FILED

MAR -7 2012

DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Application of NASH MONTANO, JR., Respondent.	))))))	No. H-37072 LA L-2011051158

DECISION AFTER REJECTION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, on July 20, 2011, in Los Angeles. Julie To, Real Estate Counsel, represented Complainant Robin Trujillo ("Complainant"), a Deputy Real Estate Commissioner in the Department of Real Estate ("Department"). Respondent NASH MONTANO, JR., aka Christopher Montano ("Respondent") appeared in pro per.

Oral and documentary evidence was received and the matter was submitted for decision on July 20, 2011. On October 4, 2011, the ALJ submitted a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ along with a copy of said Proposed Decision. Respondent was notified that I would

decide the case upon the record, the transcript of proceedings held on July 20, 2011, and upon any written argument offered by Respondent and Complainant. Complainant submitted further written argument, and Respondent did not.

I have given careful consideration to the record in this case, including the transcript of proceedings of July 20, 2011. I have also considered the argument submitted by Complainant. The following shall constitute the Decision of the Real Estate Commissioner in this proceeding:

FINDINGS OF FACT

1. Complainant filed the Statement of Issues in her official capacity.

2. On or about September 26, 2008, Respondent submitted an application for a real estate salesperson license. In his application, Respondent disclosed the convictions discussed below.

Respondent's Convictions

3. On or about July 7, 2000, in the Second Judicial District Court, County of Bernalillo, State of New Mexico, case number CR 99-03431, Respondent was convicted of and sentenced for one count of homicide by a vehicle (reckless), a third degree felony offense; and one count of reckless driving, a misdemeanor. The sentencing followed a court trial in which Respondent was found guilty of reckless driving, but a mistrial was declared as the jury could not reach agreement on the homicide by vehicle charge. Respondent was re-tried and, in the end, pled guilty to the homicide by vehicle charge.

(a) Respondent was sentenced to a total of six years in prison, of which three years were suspended, for an actual sentence of imprisonment of three years. Execution of the three year sentence was also suspended, and Respondent was placed on probation for a period of three years under terms and conditions including that he undergo an evaluation for alcohol and substance abuse and for counseling, he abstain from using alcohol, and he pay a $100 DNA processing fee.

(b) On September 18, 2002, Respondent was found to be in violation of his

probation for failing to pay the $100 DNA processing fee, and his probation was revoked. He was ordered to serve three years in prison, less 400 days credit. He was released from prison on February 8, 2003. Upon completion of confinement, Respondent received an unsatisfactory discharge from probation.

4. The facts and circumstances leading to Respondent's conviction for homicide by vehicle (reckless) stemmed from an incident on August 18, 1996. Respondent was backing up his car on the driveway of his home when he struck his girlfriend. She died in the hospital eleven days later.

(a) Respondent testified that he was backing his car out of the driveway when it got a flat tire. He stopped to fix the tire, and then he and his girlfriend went to bed. He testified that the next morning his girlfriend told him that he had hit her with the car, and that she had been injured. Respondent said he did not realize he hit her, and could not see her because she was hiding behind his car. Respondent took his girlfriend to the hospital, where she was admitted for treatment of her injuries. She remained in the hospital for over a week, and died 11 days later from complications related to a blood infection.

(b) Respondent submitted a portion of an unsigned letter from his criminal attorney with his original application. In the letter, which was addressed to the criminal court at time of sentencing, the attorney's description of the accident suggests that the victim was actually pinned between two cars in the driveway, and received injuries to her lower back and liver. The letter points out that it was Respondent who took the victim to the hospital.

(c) Respondent's testimony at hearing and the excerpt from his attorney's letter to the sentencing court are somewhat inconsistent, in that Respondent talks about having had a flat tire, and not having been aware that he'd struck his girlfriend with his car until the next day. However, it is also possible that the two versions are consistent: that Respondent did not initially realize his girlfriend had been injured, that the couple went to bed the night of the accident, and that the extent of the victim's injuries was not apparent

until the next day. Respondent was never charged with, much less convicted of, any intentional, malicious or dishonest acts in relation to the vehicular homicide case.[1] Nonetheless, Respondent's inability to clearly describe what happened in the accident reflects how difficult it has been for him to come to terms with his conduct and to unequivocally accept responsibility.

