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NOV 29 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

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

In the Matter of the Application of) DRE No. H-31712 LA
) OAH No. L-2005040349
)
ANTHONY D. MARTINEZ,)
)
)
Respondent.)

STIPULATION AND AGREEMENT

AND

DECISION AFTER REJECTION

The California Department of Real Estate ("Department")
filed a Statement of Issues against ANTHONY D. MARTINEZ
("Respondent") on March 1, 2005. On June 8, 2005, a hearing was
held, evidence was received, and the matter was deemed submitted
for decision.

On July 7, 2005, the Proposed Decision of the
Administrative Law Judge was issued that found cause under

1 Business and Professions Code ("Code") Sections 480 for both
2 convictions set forth below, and 10177(b) for the June 16, 2000,
3 Penal Code Section 245(a)(1) (assault w/deadly weapon), to deny
4 Respondent's real estate salesperson license application but
5 granted issuance of a real estate salesperson license.

6 On August 1, 2005, the Commissioner rejected the
7 Proposed Decision of July 7, 2005.

8 The parties wish to settle this matter without further
9 proceedings.

10 IT IS HEREBY STIPULATED by and between Respondent,
11 represented by Frank M. Buda, Attorney at Law, and the
12 Department, acting by and through Elliott Mac Lennan, Counsel for
13 the Department of Real Estate, as follows for the purpose of
14 settling and disposing of the Statement of Issues filed by the
15 Department.

16 1. It is understood by the parties that the Real
17 Estate Commissioner may adopt the Stipulation and Agreement as
18 his decision in this matter, thereby imposing the penalty and
19 sanctions on Respondent's real estate license as set forth in the
20 below "Decision and Order". In the event the Commissioner in his
21 discretion does not adopt the Stipulation and Agreement
22 ("Stipulation"), the Stipulation shall be void and of no effect;
23 the Commissioner will review the transcript and the evidence in
24 the case, and will issue his Decision after Rejection as his
25 Decision in this matter.

26 2. By reason of the foregoing and solely for the
27 purpose of settlement of the Statement of Issues without further

1 administrative proceedings, it is stipulated and agreed that the
2 following shall be adopted as the Commissioner's Decision:

3 FACTUAL FINDINGS

4 1. Complainant, Maria Suarez, filed the Statement of
5 Issues in her official capacity as a Deputy Real Estate
6 Commissioner of the State of California.

7 2. Respondent filed an application for licensure as a
8 real estate salesperson on April 4, 2003. He disclosed the
9 convictions at issue.

10 3.a. On June 26, 2000, in the Superior Court, County
11 of Los Angeles, State of California, in case number YA043553,
12 Respondent was convicted, on his plea of nolo contendere, of
13 violating Penal Code Section 245(a)(1) (assault with a deadly
14 weapon), a felony. The Court suspended imposition of a 5-year
15 state prison sentence and placed Respondent on formal probation
16 for three years on terms and conditions that included service of
17 365 days in county jail, with credit for 160 days, and payment of
18 a \$200 fine.

19 b. The circumstances surrounding the conviction are as
20 follows. On March 12, 2000, while in line in the drive-through
21 lane of a Jack-in-the-Box fast food restaurant, a passenger in
22 Respondent's car said something to the occupants of another
23 vehicle. The four occupants of the other vehicle took issue with
24 the comments, exited their car, and started moving toward
25 Respondent's car. Respondent's passenger also exited the vehicle
26 and an altercation ensued. Respondent testified that he did not
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1 exit his vehicle, but could not get his companion to promptly
2 return to the vehicle. Respondent overheard someone, not his
3 passenger, say something about a gun. Also, one of the occupants
4 of the other vehicle tried to pull Respondent out of his seat.
5 Fearing for his safety, Respondent drove off and in the process
6 hit one of the men. Respondent testified that he was simply
7 trying to flee and denied trying to hit the other man.

