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JUL 14 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	DRE FILE NO. H-2382 FR
	)	OAH NO. 2009050783
OSCAR F. BALTAZAR,	)	
	)	DECISION AFTER REMAND FROM
Respondent.	)	SUPERIOR COURT
	)	CASE NO. 34-2010-80000447

1. This matter came on for hearing before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on July 29, 2009. Kenneth C. Espell, Counsel, represented the Complainant. Respondent OSCAR F. BALTAZAR appeared on his own behalf. Evidence was received, the record was closed, and the matter was submitted.

2. On August 14, 2009, the Administrative Law Judge rendered a Proposed Decision revoking all licenses and licensing rights of Respondent, but granting Respondent the right to a restricted real estate salesperson license. On September 17, 2009, the Real Estate Commissioner rejected the Proposed Decision and revoked Respondent OSCAR F. BALTAZAR's real estate salesperson license effective at noon on February 16, 2010.

3. On February 16, 2010, Respondent OSCAR F. BALTAZAR filed a Petition for Writ of Mandate in the Sacramento County Superior Court, Case No. 34-2010-80000447,

1 challenging the Real Estate Commissioner's Decision filed on January 26, 2010, revoking the  
2 real estate salesperson license of Respondent OSCAR F. BALTAZAR.

3 4. On May 28, 2010, the matter came before Superior Court Judge Michael P.  
4 Kenney. Respondent Balthazar being represented by John C. McCarron, of Stern, Van Vleck &  
5 McCarron, LLP and Amy J. Winn, Deputy Attorney General, appeared as attorney for the  
6 Department of Real Estate.

7 5. On May 28, 2010, the Clerk of the Court in Sacramento Superior Court case  
8 number 34-2010-80000447, the Court granted Respondent OSCAR F. BALTAZAR's Petition  
9 for Writ of Mandate and ordered the Real Estate Commissioner to set aside his January 26, 2010  
10 *Decision After Rejection* revoking Respondent OSCAR F. BALTAZAR's real estate license in  
11 the above captioned matter.

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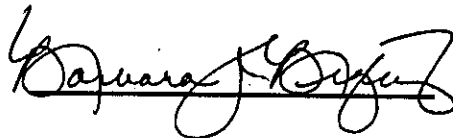
1 NOW, THEREFORE, PURSUANT TO THE SUPERIOR COURT'S ORDER  
2 OF MAY 28, 2010, IT IS HEREBY ORDERED THAT:

3 1. The Commissioner's September 17, 2009 *Decision After Rejection* revoking  
4 the real estate license of Respondent OSCAR F. BALTAZAR be and hereby is vacated and set  
5 aside and the August 14, 2009 Proposed Decision of Administrative Law Judge Karen J. Brandt  
6 revoking all licenses and licensing rights of Respondent OSCAR F. BALTAZAR, but granting  
7 Respondent the right to a restricted real estate salesperson license under those certain terms and  
8 conditions as set forth in Judge Brandt's decision of August 14, 2009 is hereby adopted by the  
9 Commissioner as his decision in this matter. (A true and correct copy of Judge Brandt's August  
10 14, 2009 *Proposed Decision* is attached to as Exhibit "1" and is incorporated herein by  
11 reference.)

12 This Decision shall be effective immediately.

13  
14 IT IS SO ORDERED 7/12, 2010.

15 JEFF DAVI  
16 Real Estate Commissioner

17 

18 BY: Barbara J. Bigby  
19 Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OSCAR F. BALTAZAR,

Respondent.

Case No. H-2382 FR

OAH No. 2009050783

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 29, 2009, in Sacramento, California.

Kenneth C. Espell, Counsel, represented John Sweeney (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

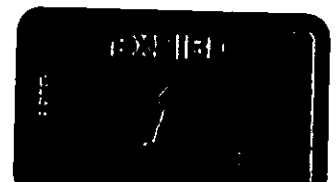
Oscar F. Baltazar (respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted on July 29, 2009.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in his official capacity.
2. Respondent has been licensed as a real estate salesperson since 1999 and currently has license rights under the Real Estate Law.<sup>1</sup> Complainant seeks to revoke respondent's real estate salesperson license based upon the conviction described in Finding 3 below.
3. On September 19, 2008, in the San Diego County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Penal Code section 245, subdivision (a)(1), assault with force likely to produce great bodily injury, a misdemeanor. The imposition of sentence was suspended and respondent was placed on probation for three years. Respondent was ordered to perform 250 hours of community service, to pay fines and

<sup>1</sup> Part 1 of Division 4 of the Business and Professions Code:



fees, and to pay \$4,000 in restitution to the victim. The court permitted respondent to pay \$25 per month toward these fines, fees and restitution. Respondent's probation is scheduled to end on September 18, 2011.

