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FILED

FEB 16 2006.

DEPARTMENT OF REAL ESTATE

By *L. Frost*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
JESSE AARON CROUCH,) No. H-1830 FR
Respondent.) OAH No. N-2005100821

STIPULATION AND AGREEMENT

AND

DECISION AFTER REJECTION

The California Department of Real Estate (Complainant) filed a Statement of Issues against JESSE AARON COUCH (sometimes referred to as "Respondent") on September 26, 2005. On November 21, 2005, a hearing was held and evidence was received, the record was closed, and the matter was submitted.

On December 21, 2005, the Proposed Decision of the Administrative Law Judge was issued, and determined, among other things, that Respondent's application of a real estate salesperson license should be denied with the right to a

1 restricted salesperson license on various terms, conditions and
2 restrictions.

3 On January 17, 2006, the Commissioner rejected the
4 Proposed Decision of December 21, 2005.

5 The parties wish to settle this matter without further
6 proceedings.

7 IT IS HEREBY STIPULATED by and between Respondent and
8 the Complainant, acting by and through John Van Driel, Counsel
9 for the Department of Real Estate, as follows for the purpose of
10 settling and disposing of the Statement of Issues filed by
11 Complainant.

12 1. It is understood by the parties that the Real
13 Estate Commissioner may adopt the Stipulation and Agreement as
14 his decision in this matter, thereby imposing the penalty and
15 sanctions on Respondent's application for a real estate license
16 as set forth in the below "Decision and Order". In the event
17 the Commissioner in his discretion does not adopt the
18 Stipulation and Settlement, the Stipulation shall be void and of
19 no effect; the Commissioner will review the transcript and the
20 evidence in the case, and will issue his Decision after
21 Rejection as his Decision in this matter.

22 2. By reason of the foregoing and solely for the
23 purpose of settlement of the Statement of Issues without further
24 administrative proceedings, it is stipulated and agreed that the
25 following shall be adopted as the Commissioner's Decision:

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FACTUAL FINDINGS

1. Respondent Jesse Aaron Crouch filed his application for a real estate salesperson license with the Department of Real Estate on October 22, 2004.

2. Complainant John Sweeney filed the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California, on September 26, 2005.

3. On September 29, 2005, respondent filed a notice of defense on application and a request for hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing on November 21, 2005, pursuant to a notice of hearing, before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

Respondent's Convictions

4. On January 26, 1994, respondent was convicted in the Tulare County Municipal Court of violating Penal Code sections 242 (battery) and 594, subdivision (A) (vandalism), misdemeanors, based upon a plea of guilty. The conduct underlying these convictions occurred on July 2, 1993, against the person and property of his girlfriend (and current wife), Dallas Olvera. For these convictions, respondent was given a conditional sentence of twenty four months, and fifteen days of county jail time, suspended. Respondent was ordered to complete forty hours of volunteer work.

1 5. On June 23, 1997, respondent was convicted in Fresno
2 Municipal Court of a misdemeanor violation of Penal Code
3 section 273.5 (inflicting corporal injury on co-habitant or
4 spouse), based upon his plea of *nolo contendere*. The conduct
5 underlying this conviction occurred on April 25, 1997, when
6 respondent was alleged to have kicked Dallas Olvera on her
7 left cheek and face, and to have choked her with both hands.
8 For this conviction, respondent was sentenced to three years
9 of formal probation, 360 days in jail custody which was
10 stayed, and a fine of \$1,000.

11 6. On May 28, 1997, respondent was convicted in the
12 Tulare County Superior Court of a violation of Penal Code
13 section 242 (battery), based upon a plea of guilty.
14 Respondent was ordered to participate in a six-month anger
15 management program and to pay a fine of \$250.00.¹

16 7. In addition to his convictions described above, on or
17 about August 22, 1996, respondent was charged with possession
18 of a controlled substance in violation of Health and Safety
19 Code section 11377. Thereafter, respondent was determined to
20 be eligible for diversion and successfully completed all
21 requirements of Penal Code section 1000 program as ordered.
22 The court documents do not specifically set forth the terms of
23 respondent's sentence pertaining to this conviction. Respondent
24 testified that he was ordered to participate in the anger-
25 management course due to this conviction. On February 13, 1997,

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1 the case was dismissed upon completion of the conditional
2 sentence.

3 8. Respondent's convictions for spousal abuse and
4 battery against the woman he ultimately married and with whom
5 he had a child at the time were acts of violence against an
6 individual with whom he had a special relationship.

7 *Evidence Regarding Rehabilitation*

8 9. Respondent is currently 33 years old. His
9 convictions occurred during a four-year period when he was
10 between the ages of 21 and 25 years old. It has been
11 approximately eight years since his last conviction.
12 Respondent has fully completed all the sentencing requirements
13 imposed by the courts for his convictions. Respondent fully
14 acknowledges his convictions, as well as the pain he caused
15 his wife and parents by the behavior that led to these
16 convictions.

