

**FILED**

**JAN 31 2023**

**DEPT. OF REAL ESTATE**

By: 

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of:	)	DRE No. H-42352 LA
	)	
CRYSTAL GUERRERO,	)	OAH No. 2022100045
	)	
	)	
<u>Respondent.</u>	)	

DECISION

The Proposed Decision dated December 08, 2022, 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.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department'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.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate

Commissioner.

FEB 20 2023

This Decision shall become effective at 12 o'clock noon on \_\_\_\_\_.

IT IS SO ORDERED 1.19.23

DOUGLAS R. McCAULEY  
REAL ESTATE COMMISSIONER



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

**In the Matter of the Application of:**

**CRYSTAL GUERRERO, Respondent.**

**Agency Case No. H-42352 LA**

**OAH No. 2022100045**

**PROPOSED DECISION**

Carmen D. Snuggs-Spraggins, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 10, 2022.

Maria Suarez (Complainant), Supervising Special Investigator of the State of California, was represented by Kevin Sun, Counsel, Department of Real Estate (Department).

Crystal Guerrero (Respondent) appeared and represented herself.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on November 10, 2022.

## **SUMMARY**

Respondent applied to the Department for a real estate salesperson license. Complainant seeks denial of Respondent's application based upon Respondent's May 2019 conviction for battery on a spouse/child's parent. Complainant alleged Respondent's 2014 conviction for possession of metal knuckles is an aggravating factor. Respondent demonstrated sufficient rehabilitation to show that the public will be protected if she is issued a properly conditioned restricted license.

### **Jurisdictional Matters**

1. On April 8, 2021, Respondent signed, and subsequently filed with the Department, an application for a real estate salesperson license (application). The application remains pending, and no license has been issued.

2. On September 7, 2022, Complainant, acting in her official capacity, filed the Statement of Issues seeking to deny Respondent's application. The Statement of Issues alleges cause to deny the application based on Respondent's convictions of crimes substantially related to the qualifications, functions, or duties of a real estate licensee. In addition, the Statement of Issues alleges that Respondent's 2014 misdemeanor conviction is an aggravating factor.

3. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. All jurisdictional requirements have been met.

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## **Respondent's Conviction**

4. On May 9, 2019, in the Superior Court of California, County of Los Angeles, case number 9BL02302, Respondent was convicted on her nolo contendere plea of violating Penal Code sections 243, subdivision (e)(1) (battery on a spouse, boyfriend, or child's parent), and 381, subdivision (b) (possession of nitrous oxide), both misdemeanors. The court found a factual basis for Respondent's plea, suspended imposition of sentence, and placed Respondent on summary probation for 36 months under the following terms and conditions: a) service of two days in the county jail, less credit for two days; b) payment fines and fees; c) performance of 10 days of community labor; and d) completion of 52 domestic violence classes. The court also issued a protective order against Respondent.

5. The facts and circumstances underlying Respondent's conviction are that on March 31, 2019, Los Angeles County Sheriff's Department (LACSD) deputies responded to a fight in progress call. According to the LACSD Complaint Report admitted as Exhibit 4, a deputy spoke with J.C., who is the father of Respondent's son. The deputy observed J.C.'s tank top was ripped, and there was a wet stain in crotch area of his pants. J.C. told the deputy that Respondent became upset because he was with another woman. He further stated that Respondent "violently" pulled him by his tank top, causing it to rip, and attempted to punch him in the face. (Ex. 4, p. A106.) According to J.C., Respondent's male friend, who had been sitting in Respondent's car, exited the vehicle and began fighting with J.C. J.C. told the deputy he urinated on himself because he was scared. The deputy spoke with a witness who said she saw Respondent hit J.C. approximately three times. However, Respondent denied hitting J.C.

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The deputy conducted a search of Respondent's vehicle and found a nitrous oxide tank in the trunk of her car and a pink balloon on the driver's side floorboard. In the deputy's experience and based upon his training, the balloon is inflated with nitrous oxide, which is then ingested/inhaled. According to the deputy, Respondent admitted using nitrous oxide in the past to get high but had not used it that night. Respondent was ultimately arrested for battery and possession of nitrous oxide.

6. Respondent completed the domestic violence program and paid the court-ordered fines and fees. On September 10, 2019, the court modified the protective order to allow Respondent to have peaceful contact with J.C. Respondent's probation terminated in May 2022.

### **Prior Conviction**

7. On April 3, 2014, Respondent was convicted on her nolo contendere plea of violating Penal Code section 21810 (possession of brass knuckles), a misdemeanor. The court placed Respondent on summary probation for 36 months on condition that she pay fines and fees of \$1,035, or perform 106 hours of community service, and perform 47 hours of Cal Trans service. The court received a letter that Respondent "forged community service hours," and issued a bench warrant for Respondent's arrest. (Ex. 5, p. A 121.) The court subsequently revoked and then reinstated Respondent's probation and ordered her to serve 60 days in the county jail. Respondent failed to surrender on the date ordered by the court. The court issued another bench warrant for Respondent's arrest. On November 23, 2015, Respondent surrendered and began serving her 60-day sentence, with credit for four days. Complainant alleged that this conviction should be considered an aggravating factor in determining the appropriate action to take on Respondent's application.

