
15 securities fraud, namely his inability to extricate himself from a
16 business association with friends who directed him to open multiple
17 accounts, trade securities on margin calls and reneged on their
18 promises to share both profits and losses."

19 Respondent claimed that his "mounting losses" caused him to resort to heavy drinking and
20 gambling in an attempt to win the money that he had lost. The government prosecutor
21 observed that Respondent's account of the events that led him to commit his offenses were
22 corroborated by the probation officer's presentence report and recommendation and letters
23 submitted on behalf of Respondent. In addition, the prosecutor noted that Respondent's
24 successful efforts to rebuild his life, partial restitution payments, and commitment to repay
25 for all their losses should be recognized by the court. Based on Respondent's history and
26 characteristics and his "extraordinary efforts at rehabilitation," the federal prosecutor

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1 recommended a downward departure in the guidelines for Respondent's sentencing and a
2 prison sentence of 18 months.

3 11. (A) Since his hire in July 2001 at Realty Advisory Group, Respondent
4 has become an excellent real estate salesperson for the company, representing clients to buy,
5 sell, or lease industrial or commercial properties. He has handled or negotiated
6 approximately 120 real estate transactions, many of which are large transactions that take
7 months to complete, without complaint, and is the number one producer for the commercial
8 real estate firm. The broker and majority shareholder of the firm has received numerous
9 unsolicited compliments from clients about Respondent's attentiveness and helpfulness. The
10 broker has found Respondent to be a hard-working employee who keeps long hours, is
11 responsive to clients, and has quickly learned about commercial real estate business
12 practices. Respondent has an excellent reputation in the commercial real estate firm for
13 being a skillful, honest, and ethical salesperson. A Realty Advisory client whom Respondent
14 has represented in both buying and selling office buildings, described Respondent as a
15 candid, straight-forward, and trustworthy agent; said client is aware of Respondent's
16 conviction and has recommended Respondent to others. Respondent has performed his real
17 estate duties in a professional and honest manner.

18 (B) The Realty Advisory Group broker and majority shareholder has
19 found Respondent to always be an ethical and candid real estate salesperson. Respondent
20 informed the broker when the federal authorities filed charges against him and kept the
21 broker abreast of developments in his criminal matter. The broker is aware of Respondent's
22 conviction for securities fraud and has no reservations about retaining him. Recently, the
23 broker has asked Respondent to train and mentor his son after the young man graduates from
24 college and joins the company next year. Respondent has trained several new and
25 inexperienced agents for the firm, including his younger brother, by taking them to meetings
26 and having them watch as he interacts with clients. He trained his younger brother to be
27 honest and straightforward with clients. Rather than valuing properties at inflated levels or

1 disparaging other firms, Respondent believes in making honest property valuations based on
2 his research and comparable values and relies on his own reputation and that of the firm to
3 obtain business clients. Within the firm, Respondent is known as a helpful leader with team-
4 building skills and good moral character. When the firm was moving offices, he moved
5 furniture. On the weekends, he invites associates to his house for barbecues.

6 12. (A) Respondent is 38 years old and has been married now for eight
7 years. He and his spouse have two children, a son, age six, and a daughter, age four; they
8 live in a 3,000 square foot home in San Marino that they purchased in 2005. Previously,
9 Respondent and his family lived in a smaller home in San Marino for three years.

10 (B) Respondent is involved with his church, charities, and his
11 children's lives. He and his wife have raised their children in their Christian faith; the
12 children attend or attended a Christian preschool. He attends church every Sunday.
13 Respondent also supports a Pasadena shelter and home for abused children, has raised funds
14 for two hospitals, and given blood at a blood drive at their children's school to help a young
15 boy stricken with cancer. Respondent makes breakfasts for his son and gets him ready for
16 school, coaches his son's tee-ball team on the weekends, and attends and helps out at his
17 children's school events. In the evenings, he helps his children with their homework
18 assignments and reads to them. Respondent and his wife spend most of their free time with
19 their family and friends. After a difficult start to his marriage, as described hereinabove,
20 Respondent has learned to become an honorable and honest husband and a devoted father.
21 He no longer owns any stock, does not gamble, and does not drink alcoholic beverages to
22 excess.

23 CONCLUSIONS OF LAW

24 1. Grounds exist to revoke or suspend Respondent's real estate
25 salesperson's license under Business and Professions Code section 10177, subdivision (b),
26 and section 490, for conviction of felonies, which were also crimes involving moral

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1 turpitude and substantially related to the qualifications, functions, and duties of a real estate
2 licensee, based on Findings 3 - 5 and 8 above.

3 2. Rehabilitation - Under the criteria set forth in California Code of
4 Regulations, title 10, section 2911, Respondent is not completely rehabilitated from his
5 conviction, based on Findings 2 and 6 - 12 above.

