

FILED

MAR 21 2007

DEPARTMENT OF REAL ESTATE

By S. El

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	DRE NO. H-3151 SD
)	
RICARDO CHAVEZ CARDENAS,)	OAH No. L2005040036
)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

On January 31, 2007, a Decision was rendered in the above-entitled matter. The Decision was to become effective at 12 o'clock noon on February 19, 2007.

On February 15, 2007, Respondent requested time to petition for reconsideration of the Decision of January 31,

1 2007. Respondent timely submitted a petition for
2 reconsideration.

3 I have given due consideration to the petition of
4 Respondent. I find no good cause to reconsider the Decision of
5 January 31, 2007, and reconsideration is hereby denied.

6 IT IS HEREBY ORDERED March 21, 2007.

7
8 JEFF DAVI

9 Real Estate Commissioner

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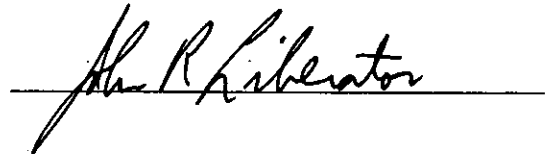
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BY: John R. Liberator
Chief Deputy Commissioner

FILED

MAR 21 2007

DEPARTMENT OF REAL ESTATE

By S. El

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
RICARDO CHAVEZ CARDENAS,) No. H-3151 SD
Respondent.)

ORDER FOR FURTHER STAY OF EFFECTIVE DATE

On January 30, 2007, a Decision was rendered in the above-entitled matter to become effective February 20, 2007.

On February 15, 2007, Respondent petitioned for reconsideration of the decision of January 30, 2006.

On February 16, 2007, the effective date of the Decision of January 30, 2007, was stayed for a period of thirty (30) days, and thereby to become effective at 12 o'clock noon on March 22, 2007.

Additional time is needed to evaluate the petition for reconsideration.

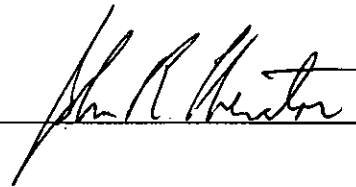
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1 IT IS HEREBY ORDERED that the effective date of the
2 Decision is stayed for a period of ten (10) days. The decision
3 of January 30, 2007, shall become effective at 12 o'clock noon
4 on April 1, 2007.

5 DATED: March 22, 2007

6 JEFF DAVI
7 Real Estate Commissioner

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FILED

FEB 16 2007

DEPARTMENT OF REAL ESTATE

By Jeff Davi

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
RICARDO CHAVEZ CARDENAS,) No. H-3151 SD
Respondent.)

ORDER STAYING EFFECTIVE DATE

On January 30, 2006, a Decision was rendered in the above-entitled matter to become effective February 20, 2007.

On February 15, 2007, Respondent petitioned for reconsideration of the Decision of January 30, 2006.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of January 30, 2006, shall become effective at 12 o'clock noon on March 22, 2007.

DATED: 2/16, 2007.

JEFF DAVI
Real Estate Commissioner

Wayne S. Bell

By WAYNE S. BELL
Chief Counsel

FILED

JAN 31 2007

DEPARTMENT OF REAL ESTATE

By A. Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	
	)	Case No. H-3151 SD
RICARDO CHAVEZ CARDENAS,	)	
	)	OAH No. L2005040036
Respondent.	)	

DECISION AFTER REJECTION

This matter was heard before Gary Brozio, Administrative Law Judge of the Office of Administrative Hearings, State of California, on May 12, 2006, followed by continued hearings on July 21, 2006, and August 21, 2006, in San Diego, California.

J. Chris Graves, in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the Accusation against Respondent. Complainant signed the Accusation on February 11, 2005.

Michael B. Rich, Counsel, represented the Complainant. Respondent Ricardo Chavez Cardenas was present and represented by legal counsel, Sandeep Baweja.

1 Evidence was received, the hearing was closed, and the
2 matter was submitted.

3 On October 23, 2006, I declined to adopt the Proposed
4 Decision and gave notice of my intention to proceed under
5 Section 11517(c) of the Government Code by deciding the case on
6 the administrative record and written argument from the parties.
7 Pursuant to Section 11517(c) of the Government Code of the State
8 of California, Respondent was served with notice of my
9 determination not to adopt the Proposed Decision of the
10 Administrative Law Judge along with a copy of said Proposed
11 Decision. Respondent was notified that I would decide the case
12 upon the record, the transcript of proceedings held on August
13 22, 2005, and upon any written argument offered by Respondent
14 and Complainant. On December 18, 2006, Respondent submitted his
15 written argument.