4. Respondent's assault conviction was based upon an incident that occurred on June 1, 2008, in San Diego, California. Respondent was visiting his parents in the San Diego area. He made arrangements to meet with Melinda Brown, Director of Business Development, Kern Economic Development Corporation, and her family for dinner at about 9:00 p.m. Before meeting with Ms. Brown and her family, respondent met with Coby Vance, a licensed real estate broker and business associate, at about 6:00 p.m. for appetizers and two beers. At about 7:45 p.m., respondent had another beer and some oysters with Mr. Brown, Ms. Brown's husband. At about 9:45 p.m., respondent had dinner and one glass of Sangria. Respondent left the restaurant with Mr. Vance at about 11:45 p.m. to look for a cab. Before finding a cab, respondent decided to stop at the Field Irish Pub to use the restroom, while Mr. Vance waited at the bar. When respondent was in the restroom, he heard a loud bang and Andrew Walker entered. Respondent said, "Whoa dude, chill out." Mr. Walker replied, "What the fuck." Out of the corner of his eye, respondent thought he saw Mr. Walker clench his fists and come toward him. Respondent swung and hit Mr. Walker in the face with his fist. Mr. Walker said, "What the hell man?" Respondent fractured a bone in Mr. Walker's cheek. After hitting Mr. Walker, respondent left the bar. Soon thereafter, respondent was arrested by the police. Respondent was 38 years old when this incident occurred.

5. At hearing, respondent described his conduct as self-defense. Respondent cannot impeach his assault conviction by claiming that he was only acting in self-defense. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 ["Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged."] ) By pleading nolo contendere, respondent stands convicted of every element of the crime. In any event, respondent's own testimony did not establish that he was in such danger from Mr. Walker to give rise to a claim of self-defense. At hearing, respondent described Mr. Walker as very drunk. Respondent struck first. There was no evidence that Mr. Walker verbally threatened respondent or engaged in sufficiently menacing action to indicate that he posed an immediate risk of harm to respondent. Instead, respondent's own testimony indicates that he overreacted.

6. Respondent has completed the 250 hours of community service ordered by the court. He completed 210 of those hours by serving as an assistant baseball coach of North West Baseball, Spring/Summer Season 2009, coaching a team of 13 and 14 year olds. He completed the other 40 hours through the Rotary Club, acting as the point of contact between a grade school and a high school, assisting both schools with community service.

7. Respondent is currently paying the restitution he owes to Mr. Walker. Although he generally pays more than the \$25 per month permitted by the court, he still owes Mr. Walker approximately \$3,500.

8. Respondent married in 2004. His wife had two children from a previous relationship. Her children are currently 11 and 13. Respondent treats his wife's two children as his own. He and his wife also had a son together, who is now three years old. In addition to supporting his wife and children, respondent also provides financial and emotional support to his parents. Respondent is active in his children's school and his church. He is also active in the Rotary Club.

9. Respondent graduated from Concordia University in 1994 with a Bachelor of Arts degree in Behavioral Science: Sociology. The Rotary Club has named him a Paul Harris fellow in appreciation for his "tangible and significant assistance given for the furtherance of better understanding and friendly relations among peoples of the world." In April 2004, he received a Certificate of Achievement from the AJI Network for completing two years of study in the Business Professional's Course.

10. Respondent began working for CB Richard Ellis in Bakersfield in 1998. He is currently a one-eighth owner of the business.

11. Four witnesses testified on respondent's behalf.

Ms. Brown has known respondent for four years. As the Director of Business Development for Kern Economic Development Corporation, she has worked with him on business deals. Ms. Brown described respondent as someone who is very responsive and professional, and works well with others.

Mr. Vance began working with respondent at CB Richard Ellis in Bakersfield in May 2004. He has developed a close personal friendship with respondent. Mr. Vance described respondent as a responsible business owner, associate, and family man. Mr. Vance has never seen respondent be aggressive or attack another person. He described respondent as both well-liked and well-respected in the community.

Wayne Kress is also a one-eighth owner of CB Richard Ellis in Bakersfield. He has both a salesperson and a broker license. Mr. Kress described respondent as trustworthy and responsible. He has never seen respondent yell in anger or be aggressive toward any person.

