

FILED

APR - 6 2009

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY:

In the Matter of the Accusation of

No. H-35093 LA

ENRIQUE PINTADO,

L-2008100011

Respondent.

DECISION

The Proposed Decision dated March 5, 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.

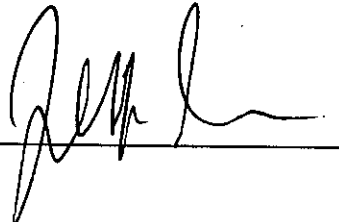
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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
April 27, 2009

IT IS SO ORDERED

JEFF DAVI
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ENRIQUE PINTADO,

Respondent.

DRE No. H-35093 LA

OAH No. L2008100011

PROPOSED DECISION

This matter was heard on February 11, 2009, in Los Angeles, California, by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Enrique Pintado (Respondent) was present and was represented by Michael Brush, attorney at law. Robin Trujillo (Complainant), Deputy Real Estate Commissioner, was represented by Cheryl D. Keily, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received, and the matter was submitted for decision on February 11, 2009.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson since November 17, 1998. His license will expire on November 16, 2010, unless renewed. There was no evidence of any prior discipline imposed against the license.
3. On March 19, 2007, Respondent was convicted, on his plea of guilty, of violating Title 18 United States Code section 1343, wire fraud, and section 2, causing an act to be done, both felonies. (*USA v. Pintado*, U.S. District Court, Central District of California, case number CR03-634 CBM.) Respondent was placed on probation for five years under various terms and conditions, including that he pay restitution totaling \$268,711 and that he not "be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the conduct of any business which submits applications for home loans, home improvement loans, or other loans through the FHA or HUD without specific approval by the Probation Officer." (Exhibit 3.)
4. The conviction was the result of actions by Respondent in 1999 or 2000 when he used his notary commission to issue three false notarizations, indicating that the signatories were present when, in fact, they were not.

5. At that time, Respondent's real estate license was relatively new, and he was working in real estate sales. Other real estate agents asked Respondent to perform the notarizations, on loan documents and trust deeds that were then submitted to the FHA (Federal Housing Authority) or HUD (Department of Housing and Urban Development). Respondent was not paid for the notarizations.

6. Respondent testified credibly that he was relatively naïve about real estate transactions at the time these notarizations took place. Respondent's prior employment had been as a manager for an automobile parts store. Shortly after the notarizations, Respondent resigned his notary commission.

7. At a time not specifically established by the evidence, Respondent was approached by the FBI (Federal Bureau of Investigation), which was investigating the real estate transactions in which the notarized documents were used. The loans on the properties had been foreclosed, and the banks had suffered losses. Respondent agreed to assist the FBI in its investigation, and did so for about three and one-half years, including arranging meetings and taping conversations with others involved in possible real estate fraud. As a result of this ongoing assistance, the U.S. Attorney's Office delayed prosecution of the criminal case against Respondent, and the conviction was likely entered much later than if Respondent had not assisted the FBI.

8. The restitution ordered by the federal court is based upon the amount of loss resulting from the property foreclosures. Respondent is not aware of any other participant in the transactions who was prosecuted or ordered to pay restitution. Respondent made lump sum restitution payments and also pays monthly, presently at the rate of \$1,150 per month. He believes he has paid about \$50,000 to \$60,000 of the restitution. Respondent reports monthly, in writing, to his probation officer, and has had no violations of probation.

9. In about 2001, Respondent began working for Century 21 Realty Masters in Montebello, where he still works today. He enjoys a good reputation with his employer, who wrote a letter of support. For the past seven years, Respondent's main activity has been to assist real estate investors in locating, evaluating, purchasing and rehabilitating properties purchased at foreclosure sales and trustee sales. He also assists in the listing and marketing of the rehabilitated properties for sale. The properties have been single and multiple family dwellings and commercial. Respondent's employer is aware of the restrictions placed on his activities by the probation terms. Respondent's activities do not fall within the probation restrictions. Respondent also presented a letter of support from a client.