16 I have given careful consideration to the record in
17 this case including the transcript of the proceedings of May 12,
18 2006, July 21, 2006, and August 21, 2006.

19 The following shall constitute the Decision of the
20 Real Estate Commissioner in this proceeding.

21 FACTUAL FINDINGS

22 1. J. Chris Graves made the Accusation in his
23 official capacity as a Deputy Real Estate Commissioner of the
24 State of California.

25 2. At all times material Respondent was and now is
26 licensed or has license rights under the Real Estate Law (Part 1
27 of Division 4 of the Business and Professions Code) as a real

1 estate broker.

2 3. On May 12, 2006, the hearing commenced. The
3 Department's case-in-chief consisted solely of documentary
4 evidence. Exhibit 3 contained the court records from the
5 battery conviction, and Exhibit 5 contained a police report
6 purportedly related to that conviction. Respondent made an
7 oral motion to exclude all evidence of the battery conviction
8 because it was not a crime involving moral turpitude and
9 because it was not substantially related to the
10 qualifications, functions, or duties of a licensee. That
11 motion was denied without prejudice pending further briefing.

12 On May 22, 2006, the Administrative Law Judge (ALJ)
13 issued an order setting a briefing schedule on the motion to
14 exclude evidence related to the battery conviction. The
15 parties filed briefs before the second day of hearing.

16 On July 21, 2006, the ALJ ruled that the Department
17 was entitled to admit facts underlying the conviction. [In re
18 *Higbee*, (1972) 6 Cal.3d 562, 572.] Because the hearing had
19 not concluded, the admissibility issue could not be decided
20 until the close of evidence. Respondent continued presenting
21 his case, and eventually Respondent testified. In his
22 testimony, Respondent discussed the facts surrounding the
23 battery conviction, and for the first time, the parties
24 learned that the police report admitted as Exhibit 5 was the
25 wrong report. Exhibit 5 related to another incident that had
26 not resulted in criminal charges. Complainant conducted cross-
27 examination of Respondent but, before completing cross--

1 examination, complainant requested a continuance to obtain the
2 relevant police report. The request was granted.

3 On August 21, 2006, complaint informed the ALJ and
4 opposing counsel that the police report could not be located.
5 Respondent quickly completed his case, complainant put on
6 rebuttal testimony, and Respondent put on surrebuttal testimony.
7 In surrebuttal, Respondent's criminal lawyer testified that the
8 superior court expunged Respondent's conviction of receiving
9 stolen property. In cross-examination; the parties discovered
10 that the defense lawyer had in his file a copy of the police
11 report related to Respondent's battery conviction. After a
12 discussion in chambers, the parties agreed that the defense
13 lawyer would identify the arresting agency and the number of the
14 report, but that the copy of the report in defense counsel's
15 file would not be turned over or admitted. Subsequently, the ALJ
16 excluded Exhibit 5 (the wrong police report) because it was
17 irrelevant and prejudicial. [Government Code. § 11513(f).]

18 At the conclusion of the hearing on August 21, 2006,
19 the ALJ granted Respondent's request to hold the record open
20 until August 28, 2006, to enable Respondent to produce a
21 certified copy of the record of expungement related to
22 Respondent's conviction of receiving stolen property. Due to
23 unforeseen delay, that document was not procured until
24 September 12, 2006, when the matter was submitted. [Ordering
25 Respondent's defense lawyer to turn over the report raised
26 issues regarding attorney-client privilege, authentication,
27 certification, and discovery. See Gov. Code, §§ 11507.5,

1 11507.6, 11513(c) and (e).] The parties chose not to continue
2 the hearing a fourth time to brief these issues. The
3 contents of this police report were not considered in any
4 aspect of the Proposed Decision.]