6 In November 2005, Respondent was convicted of two counts of securities
7 fraud. His offenses were serious felonies, caused losses of approximately \$1.4 million, and
8 resulted in his prison sentence. He served 13 and one-half months of an 18-month prison
9 sentence and was discharged from prison in April 2007. His law-abiding lifestyle in the past
10 18 months is not unexpected inasmuch as he has been on supervised release with the federal
11 probation office. Respondent will remain on probation or supervised release until June 2010.
12 Still, he has made payments towards restitution and his past tax liabilities during this time.
13 As such, Respondent has not completed probation, has not obtained expungement of his
14 conviction, and not made full restitution to the persons or entities who suffered losses from
15 his conduct. In aggravation, he was also convicted of failing to file a federal tax return for
16 1999, a misdemeanor.

17 In light of its seriousness and relative recency, Respondent's conviction would
18 reasonably lead in most cases to the revocation of one's real estate license in the absence of
19 what has to be significant evidence of rehabilitation. More than two years have passed since
20 his securities fraud conviction, which has been pleaded in the accusation as the sole basis for
21 disciplining his license. The underlying offenses occurred more than eight years ago. While
22 he has not made full restitution, Respondent has paid over \$200,000 to the victims of his
23 offenses, which is not an insignificant sum. He continues to pay \$2,000 each month in
24 restitution and is paying off his tax liabilities as well. Respondent admits all of his offenses,
25 cooperated with the federal authorities, and uses his own experience to mentor and teach
26 others. He has not completed probation but his federal probation officer not only
27 corroborated that he is in compliance with his probationary terms but also conducted

1 interviews and reviewed financial documents to find that he does not represent a risk to the
2 public or a risk to repeat his offenses.

3 Furthermore, Respondent demonstrated by clear and convincing evidence that
4 he has changed his life, relationships, and attitude since the commission of his crimes. He
5 committed his offenses in 2000 and beforehand when he was working as a stock trader and
6 incurring large trading losses. His brokerage firm and then his colleague declined to pay for
7 his trades resulting in losses or to cover his stock losses. As his indebtedness and financial
8 pressures grew, he began abusing alcohol and became addicted to gambling in an attempt to
9 make money to pay for his stock losses. Beginning in late 2000 and early 2001, however,
10 Respondent started to transform his life. He stopped trading in stock, got married, received
11 treatment and therapy for his gambling addiction and alcohol abuse, and embarked upon a
12 career in commercial real estate. After a separation and marriage counseling, Respondent
13 renewed his relationship with his wife and recovered his faith.

14 As established by the testimony of his wife, Respondent has changed his
15 personal behavior and attitude over the course of their marriage of eight years. He no longer
16 gambles or abuses alcohol. He is honest with his spouse and devoted to his children. Both
17 Respondent and his wife have attended church for several years and are involved in
18 charitable activities. As such, Respondent has achieved a stable family and fulfilled his
19 spousal and parental responsibilities since his offenses. Respondent's employer demonstrated
20 that he is an excellent and diligent real estate salesperson for the commercial real estate
21 firm. He is attentive towards clients, mentors new and younger members of the firm, and is
22 always willing to help out in the office. His employer, a client, and brother established by
23 their testimony, which were consistent, that Respondent has the highest reputation for
24 honesty, professionalism, and ethics. He has been successful in his new career in real estate
25 by working hard and being honest and responsible with clients. As can be seen by his new
26 career, work habits, and reputation in the commercial real estate field in the past seven or
27 eight years, Respondent has built new business relationships and changed the ways that he

1 practices business and relates to business associates from those that he followed as a stock
2 trader in financial distress.

3 When Respondent was convicted of two counts of securities fraud in
4 November 2005, the federal court sentenced Respondent, in part, to serve 18 months in
5 prison after both the U.S. probation officer and U.S. Attorney recommended downward
6 departures from the sentencing guidelines based on Respondent's recovery from gambling
7 addiction and alcohol abuse, restitution payments, demonstration of remorse, cooperation
8 with federal authorities, and rehabilitation efforts that the U.S. probation officer described
9 as "exceptional" and "remarkable." These recommendations of the federal probation
10 officer and prosecutor are significant. If Respondent was considered rehabilitated from his
11 offenses that he committed prior to June 2000 to such degree that it warranted a reduction
12 by the federal court in the length of his prison sentence, then certainly, after three more
13 years, he should be considered to have achieved even more rehabilitation where he has
14 continued to abstain from gambling and excessive drinking, make restitution, work at his
15 career, and build his marriage and family without further incident.

