

FILED

MAY 30 2008

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By *[Signature]*

\* \* \*

In the Matter of the Application of )  
ADAM GARY WILSON, )  
Respondent. )

NO. H-2228 FRESNO  
OAH NO. N-2008020236

DECISION

The Proposed Decision dated April 29, 2008, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon  
on JUN 20 2008

IT IS SO ORDERED

*[Signature]*

JEFF DAVI  
Real Estate Commissioner

*[Signature]*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

ADAM GARY WILSON,

Respondent.

Case No. H-2228 FRESNO

OAH No. 2008020236

**PROPOSED DECISION**

Administrative Law Judge Kimberly Graham, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on March 28, 2008.

David B. Seals, Counsel, represented the Department of Real Estate.

Adam Gary Wilson was present and represented himself.

After the hearing, the record was left upon until April 9, 2008, in order to permit Respondent to submit letters of reference to the Department and OAH. The record was closed and the matter submitted on the close of business on April 9, 2008.

**FACTUAL FINDINGS**

1. The Statement of Issues was filed on January 28, 2008. Complainant John Sweeney made the allegations in the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California, and not otherwise. On February 4, 2008, Adam Gary Wilson (Respondent) timely filed a Notice of Defense on Application requesting a hearing in this proceeding.

2. Respondent filled out the Department's pre-formatted application form and signed the certification section of the form under penalty of perjury on September 15, 2007, in which he certified that his answers and statements on the form were true and correct.

3. On May 10, 2006, in the Superior Court of California, County of Fresno, in Case No. F06901296-4, respondent was convicted of violating Penal Code section 273.5 (corporal injury to spouse/cohabitant/child's parent), a felony, after a plea of no contest. The court sentenced respondent to serve 180 days in county jail (less 39 days credit), serve three years probation, and enroll in a batterer's treatment program. On May 29, 2007, upon completion of the batterer's treatment program, respondent's conviction was reduced to a misdemeanor pursuant to Penal Code section 17, subsection (b), for all purposes. Respondent, however, remains on probation.

4. The facts and circumstances of the 2006 conviction are that respondent, who was then 22 years old, was picked up from a party by his live-in girlfriend and mother of his child, Maile Gonzales. Respondent was intoxicated and directed belligerent and obscene comments at Ms. Gonzalez. After arriving at respondent's home, Ms. Gonzales decided that she did not want to spend the evening with respondent. When Ms. Gonzales attempted to leave, respondent took away her cell phone and kicked Ms. Gonzales's legs, causing Ms. Gonzales to fall to the ground. Respondent then grabbed Ms. Gonzales and dragged her into the house. After forcing Ms. Gonzales inside, respondent closed and locked the door and told Ms. Gonzales that he would "fucking kill her." After a few minutes, Ms. Gonzales was able to secretly retrieve respondent's cell phone and attempted to call for help, but was unable to. Ms. Gonzales asked respondent for permission to go to bed, which he gave. As he began to follow Ms. Gonzales upstairs, respondent noticed that he had forgotten to fasten the security door and turned around. Ms. Gonzales then suddenly ran to the bedroom, locked the door. She then ran into the bathroom and locked the door, and then ran into the toilet area and locked that door as well. Ms. Gonzales attempted to call 9-1-1, but suddenly heard the doors crashing in, as respondent had kicked in all of the doors and gained access to Ms. Gonzales. Respondent then grabbed Ms. Gonzales, dragged her out of the bathroom and into the bedroom. Respondent then grabbed Ms. Gonzales's head and slammed it against the wall, causing Ms. Gonzales to become dizzy and lose her balance. Respondent continued to hit Ms. Gonzales as she fell to the floor, and began kicking her once she was on the floor until she stopped moving and became non-responsive. After the attack, respondent left the house and drove away in his vehicle. Ms. Gonzales then ran to a neighbor's house to seek help. The neighbor contacted the police, who later arrested respondent.