5 4. Respondent is the president of Carmac
6 Industries, Inc., doing business as American Mortgage and
7 Credit (AMAC), a real estate and mortgage company Respondent
8 built from the ground up. AMAC has offices in Santee at 214
9 Town Center Parkway, and San Diego at 9765 Aero Drive. AMAC
10 employs over 100 real estate agents. About 74 percent of
11 AMAC's agents and staff are minorities, including Hispanics,
12 African Americans, and Asians. AMAC is the largest privately-
13 owned brokerage in San Diego.

14 AMAC represents underprivileged people and helps
15 them achieve the American Dream - buying a home. It primarily
16 markets its services to Hispanics who are renting, and
17 attempts to find them affordable properties and loans. After
18 nearly ten years in business, AMAC is approaching 10,000
19 Hispanic borrowers. AMAC has concentrated its efforts in East
20 San Diego County, especially in Santee. AMAC holds a major
21 market share in that area.

22 5. On January 5, 2004, Respondent pled guilty to
23 misdemeanor battery in the San Diego County Superior Court.
24 [Penal Code, § 242; Case No. S178315.] The court placed
25 Respondent on summary probation for three years on the
26 condition, among others, that he violate no laws, pay fines and
27 fees; attend and complete an anger management class, and stay

1 away from the victims. The court also issued a protective order
2 and an order to destroy all weapons. As part of the plea
3 bargain, the district attorney agreed not to oppose the
4 reduction of the crime to a disturbing the peace offense after
5 18 months.

6 Respondent completed all the terms and conditions of
7 probation. On June 14, 2006, the court granted Respondent's
8 motion for early termination of probation. On July 12, 2006,
9 the court dismissed the battery conviction under Penal Code
10 section 1204.4.

11 6. Respondent testified that he was in a
12 relationship with a woman named Celia, whose daughter was
13 named Sophia. For a time after his divorce, Respondent and
14 his older daughter lived with Celia and Sophia. Respondent
15 supported them.

16 There was tension between Celia and Sophia, and they
17 often fought. After a particularly disturbing 'fight,
18 Respondent's older daughter said that she did not want to live
19 there anymore. Respondent decided to end the relationship,
20 and he asked Celia and Sophia to move out. Tensions
21 escalated, but Respondent put their possessions in his
22 Mercedes and took them to Sophia's grandmother's house. As
23 Respondent was removing their things from the car, Celia and
24 Sophia got into a physical altercation. Sophia scratched
25 Celia, and Celia grabbed Sophia by the throat. Respondent
26 separated them with a "push." Respondent testified that he
27 merely jumped in between them. Sophia's grandparents grabbed

1 her, and Respondent left.

2 An emotional Celia telephoned Respondent and asked
3 him to return. Respondent picked her up (but not Sophia) and
4 returned to his home. The next morning, a police officer was
5 at Respondent's door to check on Celia; the officer left
6 without incident. The same day, Respondent told Celia that
7 she had to find a job and move out. He gave her money to
8 carry her over and to rent an apartment. Celia offered no
9 opposition.

10 The next day, Respondent found a police officer's
11 card on his door. He telephoned the officer, who informed him
12 that a police report had been filed related to his having
13 battered Sophia. The officer told Respondent, "The
14 grandmother wants you in trouble."

15 Later, Respondent's criminal lawyer spoke with
16 Sophia's grandmother. The lawyer learned that the grandmother
17 wanted \$275,000.00, otherwise she would sue and invent
18 charges. Respondent refused to be extorted, which he
19 characterized as a mistake at the hearing. He entered the
20 plea of guilty to the battery offense on the advice of
21 counsel.

22 7. On June 26, 2004, Respondent pled guilty to
23 receiving stolen property, charged as a felony, in the San
24 Diego County Superior Court. [Penal Code, § 496(A); Case No.
25 SCD182481.] On August 13, 2004, the court sentenced
26 Respondent to three years summary probation on the condition,
27 among others, that he complete 20 days of public work service

1 and provide 1,000 hours of volunteer work, sign a Fourth
2 Amendment waiver, and pay fines and victim restitution. Over
3 the prosecutor's objection, the superior court reduced the
4 crime to a misdemeanor.

5 Respondent completed all the terms and condition of
6 probation. On June 14, 2006, the court granted Respondent's
7 motion for early termination of probation. On July 12, 2006,
8 the court dismissed the conviction under Penal Code section
9 1204.4.

