

FILED
OCT 21 2005
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *R. Mendel*

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In the Matter of the Application of)	No. H-31792 LA
))
PEDRO ARMENDARIZ,	L-2005050646
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))
Respondent.)
))

DECISION

The Proposed Decision dated September 22, 2005; 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on NOV 10 2005.

IT IS SO ORDERED

10-18-05
JEFF DAVIS
Real Estate Commissioner

[Signature]

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

In that matter of the Application of:

PEDRO ARMENDARIZ,

Respondent.

Case No. H-31792-LA
OAH No. L2005050646

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on August 19, 2005, in Los Angeles, California.

Complainant was represented by Elliott Mac Lennan, Counsel for the Department of Real Estate (Department).

Pedro Armendariz (respondent) appeared personally and represented himself.

Oral and documentary evidence was received and the matter was submitted for decision. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Complainant, Maria Suarez, made the Statement of Issues in her official capacity as Deputy Real Estate Commissioner of the State of California.
2. On April 1, 2004, respondent submitted an application to the Department for a real estate salesperson license with the knowledge and understanding that any license issued as a result of that application would be subject to the conditions of Business and Professions Code section 10153.4, subdivision (c).
3. On February 22, 1999, in the Superior Court of California, County of San Bernardino, (Case No. MWV048784), respondent entered a plea of guilty and was convicted of one count charging a violation of Penal Code section 242, misdemeanor battery. This is a crime substantially related to the duties functions and qualifications of real estate salesperson.

4. Pronouncement of judgment was withheld and respondent was granted conditional and revocable release 36 months on certain terms and conditions directing respondent to, *inter alia*, pay a fine of \$245.00, serve three days in the county jail and complete an anger management program.

5. The facts and circumstances underlying the conviction were that respondent was at a restaurant when he noticed that his then wife was at the same restaurant with another man. Respondent confronted his wife and an argument ensued. The argument escalated to pushing and shoving. Respondent was arrested at the scene.

6. On January 28, 1999, in the Municipal Court of the Alhambra Judicial District, County of Los Angeles, (Case No. 8AL02444), respondent entered a plea of nolo contendere and was convicted of one count charging a violation of Penal Code section 415, misdemeanor disturbing the peace.

7. Imposition of sentence was suspended and respondent was placed on probation for one year on certain terms and conditions directing respondent to, *inter alia*, pay a fine of \$100.00 and perform five days of community service.

8. The facts and circumstances underlying the conviction were that, respondent and his former wife, who were separated at the time of this incident, had agreed that respondent was to drop the children off at his in-laws' house after he had visited with the children. However, respondent's in-laws, who had a negative relationship with respondent, had not agreed to this arrangement. There was a verbal disagreement between respondent and his in-laws when respondent attempted to leave the children there. Respondent's in-laws called the police and respondent was arrested.

9. On April 17 17, 1998, in the Superior Court of California, County of San Bernardino, (Case No. MWV042632), respondent entered a plea of guilty and was convicted of one count charging a violation of Penal Code section 273.5, misdemeanor domestic violence. This is a crime substantially related to the duties functions and qualifications of real estate salesperson.

10. Pronouncement of judgment was withheld and respondent was granted conditional and revocable release for a period of 36 months on certain terms and conditions directing respondent to, *inter alia*, pay \$220.00 to the domestic violence trust fund, serve 20 days in the county jail and complete an anger management program.

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11. The facts and circumstances underlying the conviction were that respondent's wife had informed respondent that she was going to a friend's house after work. She had a few beers and remained at her friend's house until 3:30 a.m. Respondent became worried. He called his father and both respondent and his father drove around the area of the house looking for her. They spotted her driving home at approximately 3:45 a.m. Respondent's father honked the car horn to get her attention. Respondent's wife stopped her car when she realized that the persons that had been following her were respondent and his father. Respondent confronted his wife and an argument ensued and respondent then grabbed her and threw her to the ground. Respondent took his wife home, and another argument ensued. Respondent pushed her to the ground and struck her.

12. Respondent satisfied most of the criteria for rehabilitation that are applicable to this case, pursuant to California Code of Regulations, title 10, section 2911, in that respondent's convictions occurred more than six years ago. He completed all terms and conditions of probation for all three convictions, including payment of all fines. Respondent now has a good relationship with his former wife and has always provided child support for his children. In addition, respondent has a good relationship with his children from his previous marriage and is involved in their activities. Respondent is now remarried and has another child with his present wife. His family life is stable and he is now active in his church.

13. The evidence also proved that respondent has been gainfully employed in the maintenance department of his local school district for the past eleven years. He was promoted to the position of supervisor for the maintenance department four years ago.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, for the convictions of crimes substantially related to the duties, functions and qualifications of a departmental licensee.

2. Respondent established rehabilitation pursuant to California Code of Regulations, title 10, section 2911, as set forth in Factual Findings 12 and 13. The evidence established that respondent's inappropriate physical contact with his former wife was limited to domestic disputes in a troubled marriage. Respondent has not engaged in this conduct outside of his first marriage. Clearly respondent has had a change in attitude and behavior since his last conviction in February 1999. The evidence of rehabilitation at hearing, as well as respondent's remorse, his stable family life, and his comportsment and demeanor at the hearing, support a conclusion that the public would be adequately protected if respondent is granted a restricted license under appropriate conditions imposed to address the concerns of the Department.

ORDER

The application of Pedro Armendariz, for a real estate salesperson license, is denied; provided, however, that a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

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

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

(b) The receipt of evidence 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 this restricted license.

2. Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

3. Pursuant to section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

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


license to respondent.

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

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

DATED: September 22, 2005


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

CRIMINAL CONVICTIONS

2.

On February 22, 1999, in the Superior Court, County of San Bernardino, State of California, in Case No. MWV048784, respondent was convicted upon a plea of guilty to violating one count of the California Penal Code Section 242 (Battery), a misdemeanor, which by its facts and circumstances, involves moral turpitude and is 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.

3.

On January 28, 1999, in the Municipal Court of Alhambra Judicial District, County of Los Angeles, State of California, in Case No. 8AL02444, respondent was convicted upon a plea of nolo contendere to violating one count of the California Penal Code Section 415 (Disturbing the Peace), a misdemeanor, which by its facts and circumstances, involves moral turpitude and is 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.

4.

On April 17, 1997, in the Superior Court, County of San Bernardino, State of California, in Case No. MWV042632, respondent was convicted upon a plea of guilty to violating one count of the California Penal Code Section 273.5 (Domestic

1 Violence), a misdemeanor, which by its facts and circumstances,
2 involves moral turpitude and is substantially related under
3 Section 2910, Chapter 6, Title 10 of the California Code of
4 Regulations, to the qualifications, functions or duties of a real
5 estate licensee.

6 5.

7 Respondent's convictions, as set forth in Paragraphs 2,
8 3 and 4, above, are cause to deny Respondent's real estate
9 license application under Sections 480(a) and 10177(b) of the
10 California Business and Professions Code.

11 These proceedings are brought under the provisions of
12 Section 10100, Division 4 of the California Business and
13 Professions Code and Sections 11500 through 11529 of the
14 California Government Code.

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

7 Dated at Los Angeles, California

8 this 18th day of March 2004.

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11 Deputy Real Estate Commissioner
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24 cc: Pedro Armendariz
25 Felipe Soltero
26 Maria Suarez
27 Sacto
JL