16 Here, Respondent was convicted of securities fraud in November 2005 but his
17 offenses occurred prior to June 2000 at a time when he was working in the different field of
18 stock trading and abusing alcohol and gambling caused by the financial pressures of
19 mounting trading losses. Over the past seven years since June 2000, Respondent has made
20 significant efforts at rehabilitating himself. While he has not completely extricated himself
21 from the stock losses and continues to make restitution, Respondent is no longer in the same
22 situation or the same person. He has changed and has learned from his past conduct.

23 Nevertheless, it has only been a year since Respondent's release from custody.
24 He has not completed probation or restitution. The conviction is not expunged. Accordingly,
25 despite the significant evidence of rehabilitation as set forth in Findings 2 and 6 - 12 above,

26 ///

27 ///

1 public interest and welfare will not be protected if Respondent is allowed to continue as a
2 real estate licensee.

3 ORDER

4 All licenses and licensing rights previously issued to Respondent John David
5 Repstad under the Real Estate Law are revoked.

6 This Decision shall become effective at 12 o'clock noon on MAY 26 2009

7 IT IS SO ORDERED 5-5-09

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9 JEFF DAVIS
10 Real Estate Commissioner
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Settled

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JAN - 5 2009
DEPARTMENT OF REAL ESTATE

Laura B. Jones

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

In the Matter of the Accusation of)	No. H-35039 LA
)	
JOHN DAVID REPSTAD,)	L-2008070746
)	
Respondent.)	
)	

NOTICE

TO: JOHN DAVID REPSTAD, Respondent, and ROBERT A. LEVINSON, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 1, 2008, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated December 1, 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 October 30,

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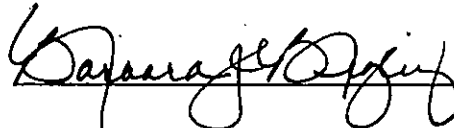
1 2008, any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

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 30, 2008, 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: 12-30-08

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15 JEFF DAVI
16 Real Estate Commissioner

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18

19 BY: Barbara J. Bigby
20 Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JOHN DAVID REPSTAD,

Respondent.

Case No. H-35039 LA

OAH No. L-2008070746

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on October 30, 2008, in Los Angeles. Complainant was represented by James A. Demus, Staff Counsel. Respondent John David Repstad was present and was represented by Robert A. Levinson, Attorney at Law.¹

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on May 16, 2007, the Accusation, Case No. H-35039 LA, was made and filed by Robin Trujillo in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. On or about January 10, 2002, the Department issued real estate salesperson license no. S01322897 and licensing rights to John David Repstad (hereinafter respondent). Said license expires on January 9, 2010, and is in full force and effect. Respondent has licensing rights under the Real Estate Law and no prior disciplinary history on his real estate license.

¹ Respondent's Hearing Brief is hereby marked as Exhibit L. In addition, respondent's Exhibit B is admitted into evidence pursuant to Government Code section 11513, subdivision (d), to supplement or explain the testimony of respondent and other witnesses as well the sentencing recommendations of the U.S. Attorney and probation officer (Exhs. A and D).

3. (A) On or about November 22, 2005, before the United States District Court, Central District of California, in *United States of America v. John Repstad*, Docket Nos. CR05-444-GPS and CR05-445-GPS, respondent was convicted on his pleas of guilty of two counts of securities fraud in violation of the United States Code, title 15, sections 78j and 78ff and the Code of Federal Regulations, title 17, section 240-10b-5, felonies and crimes involving moral turpitude; and of failing to file a tax return in violation of the United States Code, title 26, section 7203, a misdemeanor and crime not necessarily involving moral turpitude.

(B) As result of his pleas, the United States District Court adjudged respondent guilty and convicted and then sentenced him to prison for a term of 18 months, which consisted of 12 months for the conviction for failing to file a tax return and 18 months for the conviction for securities fraud. The court ordered that the prison sentences be served concurrently. Upon release from imprisonment, the District Court further ordered that respondent be placed on supervised release for three years, which consisted of one year for the conviction for failing to file a tax return and three years for each of the two counts of the conviction for securities fraud. The court ordered that these probationary terms be served concurrently.

(C) The terms and conditions of the supervised release included that respondent comply with the rules and regulations of the U.S. Probation Office; participate in an outpatient substance abuse treatment and counseling program if deemed necessary by the U.S. Probation Office; abstain from using illicit drugs, alcohol, and prescription medication; pay the special assessment and restitution in accordance with the court's orders; timely file tax returns and pay taxes owed for the years of conviction and during the period of community supervision; not obtain or possess any form of identification in any name other than his own true and legal name; not work in any position requiring a license or certification without prior approval of the U.S. Probation Officer; and apply monies received from income tax refunds, inheritance, judgments, and other anticipated or unexpected financial gains to payment of any outstanding court-ordered financial obligations.