10. Respondent is extremely remorseful for his conduct and understands the magnitude of this licensing disciplinary proceeding. Respondent also understands that his actions were the result of bad judgment. He characterizes his actions as a bad mistake from which he has learned. He no longer associates with the businessmen involved in the fraudulent transactions. Respondent would like the opportunity to continue to work under his license. Respondent is not aware of any other work that would be available to him, and

he intends to continue to work in real estate, if possible, and needs to do so to continue with the restitution payments.

11. Respondent has been the sole support of his wife, who recently began a new job. He assists his two children, ages 21 and 25, with their college expenses. When his boys were younger, Respondent became involved as a coach in many sports leagues, and he continues to do so even after his boys were no longer involved. He is also proud that his sons have followed his example by also becoming involved in activities as sports coaches.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to suspend or revoke Respondent's real estate salesperson license pursuant to Business and Professions Code section 490 and section 10177, subdivision (b), because Respondent has been convicted of felony crimes which are substantially related to the qualifications, functions, or duties of a real estate salesperson, as set forth in Factual Finding 3.

2. The Department has issued regulations that define acts that are substantially related to the qualifications, functions, or duties of a licensee, found in California Code of Regulations, title 10, section 2910. Respondent's acts of wire fraud and causing an act to be done fall under section 2910, subdivisions: (a)(2), uttering a false statement; (a)(4), employing fraud, deceit or misrepresentation; and (a)(8), doing an unlawful act with the intent or threat of doing substantial injury to property.

3. A criminal conviction can form the basis for discipline of a real estate salesman's license if the crime is a felony. The two crimes of which Respondent was convicted were felonies.

4. Criteria have been developed by the Department to evaluate the rehabilitation of a licensee who has committed a crime. These criteria, found at California Code of Regulations, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;

Subdivision (j), stability of family life;
Subdivision (k), enrollment in or completion of educational or training courses;
Subdivision (l), significant involvement in community, church or private programs for social betterment; and

Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with her previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

5. It has been more than two years since the acts underlying the conviction. Respondent provided continuing cooperation with FBI investigations. There has been no expungement or early termination of probation. Respondent is complying with his probation terms. Respondent is remorseful for his conduct and views it in a proper perspective, both as to the effects it has had on others as well as its affect on him. Respondent acknowledges that the conduct resulted from his bad judgment. He is active in his community and has a stable family life. His attitude is one of contrition, and his supervising broker stands strongly in his support. Respondent has demonstrated that he can operate safely under appropriate restrictions, such as his probation terms. Under these circumstances, Respondent should not maintain an unrestricted license, but has shown sufficient rehabilitation to be monitored under a restricted license for three years, including a period of suspension and the requirement to take the professional responsibility examination.

ORDER

All licenses and licensing rights of Respondent, Enrique Pintado, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application 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. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for fifteen days from the date of issuance of said restricted license.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

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8. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: March ⁵/₄, 2009.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

1 CHERYL D. KEILY, Counsel (SBN 94008)
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) 576-5770

FILED

JUL - 9 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-35093 LA
12 ENRIQUE PINTADO,) A C C U S A T I O N
13 Respondent.)
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15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ENRIQUE PINTADO, aka Henry Pintado, ("Respondent")
18 alleges as follows:

19 1.

20 The Complainant, Robin Trujillo, 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 salesperson.

3.

(CRIMINAL CONVICTION)

On or about March 19, 2007, in the United States District Court for the Central District of California, in Case No. CR03-634, Respondent was convicted of violating Title 18 U.S.C. Section 1343 and Section 2 (Wire Fraud and Causing an Act to be Done), felonies. The underlying facts of this crime involve moral turpitude, and bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4.

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

9 Dated at Los Angeles, California

10 this 7 day of July, 2008.

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14 Robin Trujillo
15 Deputy Real Estate Commissioner
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26 CC: ENRIQUE PINTADO
27 RMEG Realty Incorporated
Robin Trujillo
Sacto.