

*Suarez*

**FILED**

JAN 21 2010

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation against	)	No. H-35801 LA
	)	L-2009060295
DAVID HENRY EUZARRAGA,	)	
	)	
Respondent.	)	

DECISION AFTER REJECTION

Chris Ruiz, Administrative Law Judge ("ALJ") Office of Administrative Hearings, State of California, heard this matter on July 27, 2009 in Los Angeles, California.

James Demus, Counsel, represented Maria Suarez, Deputy Real Estate Commissioner ("Complainant"), California Department of Real Estate ("Department").

Roger W. Calton, Esq., represented DAVID HENRY EUZARRAGA ("Respondent"), who was present at hearing.

Oral and documentary evidence was received and the matter was submitted for decision on July 27, 2009. On August 20, 2009, the ALJ issued a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of

1 the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would  
2 decide the case upon the record, the transcript of proceedings held on July 27, 2009, and upon  
3 any written argument offered by Respondent and Complainant. Respondent submitted further  
4 argument on November 2, 2009. Complainant submitted further argument on  
5 November 9, 2009.

6 I have given careful consideration to the record in this case, including the  
7 transcript of proceedings of July 27, 2009. I have also considered the arguments submitted by  
8 Respondent and by Complainant. The following shall constitute the Decision of the Real Estate  
9 Commissioner ("Commissioner") in this proceeding:

10 FINDINGS OF FACT

11 1. Complainant brought the Accusation in her official capacity. Respondent  
12 timely submitted a Notice of Defense, which contained a request for a hearing.

13 2. Respondent is licensed by the Department as a real estate broker. Respondent  
14 was first licensed as a broker in 2005, and was licensed as a real estate salesperson for  
15 approximately fifteen years before that.

16 3. On February 25, 2008, in the United States District Court, Central District, in  
17 case number SA CR07-152-AHS, Respondent was convicted of violating 18 United States Code  
18 section 1344 (bank fraud), a felony. Respondent was placed on probation for three years, subject  
19 to terms and conditions which included payment of \$75,000.00 in restitution and fines, and  
20 performance of 120 hours of community services. Respondent fully cooperated with law  
21 enforcement, paid the restitution and fines, and repurchase the loan that led to his conviction.

22 4. The facts and circumstances leading to Respondent's conviction were set forth  
23 in the related Plea Agreement. Respondent owned and controlled EFC Mortgage Corporation  
24 and Volkl Investments, located in Southern California. According to the Plea Agreement,  
25 Respondent intentionally participated in a scheme to defraud mortgage lenders, including Wells  
26 Fargo Bank, N.A., and to obtain money by means of materially false pretenses, representations  
27 and promises. Specifically, Respondent engaged the services of a forger to create false and

1 fraudulent documentation including bogus pay stubs and W-2 forms for use in a client's loan  
2 files. On or before January 15, 2004, Respondent acted as the loan agent for a client attempting  
3 to obtain a line of credit of \$250, 00.00 to refinance the client's home. Although the client was  
4 retired at the time, Respondent submitted a loan package that fraudulently represented that Volkl  
5 Investments employed the client as their Vice President of Operations, making \$12,413.00 per  
6 month. The loan package also included bogus pay stubs and Form W-2 that falsely represented  
7 inflated income for the years 2002 and 2003. Wells Fargo Bank funded the line of credit in  
8 reliance on the false income documentation.

9           5. Respondent testified at hearing and also submitted written explanations to the  
10 Department about the circumstances leading to his 2008 conviction. He explained that the client  
11 was a retired woman he knew who was experiencing financial difficulties, and he decided to help  
12 her out. When Wells Fargo discovered the discrepancy a few years later, Respondent repaid the  
13 loan in full and cooperated with the bank and with law enforcement. The court in the criminal  
14 case did not require Respondent to leave the real estate business, but it did require that he notify  
15 the Department of Real Estate.

16           6. Respondent completed the court ordered restitution and community service,  
17 and cooperated with law enforcement during the criminal proceedings. Respondent remains on  
18 probation until 2011.

19           7. Respondent is married and has a nine year old son and an adult step-son. He  
20 has been involved in his church for many years, and submitted an affidavit from his pastor  
21 attesting to his good character and activities at the Congregation. Through these activities,  
22 Respondent has been entrusted with teaching children. Respondent also provided letters of  
23 support from real estate professionals with whom he has worked over the years.

24           8. The criteria to be taken into consideration in weighing an applicant's  
25 rehabilitation are set forth in Title 10, Chapter 6 of the California Code of Regulations,  
26 Regulation 2911. Applied to the facts of this case, those factors reveal the following:

27           (a) Fewer than two years have passed since Respondent's felony conviction for

1 bank fraud, a crime committed while acting in the capacity of a real estate broker.

2 (b) Respondent repurchased the loan that led to his conviction and paid court  
3 ordered restitution and fines of \$75,000.00.

4 (c) Respondent's conviction has not been expunged.

5 (d) Regulation 2912 (d) does not apply.

