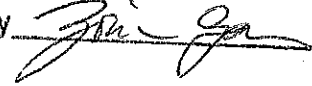


FILED

DEC - 9 2016

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	CalBRE No. H-40270 LA
)	
ANGELO GABRIEL NAEMI,)	OAH No. 2016061046
)	
Respondent.)	

DECISION

The Proposed Decision dated October 17, 2016, 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 corrections are made to the Proposed Decision.

Factual Findings, Page 2, Paragraph No. 4, Line 3, "Respondent struck the Naemi in the face." is amended to read "Respondent struck Naemi in the face."

Factual Findings, Page 2, Paragraph No. 4, Line 9, "bruises around eyes and nose" is amended to read "bruises around her eyes and nose."

Factual Findings, Page 3, Paragraph No. 7, Quoted Material, Line 2, "conviction of law that of law that occur..." is amended to read "convictions of law that occur..."

Factual Findings, Page 4, Paragraph No. 12, Line 4, "I don't recall if it was a part of the..." is amended to read "I don't recall if it was part of the..."

Legal Conclusions, Page 5, Paragraph No. 6, Line 1, "real estate broker's license..." is amended to read "real estate salesperson license..."

Legal Conclusions, Page 6, Paragraph No. 11, Line 6, "circumstances his crime." is amended to read "circumstances of his crime."

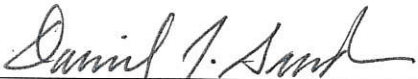
The Decision suspends or revokes one or more real estate licenses.

Pursuant to Government Code section 11521, the Bureau of Real Estate may order reconsideration of this Decision on petition of any party. The Bureau's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 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 DEC 29 2016.

IT IS SO ORDERED 12/5/16

WAYNE S. BELL
REAL ESTATE COMMISSIONER



By: DANIEL J. SANDRI
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANGELO GABRIEL NAEMI,

Respondent.

Case No. H-40270 LA

OAH No. 2016061046

PROPOSED DECISION

Administrative Law Judge (ALJ) Gloria A. Barrios heard this matter on August 29, 2016, in Los Angeles, California.

Judith B. Vasan, Staff Counsel for the Bureau of Real Estate (Bureau), represented Veronica Kilpatrick (Complainant), Supervising Special Investigator.

Angelo Gabriel Naemi (Respondent) was present and represented himself.

The record remained open for submission of three specific character references from Respondent and any response from Complainant. Respondent submitted three character reference letters¹ that were marked collectively as Exhibit B for identification. Complainant made no objection to the letters, which were admitted as administrative hearsay.² The record was closed and the matter was submitted for decision on September 19, 2016.

¹ In addition to the three character references submitted by Respondent, he also submitted additional documents. Complainant objected to the additional documents. The ALJ sustained the objection. Only the three character references submitted by Respondent will be considered by the ALJ.

² The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cap.App.4th 1001.)

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity.
2. Respondent has been licensed as a real estate salesperson, license number 01915357, since November 2, 2012. The license has been renewed through November 1, 2016. The license has not been disciplined previously.
3. On November 6, 2014, Respondent was convicted, after his plea of nolo contendere, of violating Penal Code section 273.5, subdivision (a), (corporal injury to cohabitant), a felony, (*People v. Angelo Gabriel Naemi*, Superior Court of the State of California, County of Santa Barbara, case number 1453657.) Imposition of sentence was suspended, and Respondent was sentenced to formal probation for five years, and ordered to pay fines, restitution and fees totaling \$2,150. The court ordered Respondent to serve 120 days in jail less credit for one day served. The court also ordered Respondent to enroll in and complete a one-year Batterer's Intervention program and to perform 20 hours of public service work. As of the time of the hearing of this matter, Respondent remained on probation. He completed the Batterer's Intervention program and he completed the 20 hours of public service at a Boys & Girls Club. Respondent continues to pay the court ordered restitution, fines and fees.
4. The facts and circumstances underlying Respondent's conviction are that on September 7, 2014, Respondent battered his wife of 11 years, Jessica Naemi (Naemi), at their residence. Both had been drinking alcohol. Respondent struck ~~the~~ Naemi in the face. She locked herself in the bathroom to protect herself but Respondent broke down the bathroom door. The sheriff, who investigated the crime, saw a broken door handle on the floor. Respondent put his hands over Naemi's face and mouth, smothering her. Naemi attempted to call 911 on her cell phone but Respondent took it away from her. She fled the residence to get help and he restrained her. Naemi went to a neighbor to get help and the neighbor called the police. Naemi had visible injuries, bruises around ^{her} eyes and nose. She was transported to the hospital. One of their small children overheard the argument. Another witness who was staying with Respondent and his wife claimed Respondent threatened him. Respondent left the residence before the police arrived.
5. According to Respondent, he and his wife went to a restaurant to celebrate their anniversary. They were drinking alcohol. Respondent wanted to leave the restaurant, but Naemi did not want to leave. He claimed the altercation started in the car on the way back to their home. Naemi assaulted Respondent and challenged him to hit her, calling him a "pussy." Respondent then hit her in the face. He did not sustain any injuries from Naemi's assault. The fight continued when they reached their residence. Respondent explained he tried to restrain Naemi so that he could assist her as her nose was bleeding. He contended Naemi only had a bloody nose and he did not breakdown the bathroom door. Respondent claimed he left the residence because he was sickened by what he did. Respondent and Naemi have now been married for 13 years. They have two children with another baby on

the way. They are still together. Respondent expressed remorse for his abuse of his wife. He attributes his behavior in part to the recent loss of the couple's daughter.