5. Respondent's conviction for homicide with a vehicle in 2000 was for a third degree felony. Both of the crimes of which Respondent was convicted, reckless driving and homicide with a vehicle, are crimes which involve doing an unlawful act with the threat of doing substantial to the person or property of another. In addition, Respondent was on probation for two 1994 convictions (set forth below) at the time of the accident. He sustained an additional conviction while on probation in 2002 (set forth below). Respondent's convictions for vehicular homicide and reckless driving therefore reflect an ongoing pattern of unlawful behavior and failure to comply with court supervision. These convictions are substantially related to the qualifications, functions and duties of a real estate licensee.

6. On March 21, 1994, in the County of Los Angeles, State of California, in case number 94M00648, Respondent was convicted on his plea of nolo contendere to violating Penal Code Section 243.4, subdivision (d)(1)(sexual battery), a misdemeanor. Respondent was sentenced to probation for 36 months.[2] The evidence, which was limited to a Department of Justice Arrest Disposition Report, was insufficient to establish the facts underlying this conviction. At hearing, Respondent denied that he committed the crime of which he was convicted. He testified that the circumstances leading to his conviction were that he was living with his girlfriend at the time, and her daughters made up a story to break up their relationship. However, Respondent was convicted of the crime, and therefore is

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[1] No charges or evidence established that Respondent was under the influence of alcohol or substances at the time of the accident.

[2] There is no evidence that Respondent was required to register as a sex offender or to participate in any courses or therapy.

considered for all legal purposes to have committed it. This conviction has not been expunged.

7. The crime of sexual battery involves sexually related conduct affecting a person who is an observer or non-consenting participant. Respondent's conviction is therefore substantially related to the qualifications, functions and duties of a real estate licensee.

8. On March 10, 1994, in the County of Los Angeles, State of California, in case number 94S00631, Respondent was convicted on his plea of nolo contendere to violating Penal Code Section 12025, subdivision (a)(1) (carrying a concealed weapon), a misdemeanor. Respondent was sentenced to probation for 36 months. The evidence was insufficient to establish the facts leading to this conviction. Respondent testified that the incident was close in time to the incident leading to his sexual battery conviction. He was pulled over in his vehicle and found with a gun on his person.

9. In addition to the three convictions set forth above, Respondent disclosed and provided documentation of the following additional conviction:

(a) On or about December 4, 2002, in the Bernalillo County Metropolitan Court, State of New Mexico, case no. DV260202, Respondent was convicted of committing aggravated battery on a household member, a crime that, by its circumstances, is substantially related to the qualifications, functions in duties of a real estate licensee. Respondent was sentenced to 364 days in jail, 209 of which were suspended and 155 days credit for time served. Respondent was on unsupervised probation, which ended May 25, 2003.

(b) In the conviction detail report submitted as part of Respondent's application process, Respondent explained that he and his wife had a loud domestic disturbance, which caused the neighbors to call the police. He wrote that the state pressed charges even though "the other party" (his wife) did not want to press charges. Respondent was on probation for the vehicular homicide charges at the time. Probation was revoked for

failing to pay a required fee. (See Finding of Fact 3 (b) above.)[3]

10. Respondent has not suffered any further convictions since 2003, when he was released from prison and discharged from probation.

11. During his incarceration in New Mexico, Respondent participated in counseling and substance abuse programs. Respondent testified that he did not have a problem with alcohol or substance abuse at the time of the accident leading to his conviction in 2000. However, he participated in the substance abuse and counseling programs in order to better himself, and because participation in the programs would allow him to take other classes, such as computer training classes. He participated in several computer training classes, and worked in computer and information technologies prior and subsequent to his conviction.

12. Since his convictions, Respondent has been consistently involved in taking courses and training for his economic improvement. In prison, he received certification in several computer programs, and has worked as an information technologies assistant in several businesses. He was certified as a forklift operator when needed for a job he was doing. More recently, Respondent has taken courses in real estate and passed the real estate exam. He says that he participates in Toastmasters, where he is developing his social and business skills.

13. Respondent testified that he does not drink or use drugs.

14. Respondent is 41 years old. He has a stable family life. His wife, Stephanie Montano, testified at hearing on his behalf. She met Respondent in 1997 and they are raising a son together who was 11 years old as of the time of hearing. Ms. Montano was involved with Respondent in his decision to plead guilty to the vehicular homicide charges, and has observed him to remain firm in his resolve to put that troubled time in his life

[3] The case was disclosed in Respondent's application. His explanation and documentation of the conviction was entered into the record as part of the Interview Information packet, Exhibit 6. This conviction was not included in the Accusation, and Respondent was not asked about it at hearing.

behind him. She finds Respondent to be a trustworthy, responsible person, who goes the extra step to help others. He spends a lot of time everyday with their son, who has received numerous certificates of recognition and was on the honor roll at his elementary school.