10 8. Sometime between March 27 and 29, 2004,
11 burglars entered the Salvation Army in Downtown San Diego and
12 stole 12 Toshiba Tecra A1 laptop computers. One of the
13 computes had serial number 93056893H (the stolen laptop). An
14 employee from the Salvation Army testified that the laptops
15 cost \$1,586.00 each.

16 Each of the laptops had Computrace software
17 developed by the Absolute Software Corporation. When the
18 laptop was connected to a telephone line or the internet, the
19 software periodically contacted the Computrace Monitoring
20 Center. The monitoring center captured the caller
21 identification of the telephone line or the Internet Protocol
22 (IP) address on the computers.

23 The stolen computers were owned by the Beaumont
24 Foundation of America, in Beaumont, Texas. The foundation
25 supplies computers to communities, schools, and individuals to
26 support digital inclusion for underserved individuals.
27 Shortly after the thefts, the foundation gave permission to

1 Absolute Software to monitor all communications on the
2 computers. The stolen laptop was first monitored on March 31,
3 2004, at IP address 68.7.3.148. The laptop was monitored at
4 that IP address several times thereafter.

5 The criminal investigation was assigned to Detective
6 James Boyd, who worked for the San Diego Police Department's
7 Special Investigations Unit. On April 15, 2004, Detective
8 Boyd received two e-mails from a theft recovery officer at
9 Absolute Software. The first was a call log showing all the
10 transmissions from the stolen laptop, which was last used at
11 2:04 A.M. that morning. The second email identified
12 Respondent as the person who last used the laptop. It
13 included a picture of Respondent that he had posted on an
14 internet dating service.

15 9. At 8:30 A.M., Detective Boyd and Detective
16 Johanna Thrasher contacted Respondent at his home. They had
17 never met him before. The detectives interviewed Respondent
18 at the door: they never searched his house, cars, or garage.
19 The detectives told Respondent that the laptop was stolen.
20 Respondent said that he had the laptop at his Santee office,
21 but before going there, he had to drop his children off at
22 school. He agreed to meet the detectives at the Santee office
23 around 10:00 A.M.

24 10. The detectives went to the Santee office but
25 Respondent did not arrive. Around 10:45 A.M., Detective
26 Thrasher went into the office and asked the receptionist when
27 Respondent planned to arrive, but she said she did not know.

1 About 10 minutes later, another employee came out and told the
2 detectives that "[Respondent] called and said he was going to
3 the office on Aero Drive for training and he would be back and
4 forth all day." The detective then traveled to the office on
5 Aero Drive.

6 11. At the Aero Drive Office, Detective Boyd asked
7 the receptionist whether Respondent had arrived. The
8 receptionist said that Respondent telephoned and said that
9 there could not be a meeting because something had "come up."
10 Detective Boyd asked the receptionist to telephone Respondent,
11 which she did. Detective Thrasher then spoke with Respondent
12 on the telephone.

13 12. Respondent was not cooperative, and his
14 responses were vague. He said that the laptop was in his
15 office in Santee. He could not recall exactly when he got it,
16 but believed it was within a week. He initially received it
17 from his landscaper, Gilbert Vasquez. Vasquez met the
18 supplier in the parking lot of a Home Depot and had six
19 laptops for sale. The supplier did not want to meet
20 Respondent directly, so Vasquez brought one laptop top to
21 Respondent. Respondent asked whether the computers were
22 stolen, and Vasquez said that the supplier said they were not.
23 Respondent had been trying to get in touch with the individual
24 who supplied the laptop, but he had not paid for it because he
25 NN anted to see whether it would meet his business needs.
26 Respondent said that he was supposed to pay \$500 for the
27 laptop, and that he had spoken with his "IT guy," Ron Seymour,

1 in an effort to ascertain whether it was stolen. Seymour told
2 him that, if the laptop had its components and programs, it
3 probably was not stolen. Respondent gave Seymour's telephone
4 number to the detective. Respondent said that he did not know
5 the name of the supplier, but that he had the supplier's name
6 and phone number on a sticky note attached to the laptop's
7 monitor.

8 At some point in the conversation, Respondent asked
9 Detective Thrasher how they discovered that he used the
10 computer. Thrasher responded. "You put your picture on the
11 website. You know what I'm talking about." Respondent did not
12 say anything in response. Respondent told the detective that
13 he had nothing to hide. He said that he did not given these
14 facts to the detectives earlier because he was afraid. He
15 said that the last he knew the laptop was on his desk in the
16 Santee office. Respondent agreed to meet the detectives
17 there.