17 Respondent spent his early years in foster care, and was
18 adopted at age six. He began drinking heavily at age 19, and
19 eventually used marijuana, cocaine, and methamphetamines.
20 Throughout the period of his convictions, respondent used
21 alcohol and drugs. During this time, he found his biological
22 family. Respondent believes that his early life experiences
23 caused him to have issues relating to abandonment and low
24 self-esteem. He sought to control these feelings by using
25 drugs and alcohol, and by pushing away those who loved him.
26 Respondent acknowledged he was a "mean individual" during this
27 period in his life. Respondent's life circumstances were not

1 an excuse for his behavior, but were an explanation in his own
2 mind for why he behaved as he did.

3 10. Respondent testified that he completed several
4 courses of court-ordered therapy from 1993 through 1997,
5 including the group anger management course after his 1997
6 battery conviction. At the time respondent participated in
7 this therapy, he was not really prepared to deal with his
8 issues.

9 In 1997, however, respondent sought out and participated
10 in individual counseling with a therapist in Visalia. This
11 counseling was not court-ordered. By this time, respondent's
12 daughter, Danielle, was two years old. Respondent began to
13 think about his future with his wife and child, and began to
14 realize that he would not want his daughter to be involved
15 with someone like himself. By the end of 1997, respondent had
16 stopped drinking and using drugs. Respondent participated in
17 his individual counseling over a one-year period, through the
18 end of 1998. In addition, respondent became involved in both
19 the Narcotics Anonymous (NA) and Alcoholics Anonymous (AA)
20 programs. Respondent also returned to his church, and sought
21 out family members whom he believed had "peace of mind" to be
22 his mentors. Respondent still attends NA and AA, but not on a
23 regular basis. He now drinks socially.

24 11. Respondent and Dallas Olvera, the victim of the 1994
25 and 1997 convictions, are now married and have three children,
26 ten, six and two years old. Ms. (Olvera) Crouch testified
27 that she has seen a great change in her husband's behavior and

1 ability to deal appropriately with his anger since these
2 convictions. When she and respondent first became involved
3 and parented their now ten-year-old daughter Danielle,
4 respondent was insecure and jealous. Currently, Ms. Couch and
5 respondent still have arguments, but she no longer feels
6 physically threatened by him. When respondent becomes angry,
7 he will leave the room and return to the discussion at a later
8 time. Respondent has also become more adept at talking about
9 his feelings. Ms. Couch testified persuasively that, if
10 respondent had not "straightened himself out," they would not
11 be together today. While respondent may have a drink on
12 social occasions, he no longer drinks to control his feelings.

13 12 The change in respondent's life and attitude, over
14 the past eight years, was also substantiated by the testimony
15 of his adoptive mother, Veronica Crouch, her sister Patricia
16 Bomben, and respondent's uncle, Leonard Ramirez. Mrs. Crouch
17 testified that respondent was affected by feelings of not
18 belonging due to his adoption. She now sees respondent as a
19 warm father and husband who has outgrown his abusive past.
20 Mr. Ramirez testified that respondent's concern and
21 suggestions helped galvanize the family into providing more
22 support to younger men in the family who needed treatment.

23 13. Respondent has been a barber for approximately seven
24 years. After obtaining his barber's training in Fresno, he
25 moved back to his home in Selma and worked at his trade.
26 Respondent is licensed by the Department of Consumer Affairs.
27 Approximately four years ago, respondent opened his own

1 barbershop, the Selma Barber and Beauty Shop, where he
2 supervises four independent contractors. He is a member of
3 the Selma Chamber of Commerce.

4 14. Respondent goes to church regularly and helps in
5 church functions by participating in fundraisers, and by
6 donating his time and haircuts. In addition, respondent
7 volunteers in the community as a basketball coach for
8 youngsters. Mr. Ramirez, who is a public school teacher,
9 testified that respondent has taken off work without pay to
10 help him chaperone his special education students on a field
11 trip.

12 15. Respondent has several brokers who are willing to
13 hire him as a real estate salesperson with a restricted
14 license. One of these brokers, Karnail Sindher, of KSP Real
15 Estate in Selma, wrote a letter of support in which he
16 indicated that he has known respondent for four years, is
17 aware of his past, and is willing to have him work as a real
18 estate salesperson under his supervision.

19 16. In support of his application, respondent provided
20 several letters of recommendation.

- 21 • Respondent's testimony that he volunteers as a coach for
22 junior varsity (J.V.) high school boys basketball was
23 supported by letters from Selma High boys basketball
24 coach Joe Maehink, and J.V. basketball coach Gabriel
25 Tarango. Both individuals noted that respondent is a
26 good role model with strong leadership and mentoring
27 skills.