(D) The United States District Court also ordered respondent to pay a special assessment of \$225 immediately and to pay restitution in the total amount of \$1,243,285.14 to five financial services companies or broker-dealers which incurred losses from respondent's offenses.

4. (A) The facts and circumstances of respondent's conviction for failing to file a tax return were that, in 1999, he lived in Malibu and received a gross income of at least \$241,200 from his job as a stock trader. Respondent was required by law to file a federal income tax return for the year 1999 on or before April 15, 2000. However, respondent willfully failed to file an income tax return with the Internal Revenue Service at any time as required by law.

(B) During the hearing, respondent admitted that he failed to file a federal tax return for the year 1999 in timely manner. He is paying the Internal Revenue Service and the Franchise Tax Board the sum of \$14,500 per month for past due tax liabilities. It was not established that respondent failed to file federal or state tax returns or to pay taxes for any other year.

5. (A) According to the Information in Docket No. CR05-445-GPS, the facts and circumstances of respondent's offenses for securities were that, in or about May 2000, respondent employed a device or scheme to defraud various securities broker-dealers, made untrue statements of material fact and omitted to state material facts necessary to make statements not misleading, and engaged in acts or courses of business that operated as a fraud and deceit upon broker-dealers.²

(B) In or about May 2000, respondent opened a cash account at a securities broker-dealer under a false name and falsely stated that his company was named Bristol Properties. On or about May 15, 2000, he sent a facsimile transmission to the broker-dealer in which he falsely represented his name, the tax identification number for his purported company, his ownership of home in Los Angeles, and his annual income. On said date, respondent instructed a broker at the broker-dealer to purchase 9,000 shares of stock in two companies. He failed to inform the broker-dealer that he did not have the funds to purchase the stock and that, if the price of stock decreased between the purchase date and the date that he was required to submit payment for shares, the broker-dealer would have to sell the stock on the open market at a lower price and incur a loss. In reliance on respondent's representations of his assets and income, on May 15 and 17, 2000, the broker-dealer purchased the 9,000 shares of stock for a total price of \$736,286.

(C) On or about May 19, 2000, respondent continued to deceive the broker-dealer that he had the funds to pay for the stock that the broker-dealer had purchased for him. He sent a letter by facsimile transmission promising to make payment. On or about May 22, 2000, he falsely stated to a broker that \$737,291 in funds had been transferred by wire in payment for the stock. On or about May 23, 2000, he sent two letters to the broker-dealer that the funds for the stock purchase would be coming from two different bank accounts and that he would sell the stock for one of the two companies. On May 23, 2000, the broker-dealer sold all of the stock that it had purchased for respondent on the open market for approximately \$626,079.03 and sustained a loss of approximately \$110,212.22.

(D) As stated in count one of the Information, on May 15, 2000, respondent caused the use the instrumentalities of interstate commerce or facilities of any national securities exchange to purchase 4,000 shares of stock by the broker-

² The facts and circumstances of respondent's conviction for securities fraud are more complicated and involve more than one trading account as further described in Findings 8(A) – (E) below.

dealer. As stated in count two of the Information, on May 17, 2000, respondent caused the use of the instrumentalities of interstate commerce or facilities of any national securities exchange to purchase 5,000 shares of stock by the broker-dealer.

(E) Respondent's conviction for securities fraud was for crimes substantially related to the qualifications, functions, or duties of a real estate salesperson under the criteria of California Code of Regulations, title 10, section 2910, subdivisions (a)(2), (4), and (8). Respondent uttered false statements; employed fraud, deceit, falsehood, or misrepresentation to achieve an end; and committed unlawful acts with the intent of conferring a financial benefit upon himself or threat of doing substantial injury to the property of another person. Honesty and integrity are qualities expected of a Department licensee. (See *Golde v. Fox* (1979) 98 Cal.App. 3d 167.)

6. (A) Respondent served 13 and one-half months in the federal prison in Taft for his conviction. He began his prison sentence in February 2006 and was released from prison in or about April 2007. He was then placed on supervised release for three years. He returned to his real estate job at Realty Advisory Group, Inc. (hereinafter Realty Advisory Group), and has continued to make restitution payments of \$2,000 per month. In addition, he is making monthly payments of \$14,500 to the Internal Revenue Service and Franchise Tax Board for past tax liabilities.

(B) Respondent is in compliance with the terms and conditions of his supervised release as well as the rules and regulations of the U.S. Probation Office. His random drug tests have been negative and he has no drug problem. He is current with his restitution payments. He has paid approximately \$41,875 in restitution since his discharge from prison. His probation officer has visited respondent's home and his place of employment, interviewed his employer, and reviewed his court records, probation reports, drug test results, and tax and financial statements and determined that respondent does not represent a risk of repeating his offenses. Respondent will remain on probation until June 15, 2010.

