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NOV 27 2007

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

* * * * *

In the Matter of the Accusation of)	No. H-33886 LA
)	
)	L-2007060191
ANTONIO JOSE LARA,)
))
))
Respondent.)
))

DECISION

The Proposed Decision dated November 1, 2007, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made:

Legal Conclusions, page 4, paragraph No. 3, line 14, "a treat of substantial injury" is amended to read "a threat of substantial injury".

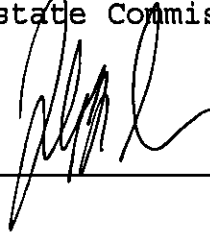
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 December 17, 2007.

IT IS SO ORDERED 11-19-07

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ANTONIO JOSE LARA,

Respondent.

Case No. H-33886 LA

OAH No. L2007060191

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 8, 2007.

Cheryl D. Keily, Staff Counsel, represented Janice Waddell (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Monty S. Gill, Attorney at Law, represented Antonio Jose Lara (Respondent) who was present throughout the hearing.

At the beginning of the hearing, Respondent's counsel made motion to dismiss the case on the grounds that the crime of which Respondent was convicted was not substantially related to the qualifications, functions, or duties of a licensee of the Department within the meaning of Business and Professions Code sections 480 and 490. The motion was taken under advisement to be ruled upon as part of the Proposed Decision in this case.

Oral and documentary evidence was received, and the matter argued. At the end of the hearing, Complainant requested time to submit a closing brief. A briefing schedule was agreed upon. Complainant's brief was filed on September 10, 2007. Respondent's brief was filed on September 17, 2007. No closing brief was filed by Complainant. The case was submitted for decision on October 4, 2007.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.

2. Respondent is presently licensed and/or has license rights as a real estate salesperson under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code). Respondent was originally licensed by the Department on May 4, 2004. Respondent's license will expire on May 3, 2008, unless it is renewed. There has been no prior disciplinary action filed against Respondent.

3. On November 6, 2006, in the California Superior Court, County of Ventura, Respondent, upon his guilty plea, was convicted of violating Penal Code section 136.1, subdivision (b) (1), dissuading a witness from reporting a crime, a misdemeanor. The court placed Respondent on formal probation for a period of 36 months on certain terms and conditions, including serving 5 days in the county jail with credit for time served and work release approved, completing 52 weekly sessions of domestic violence counseling, paying \$3,000.00 in fees and fines, completing 16 hours in the Direct Work Program and not harassing assaulting etc. Maria Lara. As of the hearing date in this case, Respondent was current in attending domestic counseling sessions and had completed 37 sessions. Respondent is making monthly payments of \$145 per month on the monetary assessment. He is in full compliance with the terms and conditions of the court's probation order. Respondent's probation will end in 2009 although he is hoping to shorten the time when he completes the domestic counseling sessions.

4. Except for the single instance reported here, there had been no prior domestic violence calls to the police either by Respondent or his wife. Respondent's wife unsuccessfully tried to get the criminal charges against her husband dismissed.

5. Respondent has had no other criminal convictions.

6. The facts and circumstances relating to Respondent's criminal conviction are as follows: Respondent came home from work one evening very tired. He asked his 9 year old daughter to make him a sandwich. He went to the bathroom, and when he returned to the family area, he looked at the sandwich and saw that the bread was not toasted the way Respondent liked it. Respondent criticized his daughter and called her stupid. Respondent's wife became very upset with her husband for his behavior. Originally, she tried to get him to apologize to the daughter for the statement. When this request failed, Respondent and his wife began a very heated argument. Respondent pushed his wife and she slapped him. The wife picked up a telephone to call 911. Respondent disconnected the telephone at the wall. Even though Respondent disconnected the telephone, enough time elapsed for the call to go through to the police dispatch center. A police vehicle was sent to Respondent's home. The responding policeman interviewed Respondent's wife and then Respondent. She and Respondent made identical reports to the police. The

police arrested Respondent. Respondent's wife was given a citation for slapping her husband.¹

7. Respondent and his wife met in 1990 when they were in high school. They have known each other for 19 years and have been married for 10 years. They have two children.