- 1 • Respondent's active participation as a parent was
2 described in a letter by Dominique Herron, vice president
3 and executive director of "Opportunity Through Education
4 Preschool Center" in Selma. Ms. Herron wrote that
5 respondent has been an active member of the Center's
6 parent advisory council where he has volunteered his time
7 to the program and has helped in the classroom.
- 8 • Respondent's reputation as a good businessman and as a
9 member of Selma's Chamber of Commerce was supported by
10 letters from Selma Unified School District superintendent
11 Dr. Anthony Monreal, and by business owner / Chamber of
12 Commerce board member David N. Areval.
- 13 • Respondent's involvement in school and community service,
14 via both fundraising and volunteer activities, was
15 supported in letters submitted by Mr. Areval and by Brian
16 Curwick, GATE coordinator at Selma Unified School
17 District.

18 17. Respondent's most recent conviction occurred in July
19 of 1997, based upon conduct in April 1997. In the intervening
20 eight years, respondent's life has improved in significant
21 ways. The weight of the evidence demonstrates that respondent
22 has taken significant steps toward rehabilitation of the
23 behavior which led to his convictions.

24 LEGAL CONCLUSIONS

25 *Applicable Law*

26 1. Complainant asserts that respondent's convictions
27 outlined in Factual Findings 4 through 6 establish cause for

1 the denial of his application for a real estate license under
2 sections 480 subdivision (a) and 10177, subdivision (b), of
3 the California Business and Professions Code. As outlined in
4 Factual Finding 7, complainant further asserts, as a matter in
5 aggravation, that respondent was charged with possession of a
6 controlled substance in violation of Health and Safety Code
7 section 11377 on or about August 22, 1996, and that he
8 successfully completed a diversion program.

9 2. Section 480, subdivision (a) of the Business and
10 Professions Code provides in pertinent part as follows:

11 (a) A board may deny a license regulated by this code on
12 the grounds that the applicant has one of the following:

13 (1) Been convicted of a crime. A conviction within the
14 meaning of this section means a plea or verdict of guilty
15 or a conviction following a plea of nolo contendere.

16 (2) Done any act involving dishonesty, fraud or deceit
17 with the intent to substantially benefit himself or
18 another, or substantially injure another; or

19 (3) Done any act which if done by a licensee of the
20 business or profession in question, would be grounds for
21 suspension or revocation of licensee.

22 The board may deny a license pursuant to this subdivision
23 only if the crime or act is substantially related to the
24 qualifications, functions or duties of the business or
25 profession for which application is made.

26 3. Section 10177, subdivision (b), of the Business and
27 Professions Code provides in pertinent part as follows:

1
2 The commissioner may suspend or revoke the license of a
3 real estate licensee, or may deny the issuance of a
4 license to an applicant, who has done any of the
5 following:

6 (b) Entered a plea of guilty or nolo contendere to, or
7 been found guilty of, or been convicted of, a felony or a
8 crime involving moral turpitude.

9 *Moral Turpitude and Substantial Relationship*

10 4. A criminal act involves moral turpitude if it
11 involves a serious breach of a duty owed to another or to
12 society. (*In re Stuart K. Lesansky* (2001) 25 Cal. 4th 11, 16
13 [citing *In re Johnson* (1992) 1 Cal.4th 689, 699; *In re Calaway*
14 (1977) 20 Cal.3d 165, 169-170; *In re Higbie* (1972) 6 Cal.3d
15 562, 569-570].) Acts of moral turpitude are acts which
16 involve "bad character" and "readiness to do evil." (*People*
17 *v. Zataray* (1985) 173 Cal. App.3d 390, 400.)

18 Inflicting corporal injury resulting in a traumatic
19 condition on a spouse or cohabitant under Penal Code section
20 273.5 has been determined to be a crime that involves moral
21 turpitude. *People v. Rodriguez* (1992) 5 Cal. App. 4th 1398,
22 1399 [upholding use of Penal Code section 273.5 conviction for
23 impeachment]. In addition, respondent's 1994 and 1997 battery
24 convictions involved acts of violence against a person with
25 whom he was in a special relationship; i.e., the woman who is
26 now his wife and who, at the time, was the mother of his
27 child. As a consequence, respondent's June 23, 1997,

1 conviction under Penal Code section 273, and his January 26,
2 1994, and May 28, 1997, convictions for violating Penal Code
3 section 242, were convictions for crimes involving acts of
4 moral turpitude.