(C) In addition to the approximately \$41,875 that he has paid since his imprisonment, respondent made additional restitution payments prior to the date of his conviction. In September and November 2005, he paid \$182,000 to brokers and/or dealers who incurred losses due to respondent's securities fraud. After his conviction, in December 2005 and February 2006, he paid another \$30,000 in restitution. After his release from prison, he began making monthly restitution payments of \$2,000.

7. Respondent admits his conviction and demonstrates remorse and regret for his criminal conduct. He accepts responsibility for his actions and does not blame anyone else for his situation. Respondent has been open and candid about his federal conviction with his employer, brother, and colleagues. When asked by his employer

to speak to his son after the young man was arrested for driving under the influence of alcohol, respondent referred to his own conviction for securities fraud in helping to convince the young man to learn from and accept responsibility for his actions and to take control of his life. Respondent testified in a candid and credible manner.

8. (A) Respondent grew up in Minneapolis, Minnesota, where his father worked as an executive for the 3M Company. He attended Christian school. Upon graduation from Minnehaha Academy in Minneapolis in 1988, he matriculated to Northwestern College in St. Paul, a Christian college of 1,700 students. After one year, respondent transferred to the University of Arizona in Tucson where he studied finance and real estate. After graduating in 1992, he moved to southern California and into the Westlake Village home of a fraternity brother. He then joined the stock brokerage firm of his fraternity brother's father and worked as a stock and hedge fund trader for the next five years.

(B) For the first three or four years, the stock market was strong and the stock brokerage firm and respondent earned income handling initial public offerings for new companies, including internet companies. Respondent had trading accounts and he and the firm shared both profits and losses from stock trades. Beginning in or about 1997, however, the stock market weakened and respondent began accumulating large losses from stock trades. His firm hesitated to pay for or share in the trades and the losses in his trading accounts grew to \$1 million. Respondent began drinking alcohol to excess. In August 1997, respondent suffered a conviction for driving under the influence of alcohol.

(C) In the fall of 1997, respondent terminated his employ with the stock brokerage firm and began working with a colleague who left the firm earlier to engage in stock trading on his own. The colleague agreed to supply respondent with cash for his trades in return for 50 percent of the profits. Still, creditors continued to call respondent, seeking payments on the large losses in his trading accounts. In order to continue trading stock and to make money, respondent then opened trading accounts at broker-dealers under false names and false company names. He also began gambling. Eventually, the colleague agreed to pay only for respondent's profitable trades and refused to pay for trades resulting in losses. In attempts to make gains, respondent purchased more stock only to incur larger losses. Five of his trading accounts were closed by the broker-dealers in negative balances. Moreover, respondent continued to gamble and abuse alcohol. In April 1999, respondent was convicted again for driving under the influence of alcohol.

(D) Through 1999 and 2000, respondent's financial situation worsened and his personal life suffered due to his gambling addiction and excessive drinking. In May 2000, respondent opened the account at the broker-dealer under a false name and committed the acts that were the basis of his securities fraud conviction. In June 2000, respondent stopped trading in the stock market. One month later, he married

his wife whom he had met a year earlier. He continued to abuse alcohol as well as gamble to try to obtain money to pay off the large losses in his stock trading accounts.

(E) At home, respondent's drinking and gambling caused him to have frequent arguments with his wife, who told him to seek treatment to address his drinking and gambling. In March 2001, respondent's wife and parents convinced him to get treatment and he entered the Custer Center, a residential treatment center in Indianapolis, Indiana. During his one-month stay, respondent realized that he had drinking and gambling problems and that he needed to change his life. Upon discharge from the treatment center, he returned to his wife in Los Angeles. In May 2001, he filed a petition for bankruptcy protection and began looking for a job. Respondent began attending meetings of Gamblers Anonymous in Santa Monica for the next several months and received counseling on gambling addiction from a psychologist at UCLA. The psychologist found that respondent was unlikely to repeat his behavior as long as he abstained from gambling. Nevertheless, in September 2001, respondent and his wife separated and lived apart for the next four months. They sought family and spiritual guidance from their church pastor who referred them to a marriage and family therapist in Sherman Oaks. From in or about October 2001 through March 2002, the couple participated in marriage counseling with the therapist. The therapist found respondent willing to do anything to save his marriage. In early 2002, respondent and his wife reconciled and they began living together again. She was pregnant with their first child. By this time, he had stopped abusing alcohol and gambling since his residential treatment program in March and April 2001 and obtained a new job at the commercial real estate firm. In 2001, he entered into an 18-month alcohol treatment program for offenders with multiple convictions for driving under the influence of alcohol. He completed the alcohol treatment program in January 2003. Slowly, respondent began rebuilding his life and marriage based on a return to his Christian faith and values.