5. At the administrative hearing, respondent tearfully testified that he deeply regretted his actions. Respondent acknowledged that he had been binge drinking on the night of the incident and admitted the accuracy of the entire contents of the police report as described by Ms. Gonzales. Respondent testified that he learned a lot about himself and his anger control problems when he took and completed the batterer's class, including that domestic violence also involves mental abuse. Respondent presented a certificate of completion from the Margaree Mason Center's 52-Week Batterer's Intervention Program, verifying that he attended classes

beginning April 25, 2006 through April 17, 2007. Respondent explained that he was devastated by his conduct and the ramifications that the conviction had on his life – mainly, that he was restricted from seeing Ms. Gonzales and his child for nearly six months. Respondent admitted that he still drinks alcohol, but not to the extent that he previously drank. Respondent explained that he limits himself to a “couple of beers for dinner” a few times per month. Respondent is currently employed with the “Roof Doctor,” a family business that repairs roofs. His aunt is a real estate agent with a local business and he hopes to work with her if he were to obtain a real estate license. Respondent admitted that he does not participate in any community service activities, but that he is very “family oriented” and spends most of his free time with his family and playing sports.

6. Ms. Gonzales testified on respondent’s behalf at the administrative hearing. Ms. Gonzales testified that the description contained in the police report of the events that lead to respondent’s arrest and conviction was entirely accurate. However, she explained that respondent has changed and is a “different person” since the night of incident – that the changes are “night and day.” Ms. Gonzales stated that respondent is a “great boyfriend” and an “awesome father” to their child, who is now three years of age. She testified that she “respects” respondent and that he proved himself to her by attending the batterer’s program. Ms. Gonzales corroborated respondent’s statement that he still drinks alcohol, but that it occurs “rarely” and he no longer “binge” drinks. Ms. Gonzales tearfully pleaded that respondent not continue to be punished for his actions that night by having his application for a real estate license denied.

7. Respondent expressed concern that he was unaware that he could present letters of reference to be considered in this case by the administrative law judge. With the consent of the Department, respondent was given the opportunity to submit any letters of reference to the Department and OAH by no later than April 9, 2008. Respondent, however, did not submit any letters to OAH for consideration.

8. Respondent now takes responsibility for his conviction and his remorse is credible. However, respondent remains on probation for his criminal conviction, which will not end until May 2009. In addition, despite recognizing that drinking alcohol contributed to his actions on the night he was arrested, respondent admits that he continues to drink alcohol.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 10152 authorizes the Real Estate Commissioner to require proof of an applicant’s honesty and truthfulness before issuing a real estate license, but it does not address the burden of proof in a hearing on the application. In the absence of a statute to the contrary, the burden of proof is on the applicant seeking a license or permit to prove his fitness for issuance

of the license he seeks.<sup>1</sup> In the absence of any law to the contrary, the required standard of proof is a preponderance of the evidence.<sup>2</sup>

2. Business and Professions Code section 10177, subdivision (b), as of the date the Department filed the present action, provided that the Department may deny the issuance of a license to an applicant, who has been convicted of a felony, or of a crime involving moral turpitude.<sup>3</sup> In addition, there must be a substantial relationship, or nexus between the felony or misdemeanor crime involving moral turpitude, and the Department's licensing concerns. (Bus. & Prof. Code, § 480, subd. (a).) However, section 480(a) is not an independent ground for denial of licensure as applied to this case. (*Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554.)<sup>4</sup>

3. Black's Law Dictionary (4th Ed. Rev.) defines moral turpitude as "conduct contrary to justice, honesty, modesty or good morals" and cites *Marsh v. State Bar of California* (1930) 210 Cal. 303, 291 P. 583. Moral turpitude has generally been held to mean a general "'readiness to do evil'... i.e., an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Mansfield* (1988) 200 Cal. App. 3d 82, 87.) Criminal conduct reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of a profession (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves a serious breach of a duty owed to another or society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the conduct would likely undermine the public confidence in and respect for the profession. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16.) Moral turpitude had additionally been defined as "conduct which is contrary to justice, honesty, modesty, or good morals" or which shows a general readiness to do evil. (*In re McAllister* (1939) 14 Cal.2d 602, 603; *People v. Castro* (1985) 38 Cal.3d 301.)