15. Respondent states that he wants a real estate salesperson license because he feels that the license would be a tool to allow him to continue to build a stable and secure life for his family. He worked for a year in a real estate office and provided a letter of support from his employer there, James Franklin Jones. Mr. Jones wrote that Respondent was hard working and friendly, has the ability to build rapport and trust with others quickly, and was well liked in the office. Respondent testified that the office went out of business in the recent economic downturn. He currently works for an insurance broker doing marketing.

16. Respondent fully disclosed his convictions and other matters in his application and the background investigation, and took the time and effort to obtain his records on-line and from courts. However, as Complainant points out in written arguments after rejection, Respondent's written explanations and testimony at hearing comes across as denying any responsibility for his conduct leading to his various convictions. For example, Respondent attributes his 1994 conviction for sexual battery to lies told by his then girlfriend's daughters. Respondent's description of the events leading to the accidental death of another girlfriend is sketchy. He tends to focus on the possibility that the actual cause of her death may have been malpractice, and not on the injuries she sustained when he unwittingly struck her with his car. Finally, in written explanations offered during the course of his background investigation, Respondent attributes his most recent conviction for aggravated battery sustained in 2002 to an overzealous prosecutor, and does not offer any description, much less apology, for yet another conviction relating to harm or threat of harm to a domestic partner.

17. It has been more than eleven years since Respondent's conviction for reckless driving and vehicular homicide. It has been nine years since the 2002 conviction

for aggravated battery in 2002, which coincided with another probation violation leading to Respondent's serving additional prison time. Respondent has been free from the constraints of court supervision for nine years, and has had no other trouble with the law. His wife appeared at hearing and, subject to cross-examination, testified to the stability of their family life, as well as the responsibility and trustworthiness Respondent has demonstrated in his work and community, in their relationship, and as a father.

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 480 (a) and 10177 (b), due to his felony conviction and conviction for crimes that are substantially related to the qualifications, functions and duties of areal estate licensee, based on Factual Findings 3 through 8 above.

2. The criminal acts underlying each of Respondent's convictions are substantially related to the qualifications, functions and duties of a real estate licensee pursuant to Title 10, Chapter 6 of the California Code of Regulations ("Regulations"), Regulation 2910(a)(8): sexual battery, vehicular homicide due to reckless driving, and carrying a concealed weapon in a vehicle, all entail doing unlawful acts with the intent or threat of doing substantial injury to the person or property of another. In addition, Respondent's recidivism reflects a pattern of repeated and willful disregard for the law, which conduct is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to Regulation 2910(a) (10).

3. Respondent's entry of guilty pleas, and other findings of guilt by the courts in the cases in New Mexico and California referred to above, are conclusive evidence of guilt upon which the ALJ and the Commissioner must rely.

> "Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of the offense charged. To hold otherwise would impose upon administrative boards extensive, time-consuming hearing aimed at relitigating criminal charges which had culminated in final judgments of conviction." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Respondent's testimony about the facts and circumstances leading to his convictions is not considered for purposes of rehashing guilt. Rather, Respondent's attitude about his criminal history is relevant to determining his rehabilitation.

Criteria for Rehabilitation

4. As cause exists to deny Respondent's application, Respondent bears the burden of establishing rehabilitation, and that he possesses the character traits of honesty and integrity necessary to be granted a real estate license. *(Martin v. Alcoholic Beverage Control Appeals Bd.* (1950) 52 Cal.2d 259, 264-265; Business and Professions Code Section 10152) Rehabilitation as a matter of law does not exist. Rehabilitation is a component of discipline, which is vested in the discretion of the Department subject only to "manifest abuse...." (See *Nightengale v. State Personnel Board* (1972) 2 C.3d 507; *Windham v. Board of Quality Assurance* (1980) 104 Cal.App.3d 472, 473, quoting *Cadilla v. Board of Medical* (1972) 26 Cal.App.3d 961, 968.)

5. The Department has established criteria as guidelines to measure the extent of an applicant's rehabilitation following a substantially related criminal conviction. These criteria are set forth in Regulation 2911.