David Coffey is the owner of Modern Office Environments. In May 2005, respondent helped him purchase the building in which his business is now located. Mr. Coffey found respondent to be honest and ethical in all his dealings. Mr. Coffey has never seen respondent act aggressively in any business or social situations.

Respondent also submitted letters of support from Michael J. Rubio, Supervisor – Fifth District; Keith Brice, President of Mid State Development Corporation; and Tammee Sherriff, Office Operations Manager for CB Richard Ellis in Bakersfield.

12. At hearing, even though respondent asserted that he hit Mr. Walker in self-defense, he took responsibility for his conviction and expressed remorse. He described

himself as a person who takes care of his family and gets actively involved in his community. He asserted that his crime was "out of character" for him and that he teaches his children that they must act responsibly and not hit anyone.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that a license may be suspended or revoked "on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be revoked if the licensee has "entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee ...."

3. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Subdivision (a)(8) of that section provides that a conviction will be deemed to be substantially related when it involves the "[d]oing 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." Respondent's misdemeanor assault conviction constituted an unlawful act that caused substantial injury to another person. Accordingly, respondent's conviction is substantially related to the qualifications, functions and duties of a real estate salesperson and establishes cause to revoke respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b).

4. In California Code of Regulations, title 10, section 2912, the Department has set forth the criteria to be applied when reviewing whether a real estate license should be disciplined when the licensee has been convicted of a crime.<sup>2</sup>

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<sup>2</sup> California Code of Regulations, title 10, section 2912 provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

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

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

5. Respondent committed a violent crime in June 2008. He still owes approximately \$3,500 in restitution to his victim. He is scheduled to be on probation until September 18, 2011.

6. There was no evidence, however, that respondent has been convicted of any crimes other than the single assault conviction described in Finding 3. He is gainfully employed. He appears to have a stable family life and is fulfilling his parental and familial responsibilities. He has significant and conscientious involvement in his community, church and privately-sponsored programs designed to provide social benefits and ameliorate social problems.

7. Respondent's crime appears to be a single, isolated event that does not warrant outright revocation of his license. But given the facts that his crime occurred only one year ago, he is still on probation, and he has not paid most of the restitution he owes, in order to adequately protect the public, some disciplinary action should be ordered. When all the

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(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) Abstinance from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

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

(m) Change in attitude from that which existed at the time of the commission of the criminal acts 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 the licensee's previous conduct and with 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, clinical psychologists, sociologists 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.



evidence is weighed and balanced, issuing respondent a restricted license for three years under the terms and conditions listed below is appropriate to adequately protect the public interest, safety and welfare.<sup>3</sup>

## ORDER

All licenses and licensing rights of respondent Oscar F. Baltazar under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and


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<sup>3</sup> At hearing, complainant questioned whether it would be appropriate for the supervising broker at CB Richard Ellis in Bakersfield to supervise respondent because respondent is a one-eighth owner of the business. Because a supervising broker is obligated to follow and comply with the Real Estate Law, the fact that respondent is a one-eighth owner should not impede the supervising broker from performing his supervisory duties.

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: August 14, 2009

  
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KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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JAN 26 2010

DEPARTMENT OF REAL ESTATE

*R. Henry*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	
	)	DRE No. H-2382 FR
	)	
OSCAR F. BALTAZAR,	)	OAH No. 2009050783
	)	
Respondent.	)	

**DECISION AFTER REJECTION**

This matter came on for hearing before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on July 29, 2009.

Kenneth C. Espell, Counsel, represented the Complainant. The Respondent appeared without counsel.

Evidence was received, the record was closed, and the matter was submitted.

On August 14, 2009, the Administrative Law Judge rendered a Proposed Decision (hereafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent

1 was notified that the case would be decided by the Real Estate Commissioner upon the record,  
2 the transcript of the proceedings held on July 29, 2009, and upon written argument offered by  
3 Respondent and Complainant.

4 Written argument was submitted by Complainant on November 5, 2009. Respondent  
5 submitted his written argument on November 2, 2009.

6 I have given careful consideration to the record in this case, including the transcript of the  
7 proceedings of July 29, 2009, and written argument offered by Respondent and Complainant.

8 The following shall constitute the Decision of the Real Estate Commissioner in these  
9 proceedings.

#### 10 **FINDINGS OF FACT**

11 1. Respondent is licensed by the Department as a real estate salesperson, License  
12 No. 01263421, and has been so licensed since October 13, 1999.

13 2. Complainant, John Sweeney, filed the Accusation in his official capacity on  
14 May 6, 2009.