(E) In July 2001, respondent was hired by Realty Advisory Group, a commercial real estate brokerage company in Los Angeles. Six months later, he was issued a real estate salesperson's license in the employ of Realty Advisory Group. In or about May 2002, respondent first learned that he was being investigated for securities fraud based on the disclosures and information that he provided in his bankruptcy petition. He immediately advised the broker at Realty Advisory Group of the investigation. Over the next three years, respondent cooperated with the federal authorities. He explained the facts and circumstances that caused him to engage in the stock trades. He revealed the accounts opened, debts incurred, and the losses caused to broker-dealers. He "candidly admitted the offense conduct during a proffer session in a pre-indictment meeting." Before being sentenced in November 2005, respondent made restitution to the victims of his offenses as described in Finding 6(C) above.

9. (A) On November 7, 2005, the U.S. Probation Officer submitted a presentence report and recommendation to the federal court for purposes of

respondent's sentencing for securities fraud. The probation officer recommended that respondent receive a 21-month prison sentence, which was a six-month variance below the low end of the sentencing guidelines based on his personal history and characteristics. Respondent was described as an "atypical defendant" who had made "exceptional efforts over the past five years to rehabilitate himself and repair some of the damage caused by his behavior."

(B) The federal probation officer noted that respondent had overcome or controlled a gambling addiction, repaired and recommitted himself to his marriage, and completed an 18-month alcohol treatment program for his two convictions for driving under the influence of alcohol. Respondent then obtained his real estate license, obtained a job at a commercial real estate office, and had achieved "extraordinary success" in the business. His transformation from an alcoholic gambling addict to a successful real estate agent was termed a significant factor in mitigation. The probation officer found it "truly remarkable" that respondent was able to extricate himself from financial and emotional difficulties and become a valuable member of society. Respondent expressed genuine remorse for all of the damage that he had caused and expressed a desire to repay the victims of his offenses. His wife stated that respondent had changed greatly from the time when they were first married.

10. In a sentencing memorandum filed with the federal court on or about October 28, 2005, the Assistant U.S. Attorney noted that respondent had submitted a lengthy letter in which:

"he detail[ed] the events which led up to his involvement in the securities fraud, namely his inability to extricate himself from a business association with friends who directed him to open multiple accounts, trade securities on margin calls and reneged on their promises to share both profits and losses."

Respondent claimed that his "mounting losses" caused him to resort to heavy drinking and gambling in an attempt to win the money that he had lost. The government prosecutor observed that respondent's account of the events that led him to commit his offenses were corroborated by the probation officer's presentence report and recommendation and letters submitted on behalf of respondent. In addition, the prosecutor noted that respondent's successful efforts to rebuild his life, partial restitution payments, and commitment to repay for all their losses should be recognized by the court. Based on respondent's history and characteristics and his "extraordinary efforts at rehabilitation," the federal prosecutor recommended a downward departure in the guidelines for respondent's sentencing and a prison sentence of 18 months.

11. (A) Since his hire in July 2001 at Realty Advisory Group, respondent has become an excellent real estate salesperson for the company, representing clients

to buy, sell, or lease industrial or commercial or industrial properties. He has handled or negotiated approximately 120 real estate transactions, many of which are large transactions that take months to complete, without complaint, and is the number one producer for the commercial real estate firm. The broker and majority shareholder of the firm has received numerous unsolicited compliments from clients about respondent's attentiveness and helpfulness. The broker has found respondent to be a hard-working employee who keeps long hours, is responsive to clients, and has quickly learned about commercial real estate business practices. Respondent has an excellent reputation in the commercial real estate field for being a skillful, honest, and ethical salesperson. A Realty Advisory client, whom respondent has represented in both buying and selling office buildings, described respondent as a candid, straight-forward, and trustworthy agent; said client is aware of respondent's conviction and has recommended respondent to others. Respondent has performed his real estate duties in a professional and honest manner.

(B) The Realty Advisory Group broker and majority shareholder has found respondent to always be an ethical and candid real estate salesperson. Respondent informed the broker when the federal authorities filed charges against him and kept the broker abreast of developments in his criminal matter. The broker is aware of respondent's conviction for securities fraud and has no reservations about retaining him. Recently, the broker has asked respondent to train and mentor his son after the young man graduates from college and joins the company next year. Respondent has trained several new and inexperienced agents for the firm, including his younger brother, by taking them to meetings and having them watch as he interacts with clients. He trained his younger brother to be honest and straight-forward with clients. Rather than valuing properties at inflated levels or disparaging other firms, respondent believes in making honest property valuations based on his research and comparable values and relies on his own reputation and that of the firm to obtain business clients. Within the firm, respondent is known as a helpful leader with team-building skills and good moral character. When the firm was moving offices, he moved furniture. On the weekends, he invites associates to his house for barbecues.