5 5. The regulations of the Department of Real Estate
6 establish criteria for substantial relationship when
7 considering whether a license should be denied on the basis of
8 the conviction of a crime, or of any act described by section
9 480, subdivision (a)(2), or 480, subdivision (a)(3) of the
10 Business and Professions Code. Specifically, California Code
11 of Regulations, title 10, Section 2910 provides, in pertinent
12 part, that, a crime or act "shall be deemed to be
13 substantially related to the qualifications, functions or
14 duties of a licensee of the Department within the meaning of
15 Sections 480 and 490 of the Code if it involves:

16 (8) Doing of any unlawful act . . . with the intent
17 or threat of doing substantial injury to the person
18 or property of another.

19 As indicated in Factual Findings 4, 5, 6, and 8 above,
20 respondent's convictions for spousal abuse and battery are
21 substantially related to the qualifications, functions or
22 duties of a licensee.

23 *Evidence Regarding Rehabilitation*

24 6. In considering whether or not to deny the issuance of
25 a license as a consequence of a crime committed by the
26 applicant, the following criteria have been identified in the
27 regulations of the Real Estate Commissioner, California Code

1 of Regulations, title 10, and are to be used for the purpose
2 of evaluating the applicant's rehabilitation (California Code
3 of Regulations, title 10, in section 2911), as follows:

4 (a) The passage of not less than two years from the
5 most recent criminal conviction or act of the applicant that
6 is a basis to deny the departmental action sought....

7 (b) Restitution to any person who has suffered monetary
8 losses through "substantially related" acts or omissions of
9 the applicant.

10 (c) Expungement of criminal convictions resulting from
11 immoral or antisocial acts.

12 (d) Expungement or discontinuance of a requirement of
13 registration pursuant to the provisions of Section 290 of the
14 Penal Code.

15 (e) Successful completion or early discharge from
16 probation or parole.

17 (f) Abstinence from the use of controlled substances or
18 alcohol for not less than two years if the conduct which is
19 the basis to deny the departmental action sought is
20 attributable in part to the use of controlled substances or
21 alcohol.

22 (g) Payment of the fine or other monetary penalty imposed
23 in connection with a criminal conviction or quasi-criminal
24 judgment.

25 (h) Stability of family life and fulfillment of parental
26 and familial responsibilities subsequent to the conviction or
27

1 conduct that is the basis for denial of the agency action
2 sought.

3 (i) Completion of, or sustained enrollment in, formal
4 education or vocational training courses for economic self-
5 improvement.

6 (j) Discharge of, or bona fide efforts toward
7 discharging, adjudicated debts or monetary obligations to
8 others.

9 (k) Correction of business practices resulting in injury
10 to others or with potential to cause such injury.

11 (l) Significant or conscientious involvement in
12 community, church or privately-sponsored programs designed to
13 provide social benefits or to ameliorate social problems.

14 (m) New and different social and business relationships
15 from those which existed at the time of the conduct that is
16 the basis for the denial of the departmental action sought.

17 (n) Change in attitude from that which existed at the
18 time of the conduct in question as evidenced by any or all of
19 the following:

20 (1) Testimony of applicant.

21 (2) Evidence from family members, friends, or other
22 persons familiar with applicant's previous conduct and with
23 his subsequent attitudes and behavioral patterns.

24 (3) Evidence from probation or parole officers or
25 law enforcement officials competent to testify as to
26 applicant's social adjustments.

1 (4) Evidence from psychiatrists or other persons
2 competent to testify with regard to neuropsychiatric or
3 emotional disturbances.

4 (5) Absence of subsequent felony or misdemeanor
5 convictions that are reflective of an inability to conform to
6 societal rules when considered in light of the conduct in
7 question.

8 7. The facts outlined in Factual Findings 9 through 17, and
9 the criteria listed in Conclusion 6 have been considered. Of
10 significance to this matter, respondent's last conviction
11 occurred in June 1997, more than eight years ago. Respondent
12 has successfully completed his probation, and has paid all
13 ordered fines on these convictions. Respondent no longer uses
14 controlled substances; however, he does drink socially.
15 Respondent has participated and continues to participate in NA
16 and AA meetings. Respondent's family life since his
17 convictions has dramatically changed, as persuasively
18 established by the testimony of respondent, his wife, mother,
19 and relatives, and as further supported by letters of
20 recommendation. Respondent has completed training as a barber
21 and is now a successful businessperson. He has been actively
22 involved in school, community, and church activities over the
23 past four years. Respondent's conduct since his convictions
24 demonstrates a significant change in attitude from that which
25 existed at the time of the convictions. Respondent's drug
26 diversion program was completed in 1997 and he has had no
27 convictions since this time.

1 As indicated in Factual Finding 17, respondent has taken
2 significant steps toward rehabilitation of the behavior which
3 led to his convictions. It is in the public interest to grant
4 him a restricted salesperson's license, with oversight by the
5 Department.