18 13. En route to the Santee Office, Detective
19 Thrasher telephoned Seymour, who was a former police officer
20 running a computer technology business. Seymour said that
21 Respondent contacted him "a couple of weeks" earlier because
22 four or five computers had been offered for sale. Seymour
23 thought the computers were used and were worth about \$800.00
24 each. He said he tried to steer Respondent away from the
25 purchase because he believed that they might be counterfeit.
26 There was no discussion about the laptops possibly being
27 stolen.

1 14. The detectives arrived at the Santee office
2 before Respondent arrived and went inside to try to locate the
3 stolen laptop. They did not find it. Employees who were
4 present said that they had not seen the laptop, but they knew
5 that Respondent worked on one.

6 15. Sometime between 11:15 and 11:45 A.M.,
7 Respondent and Gilbert Vasquez arrived at the Santee office.
8 Detective Boyd arrested Respondent and handcuffed him.
9 Respondent waived his rights and agreed to speak. Respondent
10 said that Vasquez brought the laptop to him. Vasquez said
11 that the laptop came from a guy in the parking lot at the Home
12 Depot. Vasquez said the supplier wanted \$500.00 for it, and
13 that he was going to deliver the receipts and power cord the
14 next day. Respondent thought that was a good deal, and he
15 called his Seymour, who said that it would be a good deal if
16 it came with power cord, original software, and a receipt.

17 Respondent said that the detectives scared him when
18 they showed up at his door. He admitted that, after the
19 detectives left, Vasquez telephoned him and they spoke on the
20 telephone. Respondent told Vasquez to go to the office, to
21 get the laptop, and to find the individual who delivered it.
22 Respondent said that he did not want to get caught with his
23 "hand in the cookie jar." He wanted nothing to do with the
24 stolen laptop. When asked why he did not meet the detectives
25 at the Santee office as planned. Respondent said that he had
26 to take his children to school, and then remembered that he
27 had to conduct training at the other office.

1 16. Both officers testified that Respondent would
2 not have been arrested if had turned over the stolen laptop.

3 17. Detective Thrasher spoke separately with
4 Vasquez. Vasquez made statements about Respondent's lack of
5 knowledge (which if believed would be beneficial to
6 Respondent), and he said that Respondent told him to get rid
7 of the stolen laptop (which if believed would be beneficial to
8 complainant's theory of the case). Vasquez' statements to
9 Detective Thrasher were inadmissible and unreliable hearsay
10 and were not considered in this proceeding.

11 18. The officers went to the location where Vasquez
12 allegedly disposed of the laptop. They could not find it, and
13 Respondent and Vasquez were transported to jail. The stolen
14 laptop was never recovered.

15 19. Seymour was a retired law enforcement officer
16 who owned and operated Seycom Consultants, Inc., a company
17 engaged in servicing and selling computer and
18 telecommunications systems. He had known Respondent and had
19 serviced his company for ten years.

20 Before the arrest, Respondent telephoned Seymour and
21 asked about purchasing 12 used laptops. Respondent said that
22 someone was closing a business had come into the office
23 offering them for sale. Respondent wanted to know whether it
24 was a good deal. Seymour researched their value on the
25 internet and testified that the machines were worth around
26 \$1,200.00 to \$1,300.00 new and about \$600.00 to \$700.00 used.
27 Thus, Seymour had no reason to believe the computers were

1 stolen because they were being offered at the averagemarket
2 price. He said that he provided this information to the
3 detectives who were investigating the case; but they believed
4 the laptops were worth \$2500.00 and were reluctant to accept
5 the lower valuation (which went to the issue of knowledge).
6 Seymour also testified that the police report did not
7 accurately reflect his conversation with Detective Thrasher
8 because he never said the computers were counterfeit or that
9 they were worth \$800.00.