15 3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to  
16 Government Code Section 11506. The matter was set for an evidentiary hearing before an  
17 Administrative Law Judge of the Office of Administrative Hearings, an independent  
18 adjudicative agency of the State of California, pursuant to Government Code Section 11500,  
19 et seq.

#### 20 **Respondent's Conviction**

21 4. On September 19, 2008, in San Diego County Superior Court, Respondent was  
22 convicted of violating Penal Code section 245(a)(1) (Assault With Force Likely to Produce  
23 Great Bodily Injury), a misdemeanor. The imposition of sentence was suspended and  
24 Respondent was placed on probation for three years. Respondent was ordered to perform  
25 250 hours of community service, to pay fines and fees, and to pay \$4,000 in restitution to the  
26 victim. The court permitted Respondent to pay \$25 per month toward these fines, fees and  
27 restitution. Respondent's probation is scheduled to end on September 18, 2011.

1 The facts and circumstances surrounding the conviction are that Respondent was  
2 visiting his parents in the San Diego area. He made arrangements to meet with Melinda  
3 Brown, Director of Business Development, Kern Economic Development Corporation, and  
4 her family for dinner. Before meeting with Ms. Brown and her family, Respondent met with  
5 Coby Vance, a licensed real estate broker and business associate for appetizers and two  
6 beers. At about 7:45 p.m., Respondent had another beer and some oysters with Mr. Brown,  
7 Ms. Brown's husband. At about 9:45 p.m., Respondent had dinner and one glass of Sangria.  
8 Respondent left the restaurant with Mr. Vance at about 11:45 p.m. to look for a cab. Before  
9 finding a cab, Respondent decided to stop at the Field Irish Pub to use the restroom, while  
10 Mr. Vance waited at the bar. When Respondent was in the restroom, he heard a loud bang  
11 and Andrew Walker entered. Respondent said, "Whoa dude, chill out." Mr. Walker replied  
12 "what the fuck." Out of the corner of his eye, Respondent thought he saw Mr. Walker clench  
13 his fists and come toward him. Respondent swung and hit Mr. Walker in the face with his  
14 fist. Respondent fractured a bone in Mr. Walker's cheek. After hitting Mr. Walker,  
15 Respondent left the bar. Shortly thereafter, Respondent was arrested.

16 Respondent is currently married. He has two step-children, two children from a  
17 previous marriage and one child with his present wife.

18 Respondent is active in his children's school and his church. He is also active in the  
19 Rotary Club, which named him a Paul Harris fellow in appreciation of his "tangible and  
20 significant assistance given in furtherance of better understanding and friendly relations  
21 among peoples of the world."

22 Respondent graduated from Concordia University in 1994 with a Bachelor of Arts  
23 degree in Behavioral Science: Sociology. In April 2004, Respondent received a Certificate  
24 of Achievement from the AJI Network for completing two years of study in the Business  
25 Professional's Course.

26 Melinda Brown, Coby Vance, Wayne Kress and David Coffey all testified on  
27 Respondent's behalf at the hearing.

1 Respondent provide letters of support from Michael J. Rubio, Keith Brice and  
2 Tammee Sherriff at the hearing.

3 **LAW APPLIED TO THE FACTS**

4 The Department's Accusation alleges Respondent was convicted of a crime which bears a  
5 substantial relationship to the qualifications, functions or duties of a real estate salesperson in  
6 violation of Sections 490 and 10177(b) of the Business and Professions Code (hereinafter "the  
7 Code").

8 Section 490 of the Code provides in relevant part:

9 "(a)...a board may suspend or revoke a license on the ground that  
10 the licensee has been convicted of a crime, if the crime is  
11 substantially related to the qualifications, functions, or duties of the  
12 business or profession for which the license was issued.

13 ...  
14 (c) A conviction within the meaning of this section means a plea  
15 or verdict of guilty...."

16 Section 10177 of the Code provides, in relevant part:

17 "The commissioner may suspend or revoke the license of a real  
18 estate licensee...who has done any of the following:

19 ...  
20 (b) Entered a plea of guilty or nolo contendere to, or been found  
21 guilty of, or been convicted of, a felony, or a crime substantially  
22 related to the qualifications, functions, or duties of a real estate  
23 licensee."