6 (e) Respondent remains on probation for another year.

7 (f) Regulation 2912 (f) does not apply.

8 (g) As stated above, Respondent paid all fines.

9 (h) Respondent testified that he self-monitors and does not handle files relating to  
10 real estate loans. However, all real estate transactions involve handling of the personal property  
11 and financial information of others. No other evidence was offered regarding changes, if any, in  
12 the business practices set forth in the Plea Agreement.

13 (i) Respondent retains the same social and business relationships he had at the  
14 time of the conduct leading to his conviction. These include his participation in his church and  
15 his relationships with the individuals who submitted references on his behalf.

16 (j) Respondent's family life and responsibilities remain the same as prior to his  
17 conviction. He is married with a nine year old child and an adult step-son.

18 (k) No evidence was offered regarding courses or training for economic self-  
19 improvement.

20 (l) As set forth above, Respondent is active in his church, where he is entrusted  
21 with teaching children.

22 (m) Respondent testified that he let his heart get the best of him and engaged in  
23 illegal conduct in order to help a distressed client qualify for a loan. His explanations of why he  
24 didn't loan her the money himself, or explore other options, were a little vague. However, the  
25 ALJ found that Respondent did express sincere remorse.

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1 CONCLUSIONS OF LAW

2 1. Cause exists to suspend or revoke Respondent's real estate broker license  
3 pursuant to Business and Professions Code Sections 490 and 10177(b), due to Respondent's  
4 felony conviction for a crime which is substantially related to the qualifications, functions and  
5 duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of  
6 Regulations ("Regulations"), Regulation 2910 (a) (1) (2) (4) and (8).

7 2. The Real Estate Law and the disciplinary procedures provided for in the Real  
8 Estate Law are designed to protect the public and to achieve the maximum protection for the  
9 purchasers of real property and those dealing with real estate licensees. Respondent knowingly  
10 and intentionally facilitated the fabrication and submission of false documentation in support of  
11 false statements in Loan fraud is a dishonest act. Honesty and truthfulness are among the  
12 attributes necessary for applicants to qualify for a real estate license. (*Business and Professions*  
13 *Code Section 10152*). The Legislature intended to ensure that real estate licensees will be  
14 honest, truthful and worthy of the fiduciary responsibilities which they will bear. (*Ring v. Smith*  
15 *(1970) 5 Cal.App.3d 197, 205; Golde v. Fox (1976) 98 Cal.App.3d 167, 177; Harrington v.*  
16 *Department of Real Estate (1989) 214 Cal.App.3d 394, 402.*) Real estate licensees act as  
17 fiduciaries in their dealings with the public. A real estate license by its very nature gives the  
18 licensee unfettered access to the personal belongings of those who seek to sell their homes.  
19 Clients rely on the licensee's integrity in representing them, disclosing important facts about the  
20 properties he or she is privy to, and holding money and other personal property in a fiduciary  
21 capacity.

22 3. Respondent's felony conviction was in 2008 and he remains on criminal  
23 probation until 2011. More time spent free from the constraints of judicial supervision is  
24 necessary in order to establish sufficient rehabilitation to warrant licensure.

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ORDER


WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate broker license and license rights of Respondent DAVID HENRY EUZARRAGA are hereby revoked.

This Decision shall become effective at 12 o'clock noon on February 10/10

IT IS SO ORDERED 1/20/2010

JEFF DAVI  
Real Estate Commissioner

  
BY: Barbara J. Bigby  
Chief Deputy Commissioner

*facts page*

**FILED**

SEP 24 2009

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

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of

DAVID HENRY EUZARRAGA,

Respondent.

No. H-35801 LA

L-2009060295

NOTICE

TO: DAVID HENRY EUZARRAGA, Respondent , and ROGER W. CALTON, his counsel

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 20, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 20, 2009, is attached hereto 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 July 27, 2009, and any written argument hereafter submitted on behalf of respondent and complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 27, 2009, at the Los Angeles

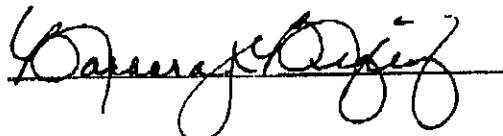
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1 office of the Department of Real Estate unless an extension of the time is granted for good cause  
2 shown.

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

6 DATED: 9.23.09

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8 JEFF DAVI  
Real Estate Commissioner

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11 BY: Barbara J. Bigby  
12 Chief Deputy Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID HENRY EUZARRAGA,

Respondent.

Department No. H-35801 LA

OAH No. 2009060295 \_\_\_\_\_

**PROPOSED DECISION**

This matter was heard on July 27, 2009, in Los Angeles, California, by Chris. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California.

David Henry Euzarraga (Respondent) was present and was represented by Roger W. Calton, Esq.

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

Oral and documentary evidence was presented and the matter was submitted for decision on July 27, 2009.