(a) Applied to the facts of this case, Respondent has met most of the criteria:

More than nine years have passed since his most recent conviction. (Regulation 2911(a)) Although he was found to have violated his probation, and was therefore required to serve actual prison time, nine years have passed since he was found in violation of probation. Respondent was released from prison and the supervision of the courts more than eight years ago, and has not suffered any further convictions or documented run-ins with the law. (Regulation 2911(e)) Respondent testified that he abstains from the use of controlled substances or alcohol, and no evidence was presented to contradict that testimony.[4] (Regulation 2911(f))

[4] There is no evidence that alcohol or substance abuse was involved in the incidents leading to his convictions. Respondent voluntarily underwent counseling in prison.

Respondent's family life has been stable since his release from prison, and he actively fulfills parental and familial responsibilities daily, which have provided him with incentive to lead a lawful and productive life. Evidence of this at hearing was established not just through Respondent's own testimony, but through the testimony of his wife, and documentation from his son's school. (Regulation 2911(h)) From the time he was in prison, and continuing to the present, Respondent has consistently sought out and completed education and vocational training courses for economic self-improvement. Respondent provided numerous documents corroborating his testimony about this. (Regulation 2911(i)) Respondent's convictions were not related to his business practices nor to his debts. (Regulation 2911(j) and (k)) Respondent has been involved in his son's school activities and in Toastmasters, a professional organization. (Regulation 2911 (l)) Respondent has been in a new relationship and married since the time of the accident leading to his girlfriend's death in 1996. He has had gainful employment and been involved in social organizations. (Regulation 2911(m))

(b) In some ways, Respondent's attitude has changed from that which existed in his earlier life, when he suffered repeated run-ins with the law. Respondent has not suffered any subsequent misdemeanor or felony convictions since 2003. His wife testified that he has successfully put aside the troubles that plagued him in his younger life, and demonstrates daily his commitment to being responsible, law abiding and helpful to others. (Regulation 2911(n)) However, Respondent's testimony and written responses to the Department's requests for information about his criminal past reflects an unwillingness to accept any responsibility for his misconduct. While he fully disclosed information requested, Respondent comes across as blaming others for his plight, without clearly and unequivocally admitting his own part. Respondent's conduct was serious enough to result in the death of a loved one, and the opportunity to have a probationary, suspended sentence revoked, resulting in his serving actual time in prison.

6. The Real Estate Law and disciplinary procedures are designed to protect the public and to achieve the maximum protection for the purchasers of real property and those

dealing with real estate licensees. The Legislature intended to ensure that real estate licensees will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. (*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.) Real estate licensees act as fiduciaries in their dealings with the public. A real estate license by its very nature gives the licensee unfettered access to the homes and property of others. Clients rely on the licensee's integrity in representing them, disclosing important facts about the real property or businesses, and holding money and other personal property in a fiduciary capacity. The consequences of careless or impulsive misconduct in driving or in personal interactions can be dire.

7. Respondent is to be commended for the steps he has taken to rehabilitate himself, to improve his economic circumstances, and to provide stability to his family. However, in minimizing his part in his legal run-ins earlier in his life, Respondent does not accept full responsibility for his own behavior. The repeated nature of his misconduct and his inability to comply with probationary terms in the past, is of particular concern. In failing to address these issues, Respondent does not demonstrate a sense of perspective that reflects adequate rehabilitation. We cannot be assured that were he to encounter difficulties and frustrations in real estate transactions, Respondent would behave in a responsible manner.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Respondent NASH MONTANO, JR. for a real estate salesperson license is denied.

This Decision shall become effective at 12 o'clock noon on MAR 27 2012.

IT IS SO ORDERED 3/6/2012.

BARBARA J. BIGBY
Acting Real Estate Commissioner

By WAYNE S. BELL
Chief Counsel

FILED

NOV 10 2011

DEPARTMENT OF REAL ESTATE
BY: K. Niederhold

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of NASH MONTANO, JR., Respondent.	No. H-37072 LA OAH No. L-2011051158

NOTICE

TO: NASH MONTANO, JR., Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated October 4, 2011, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated October 4, 2011, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 20, 2011, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 20, 2011, at the

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Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED: 11/8/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:	Case No. H-37072 LA
NASH MONTANO, JR.,	OAH No. 2011051158
Respondent.	

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, on July 20, 2011, in Los Angeles.

Julie To, Staff Counsel, represented Complainant.

Nash Montano, Jr. was present and represented himself.

Oral and documentary evidence was received, and argument was heard. The matter was submitted for decision on July 20, 2011.