8. Shortly before the incident which led to Respondent's criminal conviction, Respondent's wife went to work for the county in the social-services department. She also had a new born child and a daughter to care for in addition to maintaining her house. Respondent's wife was having trouble adjusting to work, handling her children, and managing her home. She was handling a lot of stress and depression at that time. She stated that all she wanted in calling the police was to see if they could persuade her husband to apologize to their daughter for calling her stupid. She said that, if she had understood all that was going to occur as a result of her telephone call to the police, she never would have made the call. She would have handled the situation differently. It is the wife's concern that, if Respondent is unable to continue his real estate work, the financial base for their family will be destroyed.

9. Respondent's wife testified that she was not injured by her husband during the argument that resulted in the criminal charges filed against him. She also indicated that she is not afraid of him nor has she ever been beaten by him.

10. Respondent's wife attended California Lutheran College majoring in liberal arts and Spanish. She has a teaching certificate for substitute teaching. It is her intent to obtain a clear teaching credential.

11. Respondent attended California Polytechnic State University San Luis Obispo. He is lacking two units to be eligible for a degree in history.

12. For the past three years, Respondent has coached his daughter's AYSO soccer team.

13. Respondent's younger child was recently baptized at the church he and his family attend.

14. Since obtaining his real estate license, Respondent has been continuously employed at a real estate company where he specializes in residential properties. His employer is aware of his criminal conviction and wants to continue to employ Respondent. No complaints have been received concerning Respondent's real estate activities. Respondent is a member of the National Association of Real Estate Professionals.

¹ The citation was ultimately dismissed.

15. Respondent submitted a letter of recommendation from the Office Manager at his place of employment. The Office Manager has known Respondent for the past three years and praised Respondent as a hard worker, intelligent, and dedicated. According to the Office Manager, at work, Respondent has displayed a positive and pleasant personality toward everyone in the office and to his clients.

16. Respondent also submitted letters of recommendation from a former real estate client and a co-worker both of whom have known Respondent for seven years. Both of these people praised Respondent for always being willing to provide assistance and vouched for his honesty.

17. Respondent and his wife are in agreement that the domestic counseling sessions Respondent has been attending have been helpful in improving their communication and relationship. The sessions have also helped Respondent in taking time to better evaluate situations before taking action.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Respondent's criminal conviction of dissuading a witness from reporting a crime involved moral turpitude in that it is a statutory version of obstructing justice. (*People v. McGee* (1914) 24 Cal.App.563, 572; *In re Disbarment of Craig* (1938) 12 Cal. 2^d 93, 97; and see also *People v. McElroy* (2005) 126 Cal. App. 4th 474, 881-884.)

3. It is a very close question as to whether Respondent's criminal conviction is substantially related to the qualifications, functions, or duties of a real estate licensee as described in the California Code of Regulations, title 10, section 2910. First, it should be recalled that Respondent's conviction was for dissuading a witness from reporting a crime i.e. unplugging the telephone. Further, no injuries were suffered by Respondent's wife or Respondent as a result of their argument, even though Respondent was arrested and his wife was cited. While the argument giving rise to the criminal charges extended for a period of time, it appears to have been verbal with some pushing. No weapons were involved or threats of harm made. The parties to this proceeding agree that the only subdivision (8) of section 2910 that might be applicable in this case on the question of substantial relationship. Subdivision (8) finds a substantial relationship where the act committed by the Respondent involved doing an unlawful act with the threat of doing substantial injury to the person of another. The question here turns on whether there was a ~~threat~~ ^{threat} of substantial injury existing at the time of the events leading to Respondent's conviction. While Respondent did not injure his wife during the argument that lead to his criminal conviction, the threat that such injury might have occurred was present given the situation. On this very thin point, it is found that the crime committed by Respondent

was substantially related to the qualifications, functions, or duties of a real estate licensee.

3. Cause exists, by virtue of Business and Professions Code sections 490 and/or 10177, subdivision (b), to revoke or suspend Respondent's license and license rights from the Department due to his criminal conviction.