24 **Respondent's Conviction is Substantially Related to**  
25 **the Qualifications of a Real Estate Licensee**

26 A board may impose license discipline on the grounds that the licensee has been  
27 convicted of a crime if the crime is substantially related to the qualifications, functions, or duties  
of the business or profession for which the license was issued. Thus, a determination that a

1 licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the  
2 underlying conduct, but requires a reasoned determination that the conduct was in fact  
3 substantially related to the licensee's fitness to engage in the profession. (*Gromis v. Medical*  
4 *Board* (1992) 8 Cal.App.4<sup>th</sup> 589) Licensing authorities do not enjoy unfettered discretion to  
5 determine on a case-by-case basis whether a given conviction is substantially related to the  
6 relevant professional qualifications. Business and Professions Code Section 481 requires each  
7 licensing agency to "develop criteria to aid it ... to determine whether a crime is substantially  
8 related to the qualifications, functions, or duties or the business or profession it regulates." In  
9 response to this directive the Department adopted section 2910 of Title 10 of the California Code  
10 of Regulations. (Hereinafter 'the Regulations') (*Donaldson v. Department of Real Estate* (2005)  
11 *134 Cal. App. 4<sup>th</sup> 948*)

12 Title 10, Section 2910, subdivision (a) of the California Code of Regulations provides in  
13 relevant part:

14 " (a) When considering whether a license should be denied,  
15 suspended or revoked on the basis of the conviction of a crime, or  
16 on the basis of an act described in Section 480(a)(2) or 480(a)(3) of  
17 the Code, the crime or act shall be deemed to be substantially  
18 related to the qualifications, functions or duties of a licensee of the  
19 Department within the meaning of Sections 480 and 490 of the  
20 Code if it involves:

21 ....

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

25 Respondent's conviction is substantially related to the qualifications, functions and duties  
26 of a real estate licensee because the conviction involved the threat of doing substantial injury to  
27 the person or the property of another. Respondent introduced a portion of the transcript of the  
preliminary hearing held in the San Diego County Superior Court. According to the victim's  
testimony contained in the Preliminary Hearing transcript, as a result of Respondent's punch to

1 the face, Mr. Walker suffered facial injuries which required the surgical implantation of a  
2 titanium plate in his cheek. Clearly, Respondent's punch to Mr. Walker's face resulted in a  
3 substantial injury to Mr. Walker. Thus, Respondent's conviction is substantially related to the  
4 functions, duties or qualifications of a real estate licensee.

#### 5 Public Purpose of Disciplinary Action

6 Business and Professions Code §10050 provides that: "It shall be the principal  
7 responsibility of the commissioner to enforce all laws in this part ... in a manner which achieves  
8 the maximum protection for the purchasers of real property and those persons dealing with real  
9 estate licensees." The proposed discipline of Respondent's license must be considered in this  
10 context. Consequently, when the Commissioner denies, suspends or revokes a license based on a  
11 criminal conviction, it is a conclusion that the applicant or licensee has engaged in acts that  
12 characterize him or her as being unfit or unsuitable for the particular real estate license in  
13 question. (See *Golde v. Fox* (1979) 98 Cal.App.3d 167)

14 Under Business and Professions Code §10177, the degree of discipline is a matter within  
15 the discretion of the Real Estate Commissioner. While reasonable minds may differ as to the  
16 propriety of penalty given, the degree of penalty is squarely within the Commissioner's  
17 discretion. (*Golde v. Fox*), *supra*.

#### 18 Burden of Proof

19 The burden of proof is clear and convincing evidence to a reasonable certainty (*Ettinger*  
20 *v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853). The Department has met  
21 this burden. As discussed above, Respondent has been convicted of a crime that is substantially  
22 related to the qualifications, functions or duties of a real estate licensee. Consequently, there are  
23 grounds for the revocation of Respondent's license under Business and Professions Code Section  
24 490 and Section 10177(b).

#### 25 Rehabilitation

26 Section 2912 of the California Code of Regulations provides the Criteria of  
27 Rehabilitation, which is used by the Commissioner of the Department of Real Estate to help



1 determine to what extent a Respondent convicted of a crime has been rehabilitated.  
2 Rehabilitation is not an event but rather a process of earning a second chance. Ultimately,  
3 Rehabilitation is akin to an affirmative defense. The burden of proof of establishing  
4 rehabilitation is on the proponent of the defense. (See *Whetstone v. Board of Dental Examiners*  
5 (1927) 87 Cal.App.156) In relation to Section 2912 of the Commissioner's Regulations,  
6 Respondent has presently failed to meet the following factors toward rehabilitation:

7           2912(a) – Passage of Time. Respondent was convicted in September 2008,  
8           less than a year before the disciplinary hearing.