8 4. Respondent's conviction is substantially related to
9 the qualifications, functions, and duties of a real estate
10 salesperson by reason of California Code of Regulations, Title
11 10, Section 2910(a)(8), in that the crime, on its face, involves
12 an unlawful act with the intent of doing substantial injury to
13 the person of another.

14 5. Respondent's conviction is also one of moral
15 turpitude in that the crime, on its face, involves the callous
16 disregard for human life.

17 6.a. On July 24, 2000, in the Superior Court, County
18 of Los Angeles, State of California, in case number TA054937,
19 Respondent was convicted, on his plea of nolo contendere, of
20 violating Penal Code section 12021(d) (unlawful possession of
21 firearm), a felony. The Court suspended imposition of a 2.8-year
22 state prison sentence and placed Respondent on formal probation
23 for three years on terms and conditions that included service of
24 365 days in county jail, with credit for 160 days, and payment of
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1 a \$200 fine. The sentence was to run consecutively to that in
2 factual finding number 3.

3 b. In December 1999, Respondent had a concealed
4 firearm in his vehicle, which weapon was discovered by police
5 during a traffic stop. Respondent testified that he had the
6 firearm in his possession for personal protection and had not
7 used it, in the commission of a crime.

8 c. This conviction, taken together with the conviction
9 set forth in factual finding number 3, demonstrates a pattern of
10 disregard of law and is, therefore, substantially related to the
11 qualifications, functions, and duties of a real estate
12 salesperson pursuant to California Code of Regulations, Title 10,
13 Section 2910(a)(10).

14 d. It was not established that this conviction
15 involves moral turpitude because it was not shown that the
16 conduct surrounding the crime rose to the level found by courts
17 to violate generally accepted standards of moral behavior. (See:
18 *People v. Thornton* (1992) 3 Cal.App.4th 419).

19 7. Respondent complied with the terms and conditions
20 of both sentences. On August 13, 2002, the court granted
21 Respondent's motion pursuant to Penal Code Section 1203.4 and
22 dismissed the case that led to the conviction set forth in
23 factual finding number 3. On October 27, 2003, the court granted
24 a Penal Code Section 1203.4 motion and set aside the conviction
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1 set forth in factual finding number 6. Respondent has not
2 suffered any other conviction.

3 8. Respondent expressed remorse about his conduct and
4 has changed his behavior. He moved from his old neighborhood and
5 no longer associates with those with whom he was arrested. He
6 has a steady girlfriend and both regularly attend church.

7 9. Respondent has also furthered his education. He
8 attended Los Angeles Harbor College from January 2001 until June
9 2004, completing the Music Technology Program. He is presently
10 attending an Audio Engineer Program at the Los Angeles Recording
11 School, a program he expects to complete in September 2005.

12 10. Respondent desires to become a loan officer.

13 11. Respondent's mother, Patty J. Martinez, testified
14 at the hearing and attested to his changed attitude and
15 expression of remorse. Three family friends of more than 20
16 years submitted letters further attesting to Respondent's changed
17 life.
18

19 LEGAL CONCLUSIONS

20 1. Cause exists under the provisions of Business and
21 Professions Code Sections 480(a) for both convictions, and
22 10177(b), for the June 26, 2000, Penal Code Section 245(a)(1)
23 conviction, to deny Respondent ANTHONY D. MARTINEZ' Salesperson
24 License Application as set forth in Findings 3 through 7. The
25 June 26, 2000, crime involves moral turpitude. Both crimes are
26 substantially related to the qualifications, functions or duties
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1 of a licensed real estate salesperson pursuant to Section
2 2910(a)(8) and 2910(a)(10), Title 10, Chapter 6, California Code
3 of Regulations.

4 2. Sufficient evidence was adduced, however, to
5 conclude that Respondent has been rehabilitated such that the
6 issuance of a properly conditioned restricted real estate
7 salesperson license would not be against the public's interest,
8 by reason of Factual Findings 8 through 11.

