



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues )	Case No. H-28775 LA
Against: )	
ARTHUR ALDERETE )	OAH No. L2000100193
)	
)	
Respondent )	
_____ )	

PROPOSED DECISION

On December 14, 2000, in Los Angeles, California, Deborah Myers-Young, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant, Thomas McCrady, Deputy Real Estate Commissioner, Department of Real Estate, was represented by Elliot Mac Lennan, Staff Counsel.

Respondent, Arthur Alderete, ("Respondent"), appeared and was represented by Michael J. Khouri, attorney at law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Statement of Issues was made by Thomas McCrady, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in his official capacity.
2. Respondent submitted his application for real estate salesperson's License on April 24, 2000. In response to interrogatory numbers 25 and 27, Respondent indicated that he had two criminal convictions: a felony and a misdemeanor in 1997, and four misdemeanors in 1998. Respondent also attached a letter to the Department explaining the circumstances of the convictions and

documentation of his course of rehabilitation. The application was denied and this matter ensued.

3. On July 2, 1997, in the Superior Court of California, County of Orange, Case no. C 96SF118, Respondent was convicted on his plea of guilty of one count of violating Penal Code section 236(False Imprisonment by Violence), a felony, and 243(e)(Battery, Non-Cohabitant), crimes involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate licensee under Title 10, California Code of Regulations, Section 2910.

4. Respondent was ordered to serve 270 in County Jail, stayed until July 7, 1997. He was further ordered to pay a restitution fine in the sum of \$ 200.00, and to pay full restitution in a sum not disclosed by the evidence. He was sentenced to supervised probation for a period of three years, and ordered to cooperate with his probation officer in a plan for psychological treatment. He was further ordered to not contact the victim. Respondent continues to owe restitution in the sum of \$ 1800.00.

5. The facts and circumstances underlying the 1997 conviction are that on November 24, 1996, Respondent became angry with a woman he had been dating when she broke up with him. He refused to drive her to her house in San Clemente, and made her get out of his car in Laguna Beach. He returned to pick her up, promising to drive her home. He passed her exit on the freeway, and ignored her screams to pull the car over. He then drove the car to a desolate area near Camp Pendleton, and then demanded that she orally copulate him. When she refused, he grabbed her head. She bit him, and he began to choke her. When she struggled, he grabbed at her chest and ripped at her blouse. The victim saw the headlights of another vehicle approach, and stuck her legs out the car door. When she finally escaped, the Respondent grabbed her purse, drove away, and threw her purse on her front lawn. Respondent told the police he was slightly intoxicated, and felt out of control when the victim broke up with him. He admitted to the police that he told the victim to orally copulate him, and admitted to keeping her purse as a means of control over her.

6. On September 22, 1998, in the Superior Court of California, County of Orange, South Justice Center, Case No. 98SM49424, Respondent was convicted on his plea of guilty of one count of violating Penal Code section 240(Assault), and one count of violating Penal Code section 243 (e)(1)(Battery on a Spouse or Cohabitant) crimes involving moral turpitude and substantially related to the qualifications, functions and duties of a real estate licensee under Title 10, California Code of Regulations, Section 2910.

7. Respondent was placed on conditional probation for a period of three years. He was ordered to pay a restitution fine in the sum of \$ 100.00. He was further ordered to pay \$ 200.00 to the Domestic Violence Fund, and \$ 500.00 to a Battered Woman's Shelter. He was ordered to continue with counseling, and to enroll in and

complete a Batterer's Program. He was further ordered to complete 8 hours of community service. Respondent fulfilled these conditions by June 9, 2000. He will remain on probation through September 22, 2001.

8. The facts and circumstances underlying the conviction are that on July 28, 1998, Respondent began arguing with his girl friend because he wanted to have sex with her. She refused. She went into the bathroom, where he followed her and began urinating on the floor. She began to hit him. She bit him, and he bit her. She began to call the police, and Respondent pulled the telephone out of the wall.

9. Respondent continues to be on formal probation until September 22, 2001, and owes a balance of \$ 1800.00 in fines. When Respondent initially wrote a letter to the Department of Real Estate regarding his 1997 and 1998 convictions, he minimized his actions by stating that the convictions were the result of an unhealthy relationship. He described the 1998 conviction as a violation of probation, rather than the two counts involving a different woman.