**FACTUAL FINDINGS**

1. Complainant brought the Accusation in her official capacity.
2. Respondent is presently licensed as a real estate broker and was initially licensed in December 2005. Respondent previously held a real estate salesperson license from approximately 1991 to 2005.
3. On February 25, 2008, in the United States District Court, Central District, case number SA CR07-152-AHS, Respondent was convicted of violating 18 United States Code section 1344 (bank fraud), Respondent was placed on probation for a period of three years with terms and conditions which included: pay \$75,000 in restitution and fines, and perform 120 hours of community service. Respondent fully cooperated with law enforcement, paid the restitution, and repurchased the loan that led to his conviction. The federal court did not require Respondent to leave the real estate business, nor did the court restrict his license.

4. The underlying events leading to Respondent's conviction were as follows. Respondent is 49 years old and he has a stellar reputation in the real estate industry. In January 2004, Respondent arranged a loan for a friend who had assets, but did not have sufficient income documentation to justify the loan. Respondent arranged the loan anyway, and misstated the friend's income in the loan documents, in a misguided attempt to help this friend. Respondent earned only \$500 for handling the loan. Eventually, the loan was sold to Wells Fargo. Four years later, Wells Fargo contacted Respondent and questioned the loan. Respondent repurchased the loan from Wells Fargo and Wells Fargo did not lose any money on the loan. The loan was eventually paid in full. Thereafter, Respondent was contacted by a Federal Bureau of Investigation agent. He immediately took full responsibility for the loan and he fully cooperated with law enforcement. There has been no other discipline against Respondent in his 18 years of licensure.

5. Respondent is married and has two children, ages 10 and 31. It was established that Respondent has an excellent reputation in the real estate community, except for this conviction. Respondent appeared remorseful during his testimony. He acknowledged that "a lie is a lie" even though he had good intentions in helping facilitate the loan. Respondent and Wells Fargo conducted business together for 13 years before the loan at issue came to light. Respondent established that it is highly unlikely that he would ever again perform a similar criminal act. Respondent accepted responsibility from the first day he was contacted by law enforcement and he has changed his business practices. Respondent is no longer involved in the mortgage business and he stepped down as the broker of the business he owns, Volkl Investments, Inc. He is also now involved in the sale of residential homes, rather than mortgage financing. Respondent attends Heritage Christian Fellowship Church (Church) where he is involved in teaching young children. The Church allowed him to continue teaching even after he disclosed his criminal conviction to church leaders. This act by the Church is a testament to Respondent's character. If Respondent was not a very trusted person, the Church would have likely dismissed him and not allowed him to continue teaching children. While being trustworthy is not the same as being honest, it is a good indication of Respondent's overall good character.

### LEGAL CONCLUSIONS AND DISCUSSION

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

#### Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation acts which are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subsections (a)(1)(2)(4) and (8), Respondent's criminal act is substantially related to the qualifications, functions, or duties of a licensee. (Factual Finding 1-4.)

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

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

3. Respondent's conviction was in 2008 and he remains on criminal probation until 2011. However, Respondent's conduct leading to his conviction occurred approximately five years ago. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.) An outright revocation of Respondent's license would be only to punish Respondent. Respondent established sufficient evidence of this rehabilitation to justify the following order which will sufficiently protect the health, safety, and welfare of the public. (Factual Findings 4-5.)

#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent David Henry Euzarraga under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for

not adopted

the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

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

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

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

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

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

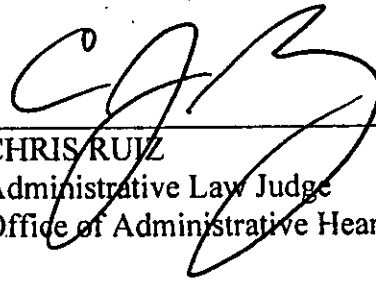
6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning Respondent's activities for which a real estate license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

*not adopted*

*not adopted*

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

DATED: August 20, 2009.

  
\_\_\_\_\_  
CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings



3.

On or about February 25, 2008, in the United States District Court, Central District of California, in case no. SA CR07-152-AHS, Respondent was convicted of violating 18 U.S.C. § 1344(bank fraud), a felony. Said crime bears 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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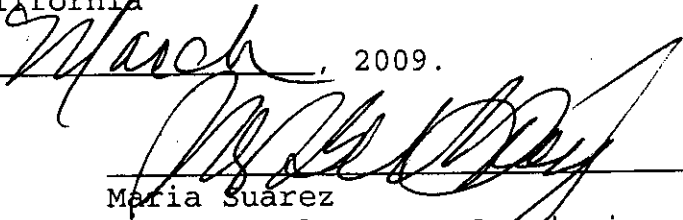
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all the licenses and license rights of Respondent, DAVID HENRY EUZARRAGA, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California  
this 23<sup>rd</sup> day of March, 2009.

  
\_\_\_\_\_  
Maria Suarez  
Deputy Real Estate Commissioner

cc: DAVID HENRY EUZARRAGA  
Maria Suarez  
Sacto.