6. Respondent did not report the 2014 conviction to the Bureau within 30 days as required by Business and Professions Code³ section 10186.2. (Complainant's Exhibit 5.)

7. Respondent explained that he did not know he was required to inform the Bureau of his conviction. He explained that his criminal defense attorney told him that the court would inform the Bureau of his conviction. On April 27, 2012, Respondent applied for a real estate salesperson license. He certified the following language when he signed his application;

"I understand that it is my obligation to notify the Department⁴ in writing of any conviction of law that occur subsequent to my filing this application."

(Complainant's Exhibit 6.) Respondent knew or should have known that he was obligated to report any conviction to the Bureau.

8. Respondent is currently an agent at Champion Real Estate (Champion) located in Orcutt. He has worked at Champion since 2012. Steven Paul Gonzales (Gonzales) is an owner of and licensed broker at Champion. He testified on behalf of Respondent. Gonzales stated that Respondent is a trust worthy, hard working and respected agent. Respondent goes above and beyond for his clients. Gonzales knows Respondent to be a good father. Gonzales knows about Respondent's conviction.

9. Although Respondent completed the court ordered Batterer's Intervention program, he voluntarily continues to meet with James Goodwin (Goodwin), M.A., M.F.T., Program Director at Central Coast Treatment Centers in Santa Maria. He wrote a letter on behalf of Respondent. He wrote, "Please know I am writing at the request of Angelo Naemi with regard to his successful completion of a mandated Batterers Intervention Program through [the] Santa Barbara County Department of Probation. Mr. Naemi is under my care as a Licensed Marriage and Family Therapist. He has been under an extreme amount of personal and family mental health pressures; that as such, may have affected his ability to appropriately follow through with the required reporting to your agency." Goodwin knew about Respondent's conviction. (Respondent's Exhibit A.)

³ All further statutory references are to the Business and Professions Code except when noted.

⁴ Effective July 1, 2013, the Department of Real Estate became the Bureau of Real Estate.

10. Ernie Cuevas (Cuevas) is Director of Healthy Lifestyles at the Boys & Girls Club of Santa Maria Valley. Cuevas wrote a letter in support of Respondent. He wrote, "I am writing this letter on behalf of Angelo Naemi who this year volunteered to coach his son's basketball team in our Orcutt Youth Basketball League. By volunteering his time Angelo has committed to practices two-three times a week as well as being at games on Saturdays. Angelo has informed me that he has practice three times a week for an hour and a half. Including games on Saturdays, this means Angelo is volunteering approximately 5-6 hours per week for the past 8-10 weeks." Cuevas knew about Respondent's conviction. (Part of Respondent's Exhibit B.)

11. Naemi wrote a letter in support of her husband. She wrote, "Obviously no person is perfect and he made a rather large mistake, but it is how he has dealt with it that means the most to me. He was attending counseling 2 times a week, one group and one private. It has helped him tremendously by actually teaching him how to cope with stress, grief, etc. He has put a lot of work into changing into the person he is today." (Part of Respondent's Exhibit B.)

12. Michael J. Scott (Scott) was Respondent's criminal defense attorney. He wrote a letter in support of Respondent. He wrote, "The reduction to a misdemeanor after 3 years and early termination was a conversation I had with the D.A. and made note in my file. I don't recall if it was X part of the written plea form. You can check the form at the clerk's office." (Part of Respondent's Exhibit B.) A review of the court record does not indicate that Respondent's felony conviction was to be reduced to a misdemeanor and his probation was to be terminated early. (Complainant's Exhibit 3.) Even assuming arguendo that such aspects of a plea deal had been agreed upon, there was no such evidence that the court has as yet reduced Respondent's felony conviction or terminated his probation.

13. Respondent is 35 years old. He is married. Respondent and his wife have two sons, ages eight and 12.

14. Complainant introduced evidence as to the Bureau's cost of its investigation and enforcement of this matter pursuant to Code section 10106. The requested total amount is \$943.30, which is reasonable under the facts of this case. (Complainant's Exhibit 7.)

LEGAL CONCLUSIONS

1. The standard of proof for the Bureau to prevail on the Accusation is clear and convincing evidence to a reasonable certainty. (See *Borror v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 121 Cal.App.4th 586, 594.)