10. In mitigation, Respondent takes full responsibility for his crime, and is greatly remorseful. He was open, forthright, and detailed when he testified at the administrative hearing about his involvement in the crimes he committed in 1997 and 1998. He believes that counseling has changed his life and has built his self-esteem. He believes he has learned how to control his anger with women. Respondent has completed a 52-week Batterer's Treatment Program on November 8, 1999 through South Coast Counseling Center, and was given a favorable prognosis. He participated in individual therapy sessions with Ann Stanton, MFCC, "almost weekly" between January 1998 and August 1998, "regularly" for six months in 1999, and once a month in 2000. He completed a 10-week Anger Management Program offered by her in 1998. Ms. Stanton believes Respondent to be working to change his behaviors and attitudes.

11. Respondent has impressed his former employer of almost two years, Jennine Baillie, a Senior Real Estate Manager at CB Richard Ellis. She spoke highly of Respondent's "excellent performance" in the commercial leasing industry. She believed him to be respectful toward women. While Respondent told her he had a criminal conviction involving a girlfriend, he did not inform her that he had two separate convictions involving sexually related violence upon two different women. Nonetheless, she believed he would be a great real estate salesperson.

12. Respondent's current employer, C. Brent Jorgensen, who manages the San Clemente office of Torbell Real Estate, would like to hire him based upon his experience with commercial real estate. He believed Respondent was respectful toward women and believed he would be a successful agent. Although Mr. Jorgensen knew Respondent had committed a battery on a woman, he did not know that Respondent had tried to force or encourage two different women to have sex with him. Nor did he know that Respondent had served jail time.

## LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists for the denial of Respondent's application pursuant to Business and Professions Code Section 480 (a), and 10177 (b), for conviction of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, as set forth in Findings 2, 3, 4, 5, 6, 7, 8, and 9.

2. Title 10, Chapter 6, California Code of Regulations section 2910(a) defines the criteria of a crime which is substantially related to the qualifications, functions and duties of a real estate licensee. Section 2910(a)(5) specifies that any sexually related conduct, and Section 2910(a)(8) specifies that the doing of any unlawful act with the intent to cause injury constitutes a substantial relationship. Respondent's convictions include false imprisonment by violence, battery, and assault, on two occasions involving different women and are therefore substantially related to the qualifications, functions and duties of a real estate licensee.

3. Respondent has certainly made strong efforts toward rehabilitation. Title 10, California Code of Regulations, section 2911, establishes the criteria for rehabilitation for applicants seeking a real estate salesperson's license. Despite his progress, he has failed to establish sufficient rehabilitation when measured against this criteria. Thus, he has not met the criteria established by section 2911(b), as he continues to owe \$ 1800.00 in restitution for his 1997 conviction. Respondent has not met the criteria established by section 2911(c), as he continues to be on probation until September 22, 2001, for his 1998 conviction. Respondent's convictions have not been expunged, under section 2911(d). Insufficient time has elapsed to determine whether Respondent has a stable family life, under section 2911(g). Finally, Respondent has not established any significant community involvement under section 2911(k).

The fact that Respondent had a relationship with these two women, as opposed to having committed random acts of sexually based violence against two women, does not significantly mitigate the risk that he presents to the real estate public. Respondent engaged in a pattern of controlling behavior, which with respect to the 1997 conviction, included dropping a woman off in a remote area, choking her, driving away and keeping her purse, and with respect to the 1998 conviction, involved pulling the telephone out a wall when the victim started to call the police. Respondent took advantage of the position of trust that the victim of the 1997 criminal conviction gave him, when she got back into his car upon his promise to drive her home. Instead, he engaged in a certain level of planning by driving past her off-ramp, pull over in a remote area, and demand oral sex. He further violated her

trust when he grabbed and kept her purse when she escaped, depriving her of her money, personal identification, and the means of returning safely to her home.