10 20. Around the time of the crime, Respondent was
11 negotiating a lease for another office and was discussing the
12 possibility of having laptops and dummy terminals. Vasquez,
13 who cut Respondent's grass and watched his children, said he
14 knew someone who had eight to ten new laptops for sale because
15 his store was going out of business. Respondent trusted
16 Vasquez and allowed him to bring over one of the laptops.
17 Respondent thought the laptop looked used, but Vasquez said it
18 was just a "demo" and the rest were still in boxes.
19 Respondent telephoned Seymour, who obtained the model number
20 and looked for the computers on line. Seymour could not find
21 the model numbers and so he believed the laptops might be
22 "clones." Seymour did not think that the \$500.00 asking price
23 was that good a deal. Seymour advised Respondent that, if he
24 elected to purchase the laptops, he should make sure the
25 machines were not used and he should obtain receipts and the
26 registration materials. Seymour was going to check the
27 laptops, but the next day the detectives appeared at

1 Respondent's front door.

2 21. The detectives told Respondent that the laptop
3 was stolen. He said that he did not know it was stolen and
4 said it was at his Santee office. The detectives initially
5 appeared to believe him, but their attitude changed when
6 Respondent said that he had a real estate business with
7 multiple branches, and the detectives saw his Lamborghini and
8 Hummer in the garage. The detectives asked Respondent. "What
9 else do you do," and began asking about drugs. Respondent
10 said the male detective got "real ghetto." They searched his
11 cars.

12 22. Respondent agreed to meet the detectives at the
13 Santee office. He telephoned Seymour who advised him to
14 return the computer. When Respondent arrived at the office,
15 the laptop was gone, and Vasquez claimed that he gave it back.
16 The detectives arrested Respondent, and then drove him around
17 for four hours, all the while trying to get information from
18 him.

19 23. The district attorney and the trial judge
20 believed Respondent was protecting someone. The judge was
21 willing to let Respondent off lightly if he disclosed who
22 stole the computers, but Respondent said that he did not know.
23 Respondent pled guilty on advice of counsel and because he
24 could not risk going to jail because of his daughters.
25 Nevertheless, he now regretted pleading guilty and maintained
26 that he was "innocent" of the charge of receiving stolen
27 property.

1 24. Respondent believed that the detectives thought
2 he was a drug dealer. He constantly had trouble with minority
3 law enforcement officers because they could not believe a
4 Hispanic legitimately earned so much money. Seymour told
5 Respondent that he believed the police were "setting him up."
6 Respondent echoed this concern by stating that much of the
7 information in the police reports was untrue, and suggesting
8 that the detectives attributed to him statements made by
9 Vasquez. Specifically, Respondent denied that Vasquez told
10 him the laptops were from a stranger at a Home Depot parking
11 lot, or that he told police that fact. He denied making an
12 agreement with detectives to meet at the Santee office at 10
13 A.M. He denied instructing Vasquez to remove the laptop from
14 the office. He denied that, in the telephone call with
15 detective Thrasher, he said that he was trying to get in touch
16 with the supplier, that the price of the laptops was \$500.00,
17 or that the name of the supplier was on a post-it on the
18 laptop monitor. Respondent denied using the laptop at 2 A.M.
19 He denied having the computer for more than a week. He did
20 not recall putting his picture on the website, or asking
21 Detective Thrasher how they knew he used the laptop.

22 25. Respondent's claim of actual innocence was
23 difficult to believe. It was difficult to believe that the
24 detectives were trying to frame him, as there was no evidence
25 to corroborate that serious allegation. It was difficult to
26 believe that Respondent was not using the laptop because his
27 own picture was posted on it for dating purposes. It was

1 difficult to believe that he had the computer for less than a
2 week because Seymour told Detective Thrasher that Respondent
3 contacted him "a couple of weeks" earlier. It was difficult
4 to believe that Respondent never agreed to meet the detectives
5 at his Santee office at 10 A.M. because the detectives went
6 there expecting to meet him, entered the office looking for
7 him, and tried to find out from staff where he went. Nothing
8 suggested that these efforts were a farce. It was difficult
9 to believe that Respondent lacked knowledge (that the laptop
10 was stolen) because he knew the laptops were being sold by a
11 person in a parking lot, he admitted he had the stolen laptop
12 but did not immediately turn it over, and he avoided the
13 detectives for a long period of time with no credible
14 explanation why. There was a great deal of evidence evincing
15 a consciousness of guilt. Moreover, some of Respondent's
16 testimony contradicted the statements he made to Detectives
17 Boyd and Thrasher on the date of the arrest, and there was no
18 showing that the detectives filed false police reports.