6 ORDER

7 Respondent's application for a real estate salesperson
8 license is denied; provided, however, a restricted real estate
9 salesperson license shall be issued to respondent pursuant to
10 Section 10156.5 of the Business and Professions Code. The
11 restricted license issued to the respondent shall be subject
12 to all of the provisions of Section 10156.7 of the Business
13 and Professions Code and to the following limitations,
14 conditions and restrictions imposed under authority of Section
15 10156.6 of said Code:

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

21 (a) The conviction of respondent, including pursuant
22 to a plea of nolo contendere, of a crime which is
23 substantially related to respondent's fitness or capacity
24 as a real estate licensee; or

25 (b) The receipt of evidence that respondent has
26 violated provisions of the California Real Estate Law, the
27 Subdivided Lands Law, Regulations of the Real Estate

1 Commissioner or conditions attaching to this restricted
2 license.

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

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

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

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

21 4. Respondent's restricted real estate salesperson license
22 is issued subject to the requirements of Section 10153.4 of the
23 Business and Professions Code, to wit: Respondent shall, within
24 eighteen (18) months of the issuance of the restricted license,
25 submit evidence satisfactory to the Commissioner of successful
26 completion, at an accredited institution, of a course in real
27 estate practices and one of the courses listed in Section

1 10153.2, other than real estate principles, advanced legal
2 aspects of real estate, advanced real estate finance or advanced
3 real estate appraisal. If Respondent fails to timely present to
4 the Department satisfactory evidence of successful completion of
5 the two required courses, the restricted license shall be
6 automatically suspended effective eighteen (18) months after the
7 date of its issuance. Said suspension shall not be lifted unless,
8 prior to the expiration of the restricted license, Respondent has
9 submitted the required evidence of course completion and the
10 Commissioner has given written notice to Respondent of lifting of
11 the suspension.

12 5. Pursuant to Section 10154, if Respondent has not
13 satisfied the requirements for an unqualified license under
14 Section 10153.4, Respondent shall not be entitled to renew the
15 restricted license, and shall not be entitled to the issuance of
16 another license which is subject to Section 10153.4 until four
17 years after the date of the issuance of the preceding restricted
18 license.

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1-26-06

DATED

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I have read the Stipulation and Agreement, and its
terms are understood by me and are agreeable and acceptable to

1 me. I willingly and voluntarily agree to enter into this
2 Stipulation.

3
4 Jan 23 06
5 DATED

Jesse Aaron Crouch
6 JESSE AARON CROUCH
7 Respondent

8 * * *

9 DECISION AND ORDER

10 The foregoing Stipulation and Agreement is hereby
11 adopted by the Real Estate Commissioner as her Decision and
12 Order.

13 This Decision shall become effective at 12 o'clock
14 noon on March 8, 2006.

15 IT IS SO ORDERED 2-9, 2005.

16 JEFF DAVI
17 Real Estate Commissioner
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FILED

JAN 20 2006

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

JESSE AARON CROUCH,)

Respondent.)

No. H-1830 FR

N-2005100816

NOTICE

TO: JESSE AARON CROUCH, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated December 21, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner.

A copy of the Proposed Decision dated December 21, 2005, 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 November 21, 2005, and any written argument hereafter submitted on behalf of Respondent and Complainant.

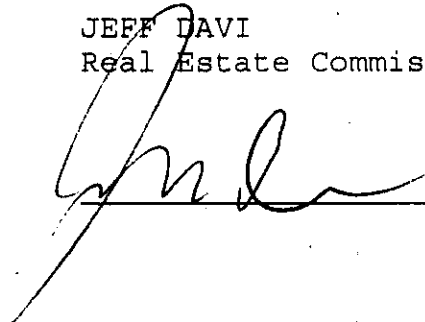
1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of November 21, 2005, at the Sacramento office
4 of the Department of Real Estate unless an extension of the time
5 is granted for good cause shown.

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

11 DATED: _____

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13 JEFF DAVI
14 Real Estate Commissioner
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JESSE AARON CROUCH,

Respondent.

Case No. H-1830 FR

OAH No. N2005100821

PROPOSED DECISION

Administrative Law Judge Marilyn A. Woollard, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on November 21, 2005.

Complainant John Sweeney, Deputy Real Estate Commissioner of the State of California (complainant), was represented by John Van Driel, Real Estate Counsel, Department of Real Estate.

Respondent Jesse Aaron Crouch was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 21, 2005.

FACTUAL FINDINGS

1. Respondent Jesse Aaron Crouch filed his application for a real estate salesperson license with the Department of Real Estate on October 22, 2004.
2. Complainant John Sweeney filed the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California, on September 26, 2005.
3. On September 29, 2005, respondent filed a notice of defense on application and a request for hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing on November 21, 2005, pursuant to a notice of hearing, before an Administrative Law Judge of the Office of Administrative Hearings, an

independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

Respondent's Convictions

4. On January 26, 1994, respondent was convicted in the Tulare County Municipal Court of violating Penal Code sections 242 (battery) and 594, subdivision (A) (vandalism), misdemeanors, based upon a plea of guilty. The conduct underlying these convictions occurred on July 2, 1993, against the person and property of his girlfriend (and current wife), Dallas Olvera. For these convictions, respondent was given a conditional sentence of twenty four months, and fifteen days of county jail time, suspended. Respondent was ordered to complete forty hours of volunteer work.