## **Respondent's Interview Information Statement**

8. Respondent submitted an Interview Information Statement to the Department dated October 29, 2021. She disclosed her criminal record and provided the details of her 2019 conviction. Respondent wrote that she had been visiting her father's house when J.C. arrived and began arguing with her. According to Respondent, as she was getting into her car, J.C. pushed the car door into her chest, and she pushed him back. She also wrote that she was with her friend who owned an automobile shop, a nitrous oxide tank was found in the trunk, and she and her friend were both arrested.

9. Respondent asserted that sheriff's deputies did not see "the big picture" and she was the only one accused of wrongdoing, as J.C. was not arrested. (Ex. 6, p. A131.) She also asserted that she is currently focused on her career, she would like a chance to earn a living and support her children by working in the real estate industry, and she has moved on with her life.

## **Respondent's Evidence**

10. Respondent is 33 years old and is a single mother of two children. She does not have experience in the real estate industry. Respondent began a real estate course in 2018, took a break from the course after her arrest in 2019, and completed the course in 2020. Her dream job is that of a real estate agent and she would like to work with her father, who is in the real estate industry. Respondent has been employed by the Los Angeles County Department of Health Services as a Technician I since September 16, 2022.

11. On June 29, 2022, the California Board of Barbering and Cosmetology issued Cosmetologist license number KK626178 to Respondent. The license is

unrestricted and scheduled to expire on June 30, 2024, unless renewed. Respondent asserted her license was issued following an administrative hearing where she explained the circumstances underlying her 2019 conviction.

12. Respondent testified that when she was arrested in 2011 for possessing metal knuckles, the object was actually a belt, and she did not understand that she was being arrested for possessing brass knuckles. At that time, Respondent was in her twenties. She described herself then as "irresponsible" and "not keeping up with what she was supposed to do." Respondent was pregnant and as the criminal case progressed, she made her children her priority. Respondent contended she got her life in order and turned herself in after a bench warrant was issued for her arrest.

13. Between 2015 and 2019, Respondent worked and concentrated on being a single mother.

14. In March of 2019, Respondent had not been in contact with J.C. and did not know he worked for her father. J.C. showed up at Respondent's father's house with his girlfriend, and, according to Respondent, started arguing with her. Respondent stated that the argument escalated when J.C. began cursing at her and walked up to her car door. As she opened the door, J.C. pushed the door against her, and J.C. and Respondent's friend started arguing. J.C. told the sheriff's deputy Respondent was the aggressor and that she came to her father's house to fight, which made no sense to Respondent because she did not know J.C. was working for her father. According to Respondent, she sustained injuries to her chest when J.C. pushed the door against her and grabbed her wrist and twisted her arm. Respondent denied hitting J.C. and states she told the officers she had sustained injuries. The LACSD Complaint Report does not mention any injuries to Respondent.



Respondent contends that her friend worked with race cars, he had just sold his car and she was giving him ride on the day of the incident with J.C. She further contends her friend placed his nitrous oxide tank in her trunk. Respondent denied telling the police officer that she used nitrous oxide to get high in the past but had not ingested or inhaled any that night.

Although Respondent may present evidence to establish the facts and circumstances underlying the criminal convictions to assist the Department in formulating the appropriate level of discipline, she cannot now dispute the elements of her criminal offenses. By way of her pleas of nolo contendere to, and conviction of, violating Penal Code sections 243, subdivision (e)(1), and 21810, Respondent is guilty of battery and possessing brass knuckles. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [holding that “[r]egardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged”].)

15. Respondent attended domestic violence and parenting courses for a year. During that same year, she also participated in counseling three days per week. Respondent learned how to control her anger, deescalate situations, and adjust her attitude. She submitted certificates of completion dated September 21, 2020, for domestic violence and individual counseling prepared by Matthews Family Counseling.

#### **CHARACTER EVIDENCE.**

16. Rosa Gonzalez, Respondent's mother, testified on Respondent's behalf. She described Respondent as having come a long way from engaging in immature behavior in her past. Ms. Gonzalez testified Respondent works “a lot” and takes care of children. She is aware that Respondent has obtained certificates to improve her

employment opportunities and worked multiple jobs at the same time. Ms. Gonzalez is also aware that Respondent wants to do better for herself and her children and has been a good influence on them.

17. Ms. Gonzalez testified she was present and observed the altercation between J.C. and Respondent. According to Ms. Gonzalez, Respondent was merely visiting her father when J.C. arrived, and things got out of hand. She observed J.C. approach Respondent and curse at her. Ms. Gonzalez did not witness Respondent hit J.C. She asserted Respondent's friend started the trouble with J.C. and that the sheriff's deputies arrived when Respondent was trying to leave. Ms. Gonzalez testified that the deputies refused to take her statement.