19 26. Respondent, the president of AMAC, testified
20 that he has never engaged in any profession other than real
21 estate. He had a "passion" for his profession. During his
22 ten-year licensure, he has been "really compliant" with the
23 Department's rules and regulations. He went from working for
24 a small broker to starting his own small office. He has grown
25 his company from a few agents to over 100 agents, and now is
26 the largest privately owned broker in San Diego. Respondent
27 believed in growing his business and wanted others to share in

1 his success. His employees shared his vision.

2 27. Regarding AMAC's internal operations, the vice-
3 president testified that the company is going into mortgage
4 banking, and that the real estate business has grown so large
5 that it has become necessary to impose a corporate structure.
6 One consequence will be placing agents on teams with managers
7 providing oversight. AMAC has a controller who does the
8 books, financial statements, expenses, and accounts
9 receivable. The controller testified that AMAC has an
10 accurate accounting system, that it purchases equipment from
11 legitimate suppliers, and that Respondent has never asked him
12 to do anything improper or unethical. AMAC has an operations
13 manager who oversees the infrastructure, including the
14 purchase of equipment. The operations manager testified that
15 Respondent has never told him to purchase equipment from
16 questionable sources. Respondent corroborated these facts.

17 28. Respondent conducts real estate training in his
18 offices a couple times a week. He and other experts supply
19 the training. He trains his agents on client interaction,
20 form and document completion, laws, regulations, credit, and
21 generally legal and proper conduct. He tracks his agents'
22 continuing education requirements. He circulates all
23 newsletters and other updates from the Department. He
24 provides new agents with checklists.

25 29. Either Respondent or one of his senior
26 subordinates reviews the work of all employees. Respondent
27 and his supervisors make certain that the agents timely meet

1 all financial obligations, that they make all disclosures, and
2 that they complete all the required paperwork. Respondent
3 seeks legal advice when necessary. He was and is devoted to
4 supplying his clients with competent, ethical, and responsible
5 service. According to Respondent, AMAC has engaged in
6 thousands of transactions and has only been sued once. There
7 was no evidence that Respondent had ever engaged in wrongdoing
8 with respect to buyers, sellers, creditors, or financial
9 institutions.

10 30. Respondent had good rapport with his officers,
11 agents, and staff. He was fair, accessible, respected,
12 trustworthy, and well liked. He helped struggling agents
13 financially.

14 31. Respondent organized a toy drive at Christmas.
15 He personally attended the event, wrapped gifts, and bought
16 most of the toys. He puts on an annual Thanksgiving and
17 Christmas dinner at a homeless shelter, which he participates
18 in and funds. He goes to local schools and encourages
19 underprivileged children to succeed. Respondent cares about
20 his community and gives back to it.

21 32. Respondent is 38 years old. He graduated from
22 the University of California, Berkeley and has a degree in
23 Economics. He is a divorced, single parent who raises two
24 daughters, ages 10 and 13. He has legal custody of his older
25 daughter. He attends church with his family.

26 33. Respondent has improved the stability of his
27 family life. Although things were tough after the divorce,

1 his family life has calmed considerably. He supports and gets
2 along with his former wife. He takes exceptional care of his
3 two daughters; who have become excellent students. The
4 instability surrounding his former relationship with Celia has
5 passed.

6 Respondent is devoted to his family, and they are
7 devoted to him. Respondent employs and financially supports
8 many members of his family. He is close to his mother, visits
9 her often, and pays her living expenses. Respondent's family
10 is a significant support system.

11 34. Respondent admitted that his crimes were
12 mistakes and were serious in nature. He called the receiving-
13 stolen-property conviction "the biggest mistake of my life."
14 He testified that he has learned and grown from these
15 mistakes. He promised never to repeat them. He counseled
16 everyone close to him not to repeat his errors.

17 Respondent was concerned about losing his license
18 because of the number of people he supports and the number of
19 employees who rely on AMAC for income. Respondent was concerned
20 about the impact of the disciplinary proceeding on his personal
21 reputation. He and other witnesses asked that Respondent's
22 broker's license not be suspended or revoked.

23 LEGAL CONCLUSIONS

24 1. Under Business and Professions Code sections 490
25 and 10177, subdivision (b), the holder of a real estate license
26 may be disciplined if he has been convicted of a felony or of a
27 crime involving moral turpitude and which is substantially

1 related to the qualifications, functions, or duties of a real
2 estate licensee.