9 Based on the above stated factual findings and legal
10 conclusions, it is determined that Respondent has been
11 sufficiently rehabilitated such that the issuance of a restricted
12 real estate salesperson license would not be adverse to the
13 public's interest.

14 ORDER

15 Respondent ANTHONY D. MARTINEZ' application for a real
16 estate salesperson license is denied; provided, however, a
17 restricted real estate salesperson license shall be issued to
18 Respondent pursuant to Section 10156.5 of the Business and
19 Professions Code. The restricted license issued to the
20 Respondent shall be subject to all of the provisions of Section
21 10156.7 of the Business and Professions Code and to the following
22 limitations, conditions and restrictions imposed under authority
23 of Section 10156.6 of said Code:

24 1. The license shall not confer any property right in
25 the privileges to be exercised, and the Real Estate Commissioner
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1 may by appropriate order suspend the right to exercise any
2 privileges granted under this restricted license in the event of:

3 (a) The conviction of Respondent (including a plea of
4 nolo contendere) of a crime which is substantially related to
5 Respondent's fitness or capacity as a real estate licensee; or

6 (b) The receipt of evidence that Respondent has
7 violated provisions of the California Real Estate Law, the
8 Subdivided Lands Law, Regulations of the Real Estate Commissioner
9 or conditions attaching to this restricted license.

10 2. Respondent shall not be eligible to apply for the
11 issuance of an unrestricted real estate license nor the removal
12 of any of the conditions, limitations or restrictions attaching
13 to the restricted license until two years have elapsed from the
14 date of issuance of the restricted license to Respondent.

15 3. With the application for license, or with the
16 application for transfer to a new employing broker, Respondent
17 shall submit a statement signed by the prospective employing real
18 estate broker on a form RE 552 (Rev. 4/88) approved by the
19 Department of Real Estate which shall certify as follows:

20 (a) That the employing broker has read the Decision
21 which is the basis for the issuance of the restricted license;
22 and
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24 (b) That the employing broker will carefully review all
25 transaction documents prepared by the restricted licensee and
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1 otherwise exercise close supervision over the licensee's
2 performance of acts for which a license is required.

3 4. Respondent's restricted real estate salesperson

4 license is issued subject to the requirements of Section 10153.4
5 of the Business and Professions Code, to wit: Respondent shall,
6 within eighteen (18) months of the issuance of the restricted
7 license, submit evidence satisfactory to the Commissioner of
8 successful completion, at an accredited institution, of two of
9 the courses listed in Section 10153.2, other than real estate
10 principles, advanced legal aspects of real estate, advanced real
11 estate finance or advanced real estate appraisal. If Respondent
12 fails to timely present to the Department satisfactory evidence
13 of successful completion of the two required courses, the
14 restricted license shall be automatically suspended effective
15 eighteen (18) months after the date of its issuance. Said
16 suspension shall not be lifted unless, prior to the expiration of
17 the restricted license, Respondent has submitted the required
18 evidence of course completion and the Commissioner has given
19 written notice to Respondent of lifting of the suspension.
20

21 5. Pursuant to Section 10154, if Respondent has not

22 satisfied the requirements for an unqualified license under
23 Section 10153.4, Respondent shall not be entitled to renew the
24 restricted license, and shall not be entitled to the issuance of
25 another license which is subject to Section 10153.4 until four
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1 years after the date of the issuance of the preceding restricted
2 license.

3 DATED: 11-10-05

E.L.L.
4 ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

5 * * *

6 I have read the Stipulation and Agreement and Decision
7 After Rejection and discussed it with my counsel. Its terms are
8 understood by me and are agreeable and acceptable to me. I
9 willingly and voluntarily agree to enter into this Stipulation.

10
11
12 DATED: _____

13 ANTHONY D. MARTINEZ, Respondent

14
15 DATED: _____

16 FRANK M. BUDA,
Attorney for Respondent
17 Approved as to Form

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years after the date of the issuance of the preceding restricted license.