FACTUAL FINDINGS

1. Complainant Robin Trujillo filed the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California.

2. On September 26, 2008, the Department received a Salesperson License Application filed by Nash Montano, Jr. (Respondent) for issuance of a real estate salesperson license.[1]

Respondent's Convictions

3. (A) A criminal Indictment was filed against Respondent in the Second Judicial District Court, County of Bernalillo, State of New Mexico, case number CR 99-03431. Count 1 of the Indictment charged Respondent with violating New Mexico Statutes Annotated (NMSA) section 66-8-101 (homicide by vehicle, reckless), a third degree felony

[1] During hearing, Respondent explained that Christopher is his middle name and baptismal name. Hence, some documents identify Respondent by the name Chris Montano or Christopher Montano.

offense. Count 2 of the Indictment charged Respondent with violating NMSA section 66-8-113 (reckless driving), a misdemeanor.

(B) On November 4, 1999, Respondent was convicted pursuant to a jury verdict of guilty on Count 2 of the Indictment. The jury was unable to reach a verdict on Count 1 and a mistrial was declared as to that count. Subsequently, on May 17, 2000, Respondent was convicted pursuant to his plea of guilty as to Count 1. On or about July 10, 2000, Respondent was sentenced to a total of six years in prison, of which three years was suspended, for an actual sentence of imprisonment of three years. Execution of the three year sentence was suspended and Respondent was placed on probation for a period of three years under terms and conditions including that he undergo an evaluation for alcohol and substance abuse and for counseling, he abstain from using alcohol, and he pay a $100 DNA processing fee. Respondent violated his probation by failing to pay the $100 DNA processing fee. Respondent was ordered to prison to serve the three year sentence, less 400 days credit for the period he was on probation, for a total confinement of 695 days. Respondent was released from prison on February 8, 2003.

(C) The facts and circumstances underlying the conviction are: On August 18, 1996, Respondent was backing up his car on the driveway of his home. Respondent's girlfriend was hiding behind the car, unknown to him. As Respondent's car backed out, the girlfriend was pinned between Respondent's car and another car on the driveway. Respondent took the girlfriend to the hospital. The girlfriend was hospitalized for 11 days. She died in the hospital from a blood infection.

4. On March 21, 1994, in the County of Los Angeles, case number 94M00648, Respondent was convicted on his plea of nolo contendere to violating Penal Code section 243.4, subdivision (d)(1) (sexual battery), a misdemeanor. Respondent was sentenced to probation for 36 months. The evidence was insufficient to establish the facts of this conviction. According to Respondent, he was living with his girlfriend and her two daughters. The daughters conjured up a story to break up his relationship with their mother.

5. On March 10, 1994, in the County of Los Angeles, case number 94S00631, Respondent was convicted on his plea of nolo contendere to violating Penal Code section 12025, subdivision (a)(1) (carrying a concealed weapon), a misdemeanor. Respondent was sentenced to probation for 36 months. The evidence was insufficient to establish the facts of this conviction. According to Respondent, he was homeless and was found with a gun on his person.

Rehabilitation

6. Respondent is 41-years-old. He is presently employed part-time by an insurance broker to do marketing.

7. Respondent completed the parole from his New Mexico conviction. Respondent testified that he entered into the plea agreement in order to spare his family the

stress and expense of a retrial, which the New Mexico prosecutors indicated they were planning to do. Respondent wanted move on with his life. He feels he was coerced by the circumstances to enter into the plea agreement.

8. During his incarceration in New Mexico, Respondent voluntarily participated in counseling and substance abuse programs. He also participated in several computer training classes. Respondent participated in the substance abuse and counseling programs in order to better himself and because participation in the programs would allow him to take other classes, such as computer training classes.

9. Respondent has a stable family life. Respondent's wife is an officer manager for a diving company. They have an 11- year-old son who is an honor roll student at his school. Respondent is proud of his son's academic achievement. Respondent's wife testified that Respondent is a great father and helps their son with his homework. She feels that Respondent has a positive attitude and works hard to better himself and put his past behind him.

10. Respondent wants a real estate salesperson license because it would be something that he could be proud of and his family could be proud of him. He feels a license is a tool that would allow him to build a stable and secure life for his family. As a real estate licensee, Respondent wants to help customers get the best loans possible, inform them of their options, and protect them from predatory lenders. Respondent has completed courses in real estate principles, real estate practice, and property management.

11. Respondent presented a letter by James F. Jones, Jr., owner and president of Casa Capital, Inc., a broker's office. Respondent worked at Casa Capital as a general officer manager and as an information technology (IT) person. In his letter, Mr. Jones commended Respondent for "his hard working nature and his friendly demeanor," and that he was "great with people and has the ability to build rapport and trust with others quickly," and was "well liked in the office and a valuable addition to our team."