4. As set forth in Factual Findings 3 through 8, respondent was convicted of a felony violation of Penal Code section 273.5, which was later reduced to a misdemeanor violation upon completion of his batterer's intervention classes. Penal Code section 273.5 provides as follows:

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<sup>1</sup> *Martin v. Alcoholic Beverage Appeals Board* (1950) 52 Cal.2d 238, *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.

<sup>2</sup> See Evidence Code section 115.

<sup>3</sup> Effective January 1, 2008, the law has changed but the change is inapplicable to this action.

<sup>4</sup> The *Petropoulos* case deals with section 490, not section 480(a); however, based on the legislative history of division 1.5 of the Business and Professions Code, of which both statutes are a part, the same reasoning should apply.

Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment.

5. In *People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402, the California Court of Appeals, Sixth Appellate District, held that Penal Code section 273.5 is a crime that involves moral turpitude. Specifically, the court found

“To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and in which Ms. Gonzales, for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship and then to violate it willfully and with the intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.” (citations omitted.)<sup>5</sup>

6. Thus, respondent’s 2006 conviction for corporal injury to spouse/cohabitant/child’s parent constitutes grounds to deny his application for licensure because it was an offense involving moral turpitude as a matter of law.

7. The fact that a crime is a misdemeanor involving moral turpitude does not end the inquiry. Business and Professions Code section 480, subdivision (a), additionally requires that in order for a crime to serve as a basis for denial of an application for licensure it must be substantially related to the qualifications, functions or duties of the business or profession for which application is made. (See *Petropoulos v. Department of Real Estate, supra* [Department must prove both that the misdemeanor crime involves moral turpitude and that it is substantially related to the duties of a real estate licensee]; and see *In re Stuart K. Lesansky, supra*; and

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<sup>5</sup> In 1999, the Court of Appeal, Fourth Appellate District, in two cases, *People v. Thurston* (1999) 71 Cal.App.4th 1050 and *People v. Campbell* (1999) 76 Cal.App.4th 305, found that the *Rodriguez* Court was mistaken in finding the Penal Code section 273.5 included as one of its elements a specific intent to injure Ms. Gonzales. In *Thurston* and *Campbell*, the court concluded that Penal Code section 273.5 is a general intent crime; however, it did not overrule the holding in *Rodriguez* that Penal Code section 273.5 is a crime that involves moral turpitude.

*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227 [a nexus or logical relationship must exist between the criminal conduct and an individual's fitness to practice a particular profession].)

11. In California Code of Regulations, title 10, section 2910, subdivision (a), the Department has set forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. In relevant part, section 2910, subdivision (a) provides that a crime will be deemed to satisfy the requirements of substantial relationship when it involves:

[¶]...[¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶]...[¶]

12. Respondent's conviction is substantially related to the qualifications, functions or duties of a real estate licensee under section 2910, subdivisions (a)(8), as described above. Respondent's criminal conduct caused substantial injury to Ms. Gonzales, who is also his cohabitant and the mother of his child. The beating described by Ms. Gonzales consisted of blows to the head and kicks to her body, as well as the dragging of her body across the ground.

13. Once cause for denial is proved, the applicant must produce persuasive evidence that he is rehabilitated and is a person of good character such that the license should issue, despite the existence of legal cause to deny issuance of the license. Pursuant to Section 482, subdivision (a) of the Business and Professions Code, the Department has enacted a nonexhaustive list of rehabilitation criteria at California Code of Regulations, title 10, section 2911, against which to weigh and evaluate an applicant's evidence of rehabilitation. The specific factors are described and evaluated with respect to respondent as follows:

(a) "The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)" The two-year period is a minimum time passage for one misdemeanor conviction. In this case, insufficient time has passed since respondent's 2006 conviction. Moreover, he remains on probation until May 2009.

(b) "Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant." This factor is not applicable.