5. On June 23, 1997, respondent was convicted in Fresno Municipal Court of a misdemeanor violation of Penal Code section 273.5 (inflicting corporal injury on co-habitant or spouse), based upon his plea of *nolo contendere*. The conduct underlying this conviction occurred on April 25, 1997, when respondent was alleged to have kicked Dallas Olvera on her left cheek and face, and to have choked her with both hands. For this conviction, respondent was sentenced to three years of formal probation, 360 days in jail custody which was stayed, and a fine of \$1,000.

6. On May 28, 1997, respondent was convicted in the Tulare County Superior Court of a violation of Penal Code section 242 (battery), based upon a plea of guilty. Respondent was ordered to participate in a six-month anger management program and to pay a fine of \$250.00.¹

7. In addition to his convictions described above, on or about August 22, 1996, respondent was charged with possession of a controlled substance in violation of Health and Safety Code section 11377. Thereafter, respondent was determined to be eligible for diversion and successfully completed all requirements of Penal Code section 1000 program as ordered. On February 13, 1997, the case was dismissed upon completion of the conditional sentence.

8. Respondent's convictions for spousal abuse and battery against the woman he ultimately married and with whom he had a child at the time were acts of violence against an individual with whom he had a special relationship.

Evidence Regarding Rehabilitation

9. Respondent is currently 33 years old. His convictions occurred during a four-year period when he was between the ages of 21 and 25 years old. It has been approximately eight years since his last conviction. Respondent has fully completed all the sentencing

¹ The court documents do not specifically set forth the terms of respondent's sentence pertaining to this conviction. Respondent testified that he was ordered to participate in the anger-management course due to this conviction.

requirements imposed by the courts for his convictions. Respondent fully acknowledges his convictions, as well as the pain he caused his wife and parents by the behavior that led to these convictions.

Respondent spent his early years in foster care, and was adopted at age six. He began drinking heavily at age 19, and eventually used marijuana, cocaine, and methamphetamines. Throughout the period of his convictions, respondent used alcohol and drugs. During this time, he found his biological family. Respondent believes that his early life experiences caused him to have issues relating to abandonment and low self-esteem. He sought to control these feelings by using drugs and alcohol, and by pushing away those who loved him. Respondent acknowledged he was a "mean individual" during this period in his life. Respondent's life circumstances were not an excuse for his behavior, but were an explanation in his own mind for why he behaved as he did.

10. Respondent testified that he completed several courses of court-ordered therapy from 1993 through 1997, including the group anger management course after his 1997 battery conviction. At the time respondent participated in this therapy, he was not really prepared to deal with his issues.

In 1997, however, respondent sought out and participated in individual counseling with a therapist in Visalia. This counseling was not court-ordered. By this time, respondent's daughter, Danielle, was two years old. Respondent began to think about his future with his wife and child, and began to realize that he would not want his daughter to be involved with someone like himself. By the end of 1997, respondent had stopped drinking and using drugs. Respondent participated in his individual counseling over a one-year period, through the end of 1998. In addition, respondent became involved in both the Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) programs. Respondent also returned to his church, and sought out family members whom he believed had "peace of mind" to be his mentors. Respondent still attends NA and AA, but not on a regular basis. He now drinks socially.

11. Respondent and Dallas Olvera, the victim of the 1994 and 1997 convictions, are now married and have three children, ten, six and two years old. Ms. (Olvera) Crouch testified that she has seen a great change in her husband's behavior and ability to deal appropriately with his anger since these convictions. When she and respondent first became involved and parented their now ten-year-old daughter Danielle, respondent was insecure and jealous. Currently, Ms. Couch and respondent still have arguments, but she no longer feels physically threatened by him. When respondent becomes angry, he will leave the room and return to the discussion at a later time. Respondent has also become more adept at talking about his feelings. Ms. Couch testified persuasively that, if respondent had not "straightened himself out," they would not be together today. While respondent may have a drink on social occasions, he no longer drinks to control his feelings.

12 The change in respondent's life and attitude, over the past eight years, was also substantiated by the testimony of his adoptive mother, Veronica Crouch, her sister

Patricia Bomben, and respondent's uncle, Leonard Ramirez. Mrs. Crouch testified that respondent was affected by feelings of not belonging due to his adoption. She now sees respondent as a warm father and husband who has outgrown his abusive past. Mr. Ramirez testified that respondent's concern and suggestions helped galvanize the family into providing more support to younger men in the family who needed treatment.