## **LEGAL CONCLUSIONS**

1. The Department is the state agency responsible for licensing and regulating real estate salespersons. (Bus. & Prof. Code, §10050, subd. (a)(2). Further references to statute are to the Business and Professions Code unless otherwise stated. The Department's highest priority in exercising its licensing and disciplinary functions is public protection. (*Id.* at § 10050.1.)

2. Respondent has the burden of proving by a preponderance of the evidence that she is fit for the license she seeks and that her application should be granted. (Evid. Code, § 115.)

3. Section 480, subdivision (a)(1) provides, in pertinent part, that the Department may deny a license if the applicant "has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties" of the real estate profession.

4. Section 10177, subdivision (b)(1), provides that the Department may deny issuance of a license to an applicant who "[e]ntered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee . . ."

5. Section 490, which is cited by Complainant as grounds to deny Respondent's license in the Statement of Issues, authorizes the Department to discipline real estate licensees. Respondent does not hold a real estate license; therefore, this statute is not relevant to these proceedings.

6. A crime is deemed substantially related if it involves "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." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) A crime is also substantially related if it involves conduct which demonstrates a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Additionally, the Department considers the "nature and gravity of the offense, the number of years that have elapsed since the date of the offense, and the nature and duties of a real estate licensee" when determining whether there is a substantial relationship between the crime and licensed activities. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

7. Here, Respondent was convicted of misdemeanor battery against J.C. Respondent's crime is substantially related to the qualifications, functions, or duties of a real estate salesperson because it involves the performance of an unlawful act with the intent or threat of doing substantial injury to a person. Accordingly, cause exists to deny Respondent's application under sections 480, subdivision (a)(1), and 10177, subdivision (b).

Respondent was convicted of possessing nitrous oxide in violation of Penal Code section 381, subdivision (b), on the same day she was convicted of battery. Respondent's crime of possessing nitrous oxide is not substantially related to the qualifications, functions, or duties of a real estate salesperson because suffering multiple convictions on the same day does not by itself demonstrate a pattern of repeated and willful disregard of law.

8. The Department has adopted criteria to consider when evaluating the rehabilitation of an applicant for a real estate license. (Cal. Code Regs., tit. 10, § 2911.) Relevant criteria include: (1) the time that has elapsed since commission of the crimes; (2) successful completion or early discharge from probation or parole; (3) payment of fines imposed in connection with a criminal conviction; (4) stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction; and (5) change in attitude from that which existed at the time of the commission of the crimes. (*Ibid.*) Change in attitude may be shown by the applicant's testimony; evidence from family members, friends, and others familiar with the applicant's previous conduct and subsequent behavior; evidence from probation or parole officers competent to testify as to the applicant's social adjustments; and an absence of subsequent convictions or misconduct that reflects an inability to conform to societal rules. (See Cal. Code Regs., tit. 10, § 2911, subd. (14).)

9. Where an applicant presents adequate mitigation and rehabilitative evidence, the Department has granted such an application while ensuring sufficient oversight to protect the public. The question presented here is whether the evidence offered by Respondent carries the "heavy burden" of rehabilitation "commensurate with the gravity of [her] crimes." (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

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10. "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.) An applicant need not "perform an artificial act of contrition" to demonstrate rehabilitation. (*Hall v. Comm. of Bar Examiners* (1979) 25 Cal.3d 730, 745.) That is because the purpose of licensing proceedings is not to punish, but rather to protect society from individuals who are not fit to practice within a licensed profession. (*In re Schwartz* (1982) 31 Cal.3d 395, 400–401.)

11. An applicant shows rehabilitation through "sustained conduct over an extended period of time" that he is fit to practice the licensed activity. (*In re Menna* (1995) 11 Cal.4th 975, 990 [quoting *In re Conflenti* (1981) 29 Cal.3d 120, 124–125].) Respondent's probation terminated less than six months ago. Accordingly, insufficient time has elapsed for Respondent to demonstrate complete rehabilitation. In addition, Respondent did not accept responsibility for her actions; she placed the blame for her 2019 conviction on J.C. and her friend. In aggravation, Respondent suffered a misdemeanor conviction in 2014 for possessing brass knuckles.

12. On the other hand, more than three years have elapsed since Respondent engaged in the conduct underlying her conviction. She complied with the terms of her probation and did not suffer any additional convictions. Respondent has a stable family life and her mother testified regarding Respondent's change in attitude. In addition, Respondent obtained an unrestricted cosmetologist license from the Board of Barbering and Cosmetology.

13. Based on the foregoing facts, legal conclusions, and analysis, it would not be against the public health, safety, and welfare to issue Respondent a restricted

salesperson license, with appropriate terms and conditions. Once the license is issued, a three-year probation period will begin.

## **ORDER**

The application of respondent Crystal Guerrero, for an unrestricted real estate salesperson license is denied; provided, however, 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 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 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 three years have elapsed from the date of issuance of the restricted license to respondent.

3. 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.

Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license.

DATE: 12/08/2022



CARMEN D. SNUGGS-SPRAGGINS  
Administrative Law Judge  
Office of Administrative Hearings