9           2912(b) – Restitution. Although he is permitted to pay his fines and  
10           restitution over time, he still owes about \$3,500 of the \$4,000 in court  
11           ordered restitution to Mr. Walker for his medical bills.

12           2912(c) – Expungement. Respondent's conviction had not been  
13           expunged.

14           2912(e) – Completion or Discharge from Probation. Respondent is on  
15           probation until September 18, 2011.

16           2912(f) – Abstinence from Alcohol or Drugs. Respondent testified at  
17           hearing that he continues to drink alcohol.

18           2912(g) – Payment of the fine or other monetary penalty imposed in  
19           connection with a criminal conviction or quasi-criminal judgment.  
20           Respondent is being allowed to pay his fines over time.

21           2912(i) – Social and Business Relationships. There is no evidence that  
22           Respondent has changed his social or business relationships.

23           2912(k) – Education. There is no evidence that Respondent has received  
24           additional formal education or training., and is a member of the Rotary  
25           Club.

26           2912(m) – Change in Attitude. The fact that Respondent continues to  
27           redirect blame for his criminal attack to the victim evidences a lack of  
            rehabilitation. Despite a plea of nolo contendere to the battery charge,  
            Respondent continues to place the blame on Mr. Walker for Mr. Walker's  
            injuries. In addition, Respondent claims that the reason for entering a plea  
            bargain arrangement in the battery prosecution was due to the expense of  
            his defense and not because he committed the battery.

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1 Respondent has not met the rehabilitation standards set forth in the Commissioner's  
2 Regulations. Any claim by Respondent of rehabilitation must be balanced in the context of his  
3 crime, an act that resulted in serious injury to another person. At this point, Respondent simply  
4 has not established his full rehabilitation.

5 When all of the facts and circumstances are weighed and balanced, it would be contrary  
6 to the public interest and welfare to allow Respondent to remain licensed as a real estate  
7 salesperson.

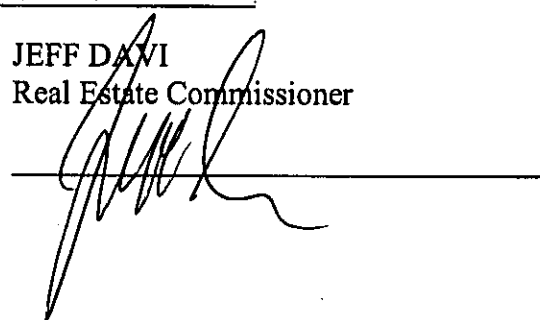
8 **ORDER**

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10 All licenses and license rights of Respondent, OSCAR F. BALTAZAR under the Real  
11 Estate Law are hereby revoked.

12 This Decision shall become effective at 12 o'clock noon on FEB 16 2010

13 IT IS SO ORDERED 1-25-10

14 JEFF DAVI  
15 Real Estate Commissioner

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DEPARTMENT OF REAL ESTATE

*E. Henry*

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BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of  
  
OSCAR F. BALTAZAR,  
  
Respondent.

No. H-2382 FR  
OAH No. 2009050783

NOTICE

TO: OSCAR F. BALTAZAR, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 14, 2009, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 14, 2009, 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 29, 2009, and 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 29, 2009, at the Sacramento

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

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

6 DATED: 9-17-09

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8 JEFF DAVI  
Real Estate Commissioner

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12 BY: Barbara J. Bigby  
13 Chief Deputy Commissioner

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OSCAR F. BALTAZAR,

Respondent.

Case No. H-2382 FR

OAH No. 2009050783

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 29, 2009, in Sacramento, California.

Kenneth C. Espell, Counsel, represented John Sweeney (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

Oscar F. Baltazar (respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted on July 29, 2009.

**FACTUAL FINDINGS**

1. Complainant made and filed the Accusation in his official capacity.
2. Respondent has been licensed as a real estate salesperson since 1999 and currently has license rights under the Real Estate Law.<sup>1</sup> Complainant seeks to revoke respondent's real estate salesperson license based upon the conviction described in Finding 3 below.
3. On September 19, 2008, in the San Diego County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Penal Code section 245, subdivision (a)(1), assault with force likely to produce great bodily injury, a misdemeanor. The imposition of sentence was suspended and respondent was placed on probation for three years. Respondent was ordered to perform 250 hours of community service, to pay fines and

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<sup>1</sup> Part 1 of Division 4 of the Business and Professions Code.

fees, and to pay \$4,000 in restitution to the victim. The court permitted respondent to pay \$25 per month toward these fines, fees and restitution. Respondent's probation is scheduled to end on September 18, 2011.