12. (A) Respondent is 38 years old and has been married now for eight years. He and his spouse have two children, a son, age six, and a daughter, age four; they live in a 3,000 square foot home in San Marino that they purchased in 2005. Previously, respondent and his family lived in a smaller home in San Marino for three years.

(B) Respondent is involved with his church, charities, and his children's lives. He and his wife have raised their children in their Christian faith; the children attend or attended a Christian preschool. He attends church every Sunday. Respondent also supports a Pasadena shelter and home for abused children, has raised funds for two hospitals, and given blood at a blood drive at their children's school to help a young boy stricken with cancer. Respondent makes breakfasts for his son and

gets him ready for school, coaches his son's tee-ball team on the weekends, and attends and helps out at his children's school events. In the evenings, he helps his children with their homework assignments and reads to them. Respondent and his wife spend most of their free time with their family and friends. After a difficult start to his marriage, as described hereinabove, respondent has learned to become an honorable and honest husband and a devoted father. He no longer owns any stock, does not gamble, and does not drink alcoholic beverages to excess.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's real estate salesperson's license under Business and Professions Code section 10177, subdivision (b), and section 490, for conviction of felonies, which were also crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings 3 – 5 and 8 above.

2. Rehabilitation—Under the criteria set forth in California Code of Regulations, title 10, section 2911, respondent is not completely rehabilitated from his conviction, based on Findings 2 and 6 – 12 above.

In November 2005, respondent was convicted of two counts of securities fraud. His offenses were serious felonies, caused losses of approximately \$1.4 million, and resulted in his prison sentence. He served 13 and one-half months of an 18-month prison sentence and was discharged from prison in April 2007. His law-abiding lifestyle in the past 18 months is not unexpected inasmuch as he has been on supervised release with the federal probation office. Respondent will remain on probation or supervised release until June 2010. Still, he has made payments towards restitution and his past tax liabilities during this time. As such, respondent has not completed probation, has not obtained expungement of his conviction, and not made full restitution to the persons or entities who suffered losses from his conduct. In aggravation, he was also convicted of failing to file a federal tax return for 1999, a misdemeanor.

In light of its seriousness and relative recency, respondent's conviction would reasonably lead in most cases to the revocation of one's real estate license in the absence of what has to be significant evidence of rehabilitation. Respondent has

made such a showing in this matter. More than two years have passed since his securities fraud conviction, which has been pleaded in the accusation as the sole basis for disciplining his license. The underlying offenses occurred more than eight years ago. While he has not made full restitution, respondent has paid over \$200,000 to the victims of his offenses, which is not an insignificant sum. He continues to pay \$2,000 each month in restitution and is paying off his tax liabilities as well. Respondent admits all of his offenses, cooperated with the federal authorities, and uses his own experience to mentor and teach others. He has not completed probation but his federal probation officer not only corroborated that he is in compliance with his probationary terms but also conducted interviews and reviewed financial documents to find that he does not represent a risk to the public or a risk to repeat his offenses.

Furthermore, respondent demonstrated by clear and convincing evidence that he has changed his life, relationships, and attitude since the commission of his crimes. He committed his offenses in 2000 and beforehand when he was working as a stock trader and incurring large trading losses. His brokerage firm and then his colleague declined to pay for his trades resulting in losses or to cover his stock losses. As his indebtedness and financial pressures grew, he began abusing alcohol and became addicted to gambling in an attempt to make money to pay for his stock losses. Beginning in late 2000 and early 2001, however, respondent started to transform his life. He stopped trading in stock, got married, received treatment and therapy for his gambling addiction and alcohol abuse, and embarked upon a career in commercial real estate. After a separation and marriage counseling, respondent renewed his relationship with his wife and recovered his faith.

As established by the testimony of his wife, respondent has changed his personal behavior and attitude over the course of their marriage of eight years. He no longer gambles or abuses alcohol. He is honest with his spouse and devoted to his children. Both respondent and his wife have attended church for several years and are involved in charitable activities. As such, respondent has achieved a stable family and fulfilled his spousal and parental responsibilities since his offenses. Respondent's employer demonstrated that he is an excellent and diligent real estate salesperson for the commercial real estate firm. He is attentive towards clients, mentors new and younger members of the firm, and is always willing to help out in the office. His employer, a client, and brother established by their testimony, which were consistent, that respondent has the highest reputation for honesty, professionalism, and ethics. He has been successful in his new career in real estate by working hard and being honest and responsible with clients. As can be seen by his new career, work habits, and reputation in the commercial real estate field in the past seven or eight years, respondent has built new business relationships and changed the ways that he practices business and relates to business associates from those that he followed as a stock-trader in financial distress.