13. Respondent has been a barber for approximately seven years. After obtaining his barber's training in Fresno, he moved back to his home in Selma and worked at his trade. Respondent is licensed by the Department of Consumer Affairs. Approximately four years ago, respondent opened his own barbershop, the Selma Barber and Beauty Shop, where he supervises four independent contractors. He is a member of the Selma Chamber of Commerce.

14. Respondent goes to church regularly and helps in church functions by participating in fundraisers, and by donating his time and haircuts. In addition, respondent volunteers in the community as a basketball coach for youngsters. Mr. Ramirez, who is a public school teacher, testified that respondent has taken off work without pay to help him chaperone his special education students on a field trip.

15. Respondent has several brokers who are willing to hire him as a real estate salesperson with a restricted license. One of these brokers, Karnail Sindher, of KSP Real Estate in Selma, wrote a letter of support in which he indicated that he has known respondent for four years, is aware of his past, and is willing to have him work as a real estate salesperson under his supervision.

16. In support of his application, respondent provided several letters of recommendation.

- Respondent's testimony that he volunteers as a coach for junior varsity (J.V.) high school boys basketball was supported by letters from Selma High boys basketball coach Joe Machink, and J.V. basketball coach Gabriel Tarango. Both individuals noted that respondent is a good role model with strong leadership and mentoring skills.
- Respondent's active participation as a parent was described in a letter by Dominique Herron, vice president and executive director of "Opportunity Through Education Preschool Center" in Selma. Ms. Herron wrote that respondent has been an active member of the Center's parent advisory council where he has volunteered his time to the program and has helped in the classroom.
- Respondent's reputation as a good businessman and as a member of Selma's Chamber of Commerce was supported by letters from Selma Unified School District superintendent Dr. Anthony Monreal, and by business owner / Chamber of Commerce board member David N. Areval.

- Respondent's involvement in school and community service, via both fundraising and volunteer activities, was supported in letters submitted by Mr. Areval and by Brian Curwick, GATE coordinator at Selma Unified School District.

17. Respondent's most recent conviction occurred in July of 1997, based upon conduct in April 1997. In the intervening eight years, respondent's life has improved in significant ways. The weight of the evidence demonstrates that respondent has taken significant steps toward rehabilitation of the behavior which led to his convictions.

LEGAL CONCLUSIONS

Applicable Law

1. Complainant asserts that respondent's convictions outlined in Factual Findings 4 through 6 establish cause for the denial of his application for a real estate license under sections 480 subdivision (a) and 10177, subdivision (b), of the California Business and Professions Code. As outlined in Factual Finding 7, complainant further asserts, as a matter in aggravation, that respondent was charged with possession of a controlled substance in violation of Health and Safety Code section 11377 on or about August 22, 1996, and that he successfully completed a diversion program.

2. Section 480, subdivision (a) of the Business and Professions Code provides in pertinent part as follows:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere....
- (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
- (3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of licensee.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

3. Section 10177, subdivision (b), of the Business and Professions Code provides in pertinent part as follows:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following: ...

- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude....

Moral Turpitude and Substantial Relationship

4. A criminal act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal. 4th 11, 16 [citing *In re Johnson* (1992) 1 Cal.4th 689, 699; *In re Calaway* (1977) 20 Cal.3d 165, 169-170; *In re Higbie* (1972) 6 Cal.3d 562, 569-570].) Acts of moral turpitude are acts which involve "bad character" and "readiness to do evil." (*People v. Zataray* (1985) 173 Cal. App.3d 390, 400.)

Inflicting corporal injury resulting in a traumatic condition on a spouse or cohabitant under Penal Code section 273.5 has been determined to be a crime that involves moral turpitude. *People v. Rodriguez* (1992) 5 Cal. App. 4th 1398, 1399 [upholding use of Penal Code section 273.5 conviction for impeachment]. In addition, respondent's 1994 and 1997 battery convictions involved acts of violence against a person with whom he was in a special relationship; i.e., the woman who is now his wife and who, at the time, was the mother of his child. As a consequence, respondent's June 23, 1997, conviction under Penal Code section 273, and his January 26, 1994, and May 28, 1997, convictions for violating Penal Code section 242, were convictions for crimes involving acts of moral turpitude.

5. The regulations of the Department of Real Estate establish criteria for substantial relationship when considering whether a license should be denied on the basis of the conviction of a crime, or of any act described by section 480, subdivision (a)(2), or 480, subdivision (a)(3) of the Business and Professions Code. Specifically, California Code of Regulations, title 10, Section 2910 provides, in pertinent part, that, a crime or act "shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves: ...

- (8) Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another.

As indicated in Factual Findings 4, 5, 6, and 8 above, respondent's convictions for spousal abuse and battery are substantially related to the qualifications, functions or duties of a licensee.