4. Respondent's assault conviction was based upon an incident that occurred on June 1, 2008, in San Diego, California. Respondent was visiting his parents in the San Diego area. He made arrangements to meet with Melinda Brown, Director of Business Development, Kern Economic Development Corporation, and her family for dinner at about 9:00 p.m. Before meeting with Ms. Brown and her family, respondent met with Coby Vance, a licensed real estate broker and business associate, at about 6:00 p.m. for appetizers and two beers. At about 7:45 p.m., respondent had another beer and some oysters with Mr. Brown, Ms. Brown's husband. At about 9:45 p.m., respondent had dinner and one glass of Sangria. Respondent left the restaurant with Mr. Vance at about 11:45 p.m. to look for a cab. Before finding a cab, respondent decided to stop at the Field Irish Pub to use the restroom, while Mr. Vance waited at the bar. When respondent was in the restroom, he heard a loud bang and Andrew Walker entered. Respondent said, "Whoa dude, chill out." Mr. Walker replied, "What the fuck." Out of the corner of his eye, respondent thought he saw Mr. Walker clench his fists and come toward him. Respondent swung and hit Mr. Walker in the face with his fist. Mr. Walker said, "What the hell man?" Respondent fractured a bone in Mr. Walker's cheek. After hitting Mr. Walker, respondent left the bar. Soon thereafter, respondent was arrested by the police. Respondent was 38 years old when this incident occurred.

5. At hearing, respondent described his conduct as self-defense. Respondent cannot impeach his assault conviction by claiming that he was only acting in self-defense. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 ["Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged."].) By pleading nolo contendere, respondent stands convicted of every element of the crime. In any event, respondent's own testimony did not establish that he was in such danger from Mr. Walker to give rise to a claim of self-defense. At hearing, respondent described Mr. Walker as very drunk. Respondent struck first. There was no evidence that Mr. Walker verbally threatened respondent or engaged in sufficiently menacing action to indicate that he posed an immediate risk of harm to respondent. Instead, respondent's own testimony indicates that he overreacted.

6. Respondent has completed the 250 hours of community service ordered by the court. He completed 210 of those hours by serving as an assistant baseball coach of North West Baseball, Spring/Summer Season 2009, coaching a team of 13 and 14 year olds. He completed the other 40 hours through the Rotary Club, acting as the point of contact between a grade school and a high school, assisting both schools with community service.

7. Respondent is currently paying the restitution he owes to Mr. Walker. Although he generally pays more than the \$25 per month permitted by the court, he still owes Mr. Walker approximately \$3,500.

8. Respondent married in 2004. His wife had two children from a previous relationship. Her children are currently 11 and 13. Respondent treats his wife's two children as his own. He and his wife also had a son together, who is now three years old. In addition to supporting his wife and children, respondent also provides financial and emotional support to his parents. Respondent is active in his children's school and his church. He is also active in the Rotary Club.

9. Respondent graduated from Concordia University in 1994 with a Bachelor of Arts degree in Behavioral Science: Sociology. The Rotary Club has named him a Paul Harris fellow in appreciation for his "tangible and significant assistance given for the furtherance of better understanding and friendly relations among peoples of the world." In April 2004, he received a Certificate of Achievement from the AJI Network for completing two years of study in the Business Professional's Course.

10. Respondent began working for CB Richard Ellis in Bakersfield in 1998. He is currently a one-eighth owner of the business.

11. Four witnesses testified on respondent's behalf.

Ms. Brown has known respondent for four years. As the Director of Business Development for Kern Economic Development Corporation, she has worked with him on business deals. Ms. Brown described respondent as someone who is very responsive and professional, and works well with others.

Mr. Vance began working with respondent at CB Richard Ellis in Bakersfield in May 2004. He has developed a close personal friendship with respondent. Mr. Vance described respondent as a responsible business owner, associate, and family man. Mr. Vance has never seen respondent be aggressive or attack another person. He described respondent as both well-liked and well-respected in the community.

Wayne Kress is also a one-eighth owner of CB Richard Ellis in Bakersfield. He has both a salesperson and a broker license. Mr. Kress described respondent as trustworthy and responsible. He has never seen respondent yell in anger or be aggressive toward any person.

David Coffey is the owner of Modern Office Environments. In May 2005, respondent helped him purchased the building in which his business is now located. Mr. Coffey found respondent to be honest and ethical in all his dealings. Mr. Coffey has never seen respondent act aggressively in any business or social situations.