When respondent was convicted of two counts of securities fraud in November 2005, the federal court sentenced respondent, in part, to serve 18 months in prison

after both the U.S. probation officer and U.S. Attorney recommended downward departures from the sentencing guidelines based on respondent's recovery from gambling addiction and alcohol abuse, restitution payments, demonstration of remorse, cooperation with federal authorities, and rehabilitation efforts that the U.S. probation officer described as "exceptional" and "remarkable." These recommendations of the federal probation officer and prosecutor are significant. If respondent was considered rehabilitated from his offenses that he committed prior to June 2000 to such degree that it warranted a reduction by the federal court in the length of his prison sentence, then certainly, after three more years, he should be considered to have achieved even more rehabilitation where he has continued to abstain from gambling and excessive drinking, make restitution, work at his career, and build his marriage and family without further incident.

Here, respondent was convicted of securities fraud in November 2005 but his offenses occurred prior to June 2000 at a time when he was working in the different field of stock trading and abusing alcohol and gambling caused by the financial pressures of mounting trading losses. Over the past seven years since June 2000, respondent has made significant efforts at rehabilitating himself. While he has not completely extricated himself from the stock losses and continues to make restitution, respondent is no longer in the same situation or the same person. He has changed and has learned from his past conduct. He does not represent a risk to the public interest. Accordingly, based on the significant evidence of rehabilitation as set forth in Findings 2 and 6 – 12 above, public interest and welfare will be protected if respondent is allowed to continue as a real estate licensee under certain terms and conditions that will also aid him in completing his rehabilitative process and impress upon him the importance of honesty and integrity that the Department of Real Estate requires of its licensees.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

All real estate licenses and licensing rights of respondent John David Repstad shall be revoked, based on Conclusion of Law No. 1; provided, however, said order of revocation will be stayed and a restricted real estate salesperson's license will be issued to respondent pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision and Order, based on Conclusion of Law No. 2. The restricted license issued

to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under the authority of Business and Professions Code section 10156.6:

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 five (5) years have elapsed from the effective date of this Decision.

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

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

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

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

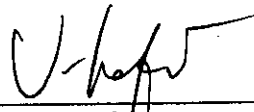
6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If

not adopted

respondent fails to satisfy this condition, the Commissioner may order the suspension of respondent's license until he passes the examination.

7. Any restricted real estate license issued to respondent pursuant to this Decision and Order shall be suspended for a period of sixty (60) days from the date of issuance of said restricted license.

Dated: Dec. 1, 2008



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

Jacky

JAMES DEMUS, Counsel (SBN 225005)
Department of Real Estate
320 West 4th Street, Suite 350
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FILED
JUN 16 2008
DEPARTMENT OF REAL ESTATE

Telephone: (213) 576-6982
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By Laura B. Orone

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-35039 LA
JOHN DAVID REPSTAD,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JOHN DAVID REPSTAD, ("Respondent") alleges as follows:

1.

The Complainant, Robin Trujillo, 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 salesperson.

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1 3.

2 On or about December 28, 2005, in the United States
3 District Court for the Central District of California, in case
4 no. CR 05-445, Respondent was convicted of violating 15 U.S.C.
5 78j, 15 U.S.C. 78ff and 17 C.F.R. 240-10b-5 (securities fraud),
6 all felonies. Said crimes involve moral turpitude and bear a
7 substantial relationship under Section 2910, Title 10, Chapter
8 6, California Code of Regulations to the qualifications,
9 functions or duties of a real estate licensee.

10 4.

11 In aggravation, on or about December 28, 2005, in the
12 United States District Court for the Central District of
13 California, in case no. CR 05-444, Respondent was convicted of
14 violating 26 U.S.C. 7203 (failure to file a tax return), a
15 misdemeanor.

16 5.

17 The crime of which Respondent was convicted, as
18 described in Paragraph 3 above, constitutes cause under Sections
19 490 and 10177(b) of the Code for the suspension or revocation of
20 the license and license rights of Respondent under the Real
21 Estate Law.

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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, JOHN DAVID REPSTAD, under the Real Estate Law (Part
6 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 13 day of June, 2008.

11 
12 Robin Trujillo
13 Deputy Real Estate Commissioner
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25 cc: JOHN DAVID REPSTAD
26 Realty Advisory Group, Inc.
27 Robin Trujillo
Sacto.