DATED: 11-10-05

ELLIOTT MAC LENNAN
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

* * *

I have read the Stipulation and Agreement and Decision After Rejection and discussed it with my counsel. Its terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily agree to enter into this Stipulation.

DATED: 11-14-05

Anthony D. Martinez
ANTHONY D. MARTINEZ, Respondent

DATED: 11.15.05

Frank M. Buda
FRANK M. BUDA,
Attorney for Respondent
Approved as to Form

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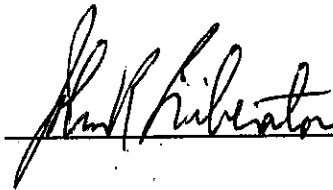
DECISION AND ORDER

The foregoing Stipulation and Agreement and Decision
After Rejection is hereby adopted by the Real Estate Commissioner
as his Decision and Order.

This Decision shall become effective at 12 o'clock noon
on DEC 19, 2005.

IT IS SO ORDERED November 22, 2005.

JEFF DAVI
Real Estate Commissioner



John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

Handwritten initials

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ELLIOTT MAC LENNAN, SBN 66674
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320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
 -or- (213) 576-6982 (office)

FILED
MAR -1 2005
DEPARTMENT OF REAL ESTATE
By *K. Medeiros*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | | |
|-------------------------------------|---|----------------------------|
| In the Matter of the Application of |) | No. H-31712 LA |
| ANTHONY D. MARTINEZ |) | <u>STATEMENT OF ISSUES</u> |
| Respondent. |) | |

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against ANTHONY D. MARTINEZ, aka Anthony Martinez, Anthony Donald Martinez, (Respondent) is informed and alleges in her official capacity as follows:

1.

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about April 4, 2003, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of Business and Professions Code ("Code") Section 10153.4.

2.

1
2 On June 26, 2000, in the Superior Court of California,
3 County of Los Angeles, in Case No. YA043553, respondent was
4 convicted of violating Penal Code Section 245(a)(1) (Assault with
5 Deadly Weapon), a felony crime, which by its facts and
6 circumstances, involves moral turpitude, and is substantially
7 related under Section 2910, Chapter 6, Title 10 of the California
8 Code of Regulations, to the qualifications, functions or duties
9 of a real estate licensee.

10 3.

11 On July 24, 2000, in the Municipal Court of Compton,
12 Lynwood Judicial District, County of Los Angeles, State of
13 California, in Case No. TA054937, respondent was convicted of
14 violating Penal Code Section 12021(d) (Felon/Addict Possession of
15 Firearm), a felony crime, which by its facts and circumstances,
16 involves moral turpitude, and is substantially related under
17 Section 2910, Chapter 6, Title 10 of the California Code of
18 Regulations, to the qualifications, functions or duties of a real
19 estate licensee.
20

21 4.

22 These crimes constitute cause for denial of
23 respondent's application for a real estate license under Sections
24 480(a) and 10177(b) of the California Business and Professions
25 Code.

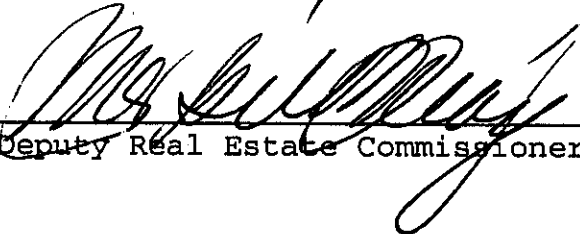
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1 These proceedings are brought under the provisions of
2 Section 10100, Division 4 of the California Business and
3 Professions Code and Sections 11500 through 11529 of the
4 California Government Code.

5 WHEREFORE, the Complainant prays that above-entitled
6 matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of, a real estate salesperson
9 license to Respondent ANTHONY D. MARTINEZ and for such other and
10 further relief as may be proper in the premises.

11 Dated at Los Angeles, California

12 this *25th* day of *February* 2005.

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14 
15 Deputy Real Estate Commissioner
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24 cc: Anthony D. Martinez
25 Maria Suarez
26 Sacto
27 CW