(c) "Expungement of criminal convictions resulting from immoral or antisocial acts." Respondent has not sought expungement of his criminal convictions.

(d) "Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code." This factor is not applicable.

(e) "Successful completion or early discharge from probation or parole." Respondent is currently serving a term of probation that does not expire until May 2009.

(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." As respondent's conviction involved the use of alcohol, and respondent admits that he continues to drink alcohol on occasion.

(g) "Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment." There was no evidence presented on this element.

(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." Respondent and Ms. Gonzales appear to have a loving relationship – they live together and are raising their child. In addition, respondent testified that he has the support of his family.

(i) "Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement." Respondent did not submit any evidence as to his education or vocational training.

(j) "Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others." There is no evidence this is applicable.

(k) "Correction of business practices resulting in injury to others or with the potential to cause such injury." This factor is not applicable.

(l) "Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems." Respondent testified that he is not involved in any community



service activities, but spends his free time with his family and his daughter, as well as playing sports.

(m) "New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought." Respondent did not submit any evidence as to his having different social or business relationships from those which existed at the time he committed the offense.

(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." California Code of Regulations, title 10, section 2911.

Respondent and Ms. Gonzales testified about the considerable changes he has made in his life since the arrest and conviction. Their testimony is deemed credible and very persuasive. However, the evidence of rehabilitation must be weighed and balanced against the risk that respondent's conduct poses to the public and to clients. Although respondent has taken substantial steps toward rehabilitation, and Respondent's offense took place in a context which is not likely to be repeated because he has developed tools for dealing with his anger, the conviction is very recent and respondent remains on probation. At this time, it would not be in the public interest to permit respondent to obtain a real estate license.

ORDER

The application of Adam Gary Wilson to the Department of Real Estate for the issuance of a real estate salesperson license is denied.

DATED: April 29, 2008



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KIMBERLY GRAHAM  
Administrative Law Judge  
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)  
2 Department of Real Estate  
3 P. O. Box 187007  
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0792 (Direct)

FILED

JAN 28 2008

DEPARTMENT OF REAL ESTATE

By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 ADAM GARY WILSON, )  
13 Respondent. )

No. H-2228 FRESNO  
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 ADAM GARY WILSON (hereinafter "Respondent") alleges as  
18 follows:

19 I

20 Respondent made application to the Department of Real  
21 Estate of the State of California for a real estate salesperson  
22 license on or about September 20, 2007.

23 II

24 Complainant, John Sweeney, a Deputy Real Estate  
25 Commissioner of the State of California, makes this Statement of  
26 Issues in his official capacity.

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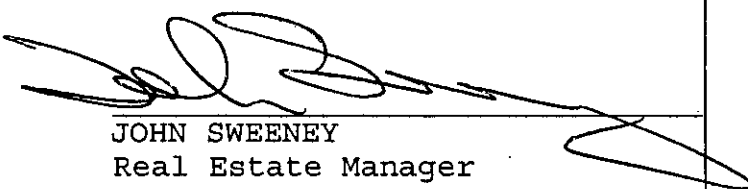
1 III

2 On or about May 10, 2006, in the Superior of  
3 California, County of Fresno, Respondent was convicted of  
4 violation of California Penal Code Section 273.5(a) (Corporal  
5 Injury to Spouse/Cohabitant/Child's Parent), a misdemeanor and a  
6 crime involving moral turpitude which is substantially related  
7 under Section 2910, Title 10, California Code of Regulations  
8 (hereinafter the "Regulations") to the qualifications, functions  
9 or duties of a real estate licensee.

10 IV

11 The crime, of which Respondent was convicted, as  
12 alleged in Paragraph III above, constitutes cause for denial of  
13 Respondent's application for a real estate license under Section  
14 10177(b) of the California Business and Professions Code, in  
15 conjunction with Section 480(a) of the Code.

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

22  
23   
24 JOHN SWEENEY  
Real Estate Manager

25 Dated at Fresno, California,  
26 this 25<sup>th</sup> day of January, 2008.