Respondent has demonstrated a recent pattern of poor anger management skills and poor judgment, which necessarily carries over into his professional conduct. As a licensed real estate agent, Respondent would be given access to people's homes, and would necessarily have access to women alone in these homes. Respondent would have women clients, whom he would be driving around to look at homes. Respondent would again be placed in a position of trust, with the personal security of women, property, and hundreds of thousands of dollars involved in the purchase and sale of homes. It is obviously incumbent upon the Department to protect women and the public at large from possible victimization by an individual who has previously committed sex-related violence against two different women as recently as two and a half years ago.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's application for a real estate salesperson's license is hereby denied.

Dated: January 12, 2001

  
DEBORAH MYERS-YOUNG  
Administrative Law Judge  
Office of Administrative Hearings

*Sacto*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
NOV - 7 2000  
DEPARTMENT OF REAL ESTATE

By *K. Meder*

In the Matter of the Application of

ARTHUR ALDERETE,

Respondent

Case No. H-28775 LA  
OAH No. L-2000100193

**NOTICE OF HEARING ON APPLICATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at \_\_\_\_\_  
Office of Administrative Hearings, 320 W. Fourth St., Ste. 630  
Los Angeles, CA 90013

on December 14, 2000, at the hour of 10:00 a.m.  
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: November 7, 2000

By *276*  
Counsel

RE 500 (Rev. 8/97)

cc: Arthur Alderete  
Sacto  
OAH  
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kw

*Arthur*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
OCT 26 2000  
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ARTHUR ALDERETE,

Respondent

By *R. Mederhoff*

Case No. H-28775 LA  
OAH No. L-20000100193

**NOTICE OF HEARING ON APPLICATION**

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at \_\_\_\_\_  
Office of Administrative Hearings, 320 West Fourth St., Ste. 630  
Los Angeles, CA 90013

on November 7, 2000, at the hour of 9:00 a.m.,  
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place  
of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within  
ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days  
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You  
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent  
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the  
Department may take disciplinary action against you based upon any express admission or other evidence including  
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The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are  
not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses  
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the  
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who  
does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs.  
The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 26, 2000

By *[Signature]*  
Counsel



1 Elliott Mac Lennan, Counsel SBN 66674  
2 Department of Real Estate  
3 320 W. 4<sup>th</sup> Street, Suite 350  
4 Los Angeles, CA 90113-1105

5 Telephone: (213) 576-6911

FILED  
SEP 21 2000  
DEPARTMENT OF REAL ESTATE

By R. Mederkholt

8 DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of) No. H-28775 LA  
12 ARTHUR ALDERETE, ) STATEMENT OF ISSUES  
13 )  
14 Respondent. )  
\_\_\_\_\_ )

15 The Complainant, Thomas McCrady, a Deputy Real Estate  
16 Commissioner of the State of California, for Statement of Issues  
17 against ARTHUR ALDERETE, is informed and alleges in his official  
18 capacity as follows:

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20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about April 24, 2000, subject to Section 10153.4(c)  
23 under the Real Estate Law (Part 1 of Division 4 of the California  
24 Business and Professions Code) (Code).

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On July 2, 1997, in the Superior Court of California, County of Orange, State of California, in case no. C 96SF118 respondent was convicted upon a guilty plea of violating one count of Section 236 of the California Penal Code (false imprisonment by violence), a felony, and of violating one count of Section 243(e) of the California Penal Code (battery, non-cohabitant) a felony.

3

On September 22, 1998, in the Superior Court of California, County of Orange, State of California, in case no. SH 96SF118 respondent was convicted upon a guilty plea of violating one count of Section 240 of the California Penal Code (assault), a misdemeanor, and of violating one count of Section 243(e) of the California Penal Code (battery upon cohabitant), a misdemeanor.

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These alleged crimes, by their facts and circumstances, involve moral turpitude and are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

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The crimes alleged in Paragraph 2 and 3, constitute cause for denial of respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

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These proceedings are brought under the provisions of Section 10100, Division 4 of the California Business and Professions Code and Sections 11500 through 11528 of the California Government Code.

WHEREFORE, the Complainant prays that above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, ARTHUR ALDERETE, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California  
This 21st day of September, 2000.

THOMAS MC CRADY  

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Deputy Real Estate Commissioner

cc: Arthur Alderete  
Sacto  
ST  
CB Richard Ellis, Inc.