2. Code section 490 provides that the Bureau may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. Code section 10177, subdivision (b), provides that a real estate licensee may have his license disciplined for conviction of a crime if it is substantially related to the qualifications, functions, or duties of a real estate licensee.

4. The Bureau has issued regulations that specify the types of crimes that are "substantially related" to the qualifications, functions, or duties of a real estate licensee. Respondent's conviction for corporal injury to a cohabitant is "substantially related" under California Code of Regulations, title 10 (CCR), section 2910, subdivision (a)(8) which provides that, "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another," bears a substantial relationship to the qualifications, functions, or duties of a Bureau licensee.

5. Respondent cannot impeach his criminal conviction. The entry of a nolo contendere plea in his 2014 criminal convictions is conclusive evidence of his guilt. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) "Regardless of the various motives which may have impelled the pleas, the convictions which were based thereon stand as conclusive evidence of appellant's guilt of the offense charged. To hold otherwise would impose upon administrative boards extensive, time consuming hearings aimed at relitigating criminal charges which had culminated in final judgments of conviction." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

6. Cause exists to impose discipline on Respondent's real estate ^{salesperson} broker's license pursuant to Code sections 490 and 10177, subdivision (b), because Respondent has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a real estate salesperson, as set forth in Factual Findings 3 through 5, and Legal Conclusions 2 through 3.

7. Under Code section 10186.2, a real estate licensee shall report to the Bureau in writing any conviction against him to the Bureau within 30 days.

8. Cause exists to impose discipline on Respondent's real estate salesperson license pursuant to Code section 10186.2, because Respondent failed to timely inform the Bureau about his 2014 conviction, as set forth in Factual Findings 6 and 7, and Legal Conclusion 7.

9. Although cause for discipline exists, it is necessary to determine whether Respondent has been sufficiently rehabilitated to warrant his continued licensure. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the

opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

10. The Bureau has established criteria for rehabilitation from a conviction of a crime to warrant continued licensure. The criteria, found at CCR, title 10, section 2912, are summarized as follows:

- Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
- Subdivision (b), restitution;
- Subdivision (c), expungement of the conviction;
- Subdivision (d), expungement of the requirement to register as a sex offender;
- Subdivision (e), completion of, or early discharge from, the criminal probation;
- Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
- Subdivision (g), payment of any criminal fines or penalties;
- Subdivision (h), correction of business practices causing injury;
- Subdivision (i), new and different social and business relationships;
- Subdivision (j), stability of family life;
- Subdivision (k), enrollment in or completion of educational or training courses;
- Subdivision (l), significant involvement in community, church or private programs for social betterment; and
- Subdivision (m), change in attitude from the time of conviction to the present, evidenced by: testimony of the licensee and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

11. It has been two years since Respondent was convicted and committed the underlying acts for which he was convicted. Respondent is up to date on the terms and conditions of his sentence and completed the mandated Batterers Intervention Program and public service hours. Respondent is involved in volunteer community work. However, he is still on formal probation. Additionally, Respondent was not credible regarding the circumstances of his crime. For example, Respondent maintained that he did not break down the bathroom door to attack his wife. The sheriff noted that he saw a broken door handle on the floor. Respondent insisted that his wife instigated the abuse, yet she did not corroborate this version of events. In fact, Naemi did not discuss the circumstances of the spousal abuse at all in her letter. Finally, Respondent minimized the injuries he inflicted on his wife that were at odds with the sheriff's description of those injuries. Respondent would have been better served to have taken full responsibility for his actions.

12. The Real Estate Law and the disciplinary procedures are designed to protect the public. Clients rely upon real estate licensees' integrity to represent their interests. (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205; *Golde v. Fox* (1976) 98 Cal.App.3d 167, 177; *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) There is a valid governmental purpose in limiting licensees of the Bureau to persons with the qualifications of honesty, truthfulness and good reputation. (*Riley v. Chambers*, (1919) 181 Cal. 589, 593-

594.) Here, Respondent's misconduct was serious and troubling. He failed to fully acknowledge the wrongfulness of his actions, which is an essential step toward rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933.) Respondent is still on probation. In this matter, an insufficient amount of time has passed for Respondent to demonstrate a record of the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) In weighing Respondent's wrongdoing and considering Respondent's mitigation and rehabilitation, the public will not be protected if he were allowed to retain his salesperson license.

13. The Bureau is entitled to recover from Respondent its costs of investigation and prosecution of this matter in the sum of \$943.30 under the provisions of Code section 10106 by reason of Finding 14.

ORDER

1. Real estate salesperson license number 01915357, and all licensing rights of Respondent Angelo Gabriel Naemi, are revoked.

2. Respondent shall pay to the Bureau the sum of \$943.30 at such time and in such manner as the Bureau may, in its discretion, direct.

DATED: October 17, 2016

DocuSigned by:

gloria a. barrios

GLORIA A. BARRIOS
Administrative Law Judge
Office of Administrative Hearings