Evidence Regarding Rehabilitation

6. In considering whether or not to deny the issuance of a license as a consequence of a crime committed by the applicant, the following criteria have been identified in the regulations of the Real Estate Commissioner, California Code of Regulations, title 10, and are to be used for the purpose of evaluating the applicant's rehabilitation (California Code of Regulations, title 10, in section 2911), as follows:

- (a) The passage of not less than two years from the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought....
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for the denial of the departmental action sought.
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

- (1) Testimony of applicant.
- (2) Evidence from family members, friends, or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.
- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
- (4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
- (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

7. The facts outlined in Factual Findings 9 through 17, and the criteria listed in Conclusion 6 have been considered. Of significance to this matter, respondent's last conviction occurred in June 1997, more than eight years ago. Respondent has successfully completed his probation, and has paid all ordered fines on these convictions. Respondent no longer uses controlled substances; however, he does drink socially. Respondent has participated and continues to participate in NA and AA meetings. Respondent's family life since his convictions has dramatically changed, as persuasively established by the testimony of respondent, his wife, mother, and relatives, and as further supported by letters of recommendation. Respondent has completed training as a barber and is now a successful businessperson. He has been actively involved in school, community, and church activities over the past four years. Respondent's conduct since his convictions demonstrates a significant change in attitude from that which existed at the time of the convictions. Respondent's drug diversion program was completed in 1997 and he has had no convictions since this time.

As indicated in Factual Finding 17, respondent has taken significant steps toward rehabilitation of the behavior which led to his convictions. It is in the public interest to grant him a restricted salesperson's license, with oversight by the Department.

ORDER

Respondent'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 the respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property rights 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 pursuant to 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 the issuance of the restricted license to respondent.

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

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

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

DATED: December 21, 2005


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

1 JOHN VAN DRIEL, Counsel (SBN 84056)
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FILED
SEP 26 2005

DEPARTMENT OF REAL ESTATE

By L. First

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 JESSE AARON CROUCH,)
13 Respondent.)

No. H-1830 FR

STATEMENT OF ISSUES

14
15 The Complainant, John Sweeney, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against JESSE AARON CROUCH (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Complainant makes this Statement of Issues in his
21 official capacity and not otherwise.

22 II

23 Respondent made application to the Department of Real
24 Estate of the State of California for a real estate salesperson
25 license on or about October 22, 2004 with the knowledge and
26 understanding that any license issued as a result of said

27 ///

1 application would be subject to the conditions of Section 10153.4
2 of the Business & Professions Code.

3 III

4 On or about June 23, 1997, in the Fresno County
5 Superior Court, Respondent was convicted of a violation of
6 Section 273.5 (inflicting corporal injury on co-habitant/spouse)
7 of the California Penal Code, a crime involving moral turpitude
8 and which bears a substantial relationship under Section 2910,
9 Title 10, California Code of Regulations, to the qualifications,
10 functions, or duties of a real estate licensee.

11 IV

12 On or about May 28, 1997, in the Tulare County Superior
13 Court, Respondent was convicted of a violation of Section 242
14 (battery) of the California Penal Code, a crime involving moral
15 turpitude and which bears a substantial relationship under
16 Section 2910, Title 10, California Code of Regulations, to the
17 qualifications, functions, or duties of a real estate licensee.

18 V

19 On or about July 28, 1993, in the Tulare County
20 Superior Court, Respondent was convicted of a violation of
21 Section 594(a) (vandalism) of the California Penal Code, a crime
22 involving moral turpitude and which bears a substantial
23 relationship under Section 2910, Title 10, California Code of
24 Regulations, to the qualifications, functions, or duties of a
25 real estate licensee.

26 ///

27 ///

1 MATTERS IN AGGRAVATION

2 VI

3 On or about August 22, 1996, in the Fresno County
4 Superior Court, Respondent was charged with possession of a
5 controlled substance, a violation of Section 11377 of the
6 California Health & Safety Code, and successfully completed a
7 diversion program.

8 VII

9 The crimes of which Respondent was convicted, as
10 alleged in Paragraphs III through V, constitute cause for denial
11 of Respondent's application for a real estate license under
12 Sections 480(a) and 10177(b) of the California Business and
13 Professions Code.

14 WHEREFORE, the Complainant prays that the above-
15 entitled matter be set for hearing and, upon proof of the charges
16 contained herein, that the Commissioner refuse to authorize the
17 issuance of, and deny the issuance of, a real estate salesperson
18 license to Respondent, and for such other and further relief as
19 may be proper under other provisions of law.
20

21
22 
23 JOHN SWEENEY
24 Deputy Real Estate Commissioner

25 Dated at Fresno, California,
26 this 30th day of August, 2005.
27