Respondent also submitted letters of support from Michael J. Rubio, Supervisor – Fifth District; Keith Brice, President of Mid State Development Corporation; and Tammee Sherriff, Office Operations Manager for CB Richard Ellis in Bakersfield.

12. At hearing, even though respondent asserted that he hit Mr. Walker in self-defense, he took responsibility for his conviction and expressed remorse. He described

himself as a person who takes care of his family and gets actively involved in his community. He asserted that his crime was "out of character" for him and that he teaches his children that they must act responsibly and not hit anyone.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that a license may be suspended or revoked "on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."
2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be revoked if the licensee has "entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee ...."
3. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Subdivision (a)(8) of that section provides that a conviction will be deemed to be substantially related when it involves the "[d]oing 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." Respondent's misdemeanor assault conviction constituted an unlawful act that caused substantial injury to another person. Accordingly, respondent's conviction is substantially related to the qualifications, functions and duties of a real estate salesperson and establishes cause to revoke respondent's license under Business and Professions Code sections 490 and 10177, subdivision (b).
4. In California Code of Regulations, title 10, section 2912, the Department has set forth the criteria to be applied when reviewing whether a real estate license should be disciplined when the licensee has been convicted of a crime.<sup>2</sup>

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<sup>2</sup> California Code of Regulations, title 10, section 2912 provides:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

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

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.



5. Respondent committed a violent crime in June 2008. He still owes approximately \$3,500 in restitution to his victim. He is scheduled to be on probation until September 18, 2011.

6. There was no evidence, however, that respondent has been convicted of any crimes other than the single assault conviction described in Finding 3. He is gainfully employed. He appears to have a stable family life and is fulfilling his parental and familial responsibilities. He has significant and conscientious involvement in his community, church and privately-sponsored programs designed to provide social benefits and ameliorate social problems.

7. Respondent's crime appears to be a single, isolated event that does not warrant outright revocation of his license. But given the facts that his crime occurred only one year ago, he is still on probation, and he has not paid most of the restitution he owes, in order to adequately protect the public, some disciplinary action should be ordered. When all the

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(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 criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

(h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.

(i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

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

(m) Change in attitude from that which existed at the time of the commission of the criminal acts 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 the licensee's previous conduct and with 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, clinical psychologists, sociologists 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.

evidence is weighed and balanced, issuing respondent a restricted license for three years under the terms and conditions listed below is appropriate to adequately protect the public interest, safety and welfare.<sup>3</sup>

### ORDER

All licenses and licensing rights of respondent Oscar F. Baltazar under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. 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 that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

<sup>3</sup> At hearing, complainant questioned whether it would be appropriate for the supervising broker at CB Richard Ellis in Bakersfield to supervise respondent because respondent is a one-eighth owner of the business. Because a supervising broker is obligated to follow and comply with the Real Estate Law, the fact that respondent is a one-eighth owner should not impede the supervising broker from performing his supervisory duties.


*not adopted*

*not adopted*

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: August 14, 2009

  
KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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KENNETH C. ESPELL, Counsel (SBN 178757)  
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Telephone: (916) 227-0789  
-or- (916) 227-0868 (Direct)

FILED

MAY - 6 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of	)	H-2382 FR
	)	
OSCAR F. BALTAZAR,	)	<u>ACCUSATION</u>
	)	
Respondent.	)	
	)	

The Complainant, JOHN SWEENEY, in his official capacity as a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against OSCAR F. BALTAZAR (hereinafter "Respondent"), is informed and alleges as follows:

1

Respondent is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (hereinafter "the Code") as a real estate salesperson.

2

On or about September 19, 2008, in the San Diego County Superior Court, State of California, in case number SCD 214138, Respondent was convicted of violating Section 245(a)(1) of the California Penal Code (Assault Causing Serious Bodily Injury), a misdemeanor

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1 which bears a substantial relationship under Section 2910, Title 10, California Code of  
2 Regulations, to the qualifications, functions, or duties of a real estate licensee.

3 3

4 The crime of which Respondent was convicted, as alleged above constitutes  
5 cause for suspension or revocation of all licenses and license rights of Respondent under  
6 Sections 490 and 10177(b) of the California Business and Professions Code.

7 WHEREFORE, Complainant prays that a hearing be conducted on the  
8 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing  
9 disciplinary action against all licenses and license rights of Respondent under the Real Estate  
10 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further  
11 relief as may be proper under the provisions of law.

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13   
14 JOHN SWEENEY  
Deputy Real Estate Commissioner

15 Dated at Fresno, California,

16 this 21<sup>st</sup> day of April, 2009.