4. Pursuant to Business and Professions Code section 493, while the record of conviction of an individual is conclusive evidence of the fact that the conviction occurred, the Department may inquire into the circumstances surrounding the commission of the crime in order to fix the appropriate degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. In the present situation, such an inquiry leads to the conclusion that, notwithstanding Respondent's criminal conviction, the facts and circumstances leading to his criminal conviction do not support a rigid application of the normal rules applicable in such a situation. Respondent has no other criminal convictions. No injury occurred as a result of Respondent's actions during his argument with his wife. There is no other instance where the police were called as a result of any domestic dispute between Respondent and his wife. Respondent has a good employment history as a real estate salesperson. His employer, a former client, and a co-worker all stated that Respondent gets along well with his clients. Respondent's employer is willing to continue Respondent's employment. No other administrative actions have been filed against Respondent's real estate activities. Respondent is in full compliance with the terms and conditions imposed by the criminal court. Contrary to the normal situation where such proceedings, as the present one, are not brought until a more substantial period has elapsed from the time of conviction, Respondent has cooperated in the prompt consideration of this matter. Under these circumstances, the public can be protected while at the same time permitting Respondent to continue his activities as a real estate salesperson under the provisions of a restricted license.

5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated. While a rigid application of these criteria are not appropriate in this case for the reasons set forth in the preceding paragraph, it should be noted that Respondent relationship with his wife has improved as a result of his attendance at domestic counseling sessions. Respondent has a stable family life. Respondent's good character is supported by the letters of those persons who have worked with him over the past several years. Respondent's employer is willing to continue Respondent's employment. Respondent has no other criminal convictions and there is no other history of any other marital problems. Respondent is current with all the terms and conditions imposed by the criminal court.

ORDER

It is hereby ordered:

A. Respondent's motion to dismiss these proceedings on the ground that Respondent's criminal conviction is not related to the qualifications, functions or duties of a real estate licensee is denied.

B. All licenses and licensing rights of Respondent Antonio Jose Lara, 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. 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 two years have elapsed from the effective date of this Decision.

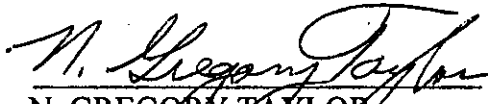
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by that employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(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.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that, since the most recent issuance of an original or renewal real estate license, Respondent has 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.

DATED: November 1, 2007.


N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

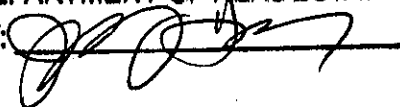
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FILED

APR - 9 2007

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- 33886 LA
12 ANTONIO JOSE LARA,) A C C U S A T I O N
13 Respondent.)
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15 The Complainant, Janice Waddell, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ANTONIO JOSE LARA, aka Tony Lara, ("Respondent") alleges
18 as follows:

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20 1.

21 The Complainant, Janice Waddell, a Deputy Real Estate
22 Commissioner of the State of California, makes this Accusation
23 in her official capacity.

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the Real Estate Law, Part 1 of Division 4 of the
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1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 (CRIMINAL CONVICTION)

5 On or about November 6, 2006, in the California
6 Superior Court, County of Ventura, in Case No. 2006024447,
7 Respondent was convicted of violating California Penal Code
8 section 136.1(b)(1) (Dissuading Witness from Reporting Crime), a
9 misdemeanor. The underlying facts of this crime involve moral
10 turpitude, and bear a substantial relationship under Section
11 2910, Title 10, Chapter 6, California Code of Regulations to the
12 qualifications, functions or duties of a real estate licensee.

13 4.

14 The crime of which Respondent was convicted, as
15 described in Paragraph 3, above, constitutes cause under
16 Sections 490 and 10177(b) of the Code for the suspension or
17 revocation of the license and license rights of Respondent under
18 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, ANTONIO JOSE LARA, 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 26 day of March, 2007.

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15 Janice Waddell
16 Deputy Real Estate Commissioner
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25 cc: Antonio Jose Lara
26 Evans/Sipes Inc.
27 Janice Waddell
Sacto.