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's application for a real estate salesperson license under Business and Professions Code sections 10177, subdivision (b), 475, subdivision (a)(2), and 480, subdivision (a)(1), in that Respondent was convicted of a felony and crimes substantially related to the qualifications, functions, and duties of a real estate licensee, based on Factual Findings 3, 4, 5.

2. Under the Department's criteria of substantial relationship, which are set forth at California Code of Regulations, title 10, section 2910, Respondent's criminal acts are deemed to be substantially related because they involved the doing of unlawful act with the intent of or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

3. Respondent's entry of the guilty plea to the charge of homicide by vehicle, reckless, in the New Mexico case is conclusive evidence of guilt upon which the Administrative Law Judge must rely. "Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of the offense charged. To hold otherwise would impose upon administrative boards extensive, time-consuming hearing aimed at relitigating criminal charges which had culminated in final judgments of conviction." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

4. The objective of license disciplinary proceedings is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensees. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to real estate licenses are designed to protect the public from any potential risk of harm. (*Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.) The law looks with favor upon those who have been properly reformed. (*Reisner v. State Bar* (1967) 67 Cal.2d 799, 811.) To that end, Respondent bears the burden to establish his reformation or rehabilitation against a history of criminal conduct. (See *Martin v. Alcoholic Bev. App. Bd.* (1950) 52 Cal.2d 259, 265.)

5. The Department has developed criteria for the purpose of evaluating the rehabilitation of an applicant for a license, which are set forth at California Code of Regulations, title 10, section 2911. Applying the criteria, Respondent's evidence established he is sufficiently rehabilitated for issuance of a restricted salesperson license. More than two years have passed since Respondent's convictions. Respondent successfully completed the probation and parole for his New Mexico conviction. Respondent has a stable family life and is fulfilling his parental and familial responsibilities. He has completed educational and vocational training courses for economic self-improvement. Most importantly, Respondent demonstrated a change in attitude from that which existed at the time of his criminal acts. At hearing, Respondent was credible in his testimony, both in terms of his demeanor, which was open and straightforward, and in terms of the consistency of his statements. He appeared sincere and motivated to keep his life on the right track. His family appears to be strong motivation to keep his life on the right track.

6. Respondent established sufficient rehabilitation to warrant the issuance of a restricted salesperson license. The Order below will protect the public from any potential risk of harm.

ORDER

Not adopted

Respondent Nash Montano, Jr.'s application for a 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 two 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.

4. 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 187000, Sacramento, CA 95818-7000. 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 and shall be grounds for the suspension or revocation of that license.

DATED: October 4, 2011

Erlinda G. Shrenger

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

Not adopted

DIANE LEE, Counsel (SBN 247222)
Department of Real Estate
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Los Angeles, California 90013

Telephone: (213) 576-6982
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FILED

FEB 15 2011

DEPARTMENT OF REAL ESTATE
BY: R Niederholt

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of NASH MONTANO, JR., Respondent.	No. H-37072 LA STATEMENT OF ISSUES

The Complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity, for Statement of Issues against NASH MONTANO, JR. aka Christopher Nash Montano ("Respondent") alleges as follows:

1.

On or about September 26, 2008, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license.

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(CRIMINAL CONVICTIONS)

2.

On or about July 10, 2000, in the Second Judicial District Court of the State of New Mexico, County of Bernalillo, Case No. CR-99-03431, Respondent was convicted of violating New Mexico Statutes Annotated section 66-8-101 (homicide by vehicle (reckless)), a felony, and New Mexico Statutes Annotated section 66-8-113 (reckless driving), a misdemeanor. Said crimes bear a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

3.

On or about March 21, 1994, in the County of Los Angeles, Case No. 94M00648, Respondent was convicted of violating California Penal Code section 243.4(d)(1) (sexual battery), a misdemeanor. Said crime bears a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

4.

On or about March 10, 1994, in the County of Los Angeles, Case No. 94S00631, Respondent was convicted of violating California Penal Code section 12025(a)(1) (carrying a concealed weapon within vehicle), a misdemeanor. Said crime bears a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

5.

The crimes of which Respondent was convicted as alleged herein constitute cause for denial of Respondent's application for a real estate license under California Business and Professions Code Sections 475(a)(2), 480(a), and 10177(b).

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the California Government Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, NASH MONTANO, JR., and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California: February 9, 2011.

Robin Trujillo
Deputy Real Estate Commissioner

cc: NASH MONTANO, JR.
Casa Capital, Inc.
Robin Trujillo
Sacto