3 2. Pursuant to sections 490 and 10177(b) of the
4 Business and Professions Code, cause exists to discipline
5 Respondent's broker license for his conviction of receiving
6 stolen property. Respondent plead guilty to a violation of
7 Penal Code section 496, subdivision (a). Although Respondent
8 maintained that he was not guilty of that crime, his guilty
9 plea conclusively proved each of the elements of the offense.
10 In administrative disciplinary proceedings, a licensee may not
11 seek to impeach a prior criminal conviction by means of an "an
12 inquiry into the circumstances surrounding the offense."

13 [Arneson -v- Fox (1980) 28 Cal.3d 440, 449.]

14 3. The crime of receiving stolen property involves
15 moral turpitude. [People -v- Turner (1990) 50 Cal.3d 668, 705:
16 People -v- Rodriguez (1986) 177 Cal.App.3d 174, 178179.] It
17 bears a substantial relationship to the qualifications,
18 functions, or duties of a real estate broker under California
19 Code of Regulations, title 10, section 2910, subdivision
20 (a)(1).

21 3. The factors in mitigation and extenuation and in
22 rehabilitation have been considered in making the following
23 order.

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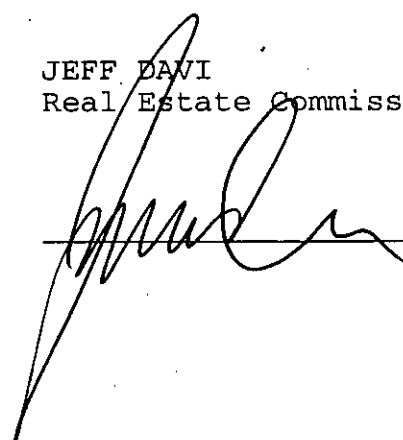
ORDER

All licenses and licensing rights of Respondent
RICARDO CHAVEZ CARDENAS are revoked.

This Decision shall become effective at 12 o'clock
noon on FEB 20 2007.

IT IS SO ORDERED 1-30-07

JEFF DAVI
Real Estate Commissioner



FILED
OCT 25 2006

DEPARTMENT OF REAL ESTATE

By A. El

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

RICARDO CHAVEZ CARDENAS,)

No. H-3151 SD

Respondent.)

L-2005040036

NOTICE

TO: RICARDO CHAVEZ CARDENAS, Respondent, and SANDEEP BAWEJA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 21, 2006, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 21, 2006, 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 May 12, July 21

///

1 and August 21, 2006, and any written argument hereafter submitted
2 on behalf of Respondent and Complainant.

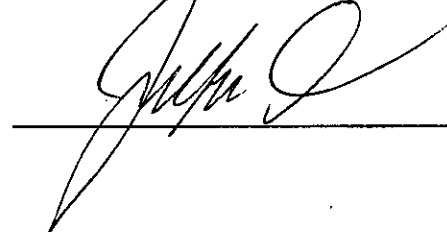
3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of May 12, July 21, and August 21, 2006, at
6 the Sacramento office of the Department of Real Estate unless an
7 extension of the time is granted for good cause shown.

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

13 DATED: _____

10-23-06

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15 JEFF DAVI
Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

RICARDO CARDENAS,

Respondent.

Case No. H-3151 SD

OAH No. L2005040036

PROPOSED DECISION

Administrative Law Judge Gary Brozio, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on May 12, July 21, and August 21, 2006.

Michael B. Rich, Real Estate Counsel, represented complainant, Deputy Real Estate Commissioner J. Chris Graves, Department of Real Estate (Department), State of California.

Sandeep Baweja, Attorney at Law, represented Ricardo Cardenas (respondent).

The matter was submitted on September 12, 2006.

FACTUAL FINDINGS

Procedural History

1. Respondent's License: The Department issued Respondent broker license number 01156514. It expires April 11, 2007.
2. The Accusation: On February 22, 2005, Deputy Real Estate Commissioner J. Chris Graves filed, in his official capacity, an accusation seeking disciplinary action against Respondent's license because he pled guilty to two misdemeanor offenses – simple battery in 2003 and receiving stolen property in 2004. Respondent filed a notice of defense and a hearing was set.
3. The Hearing: On May 21, 2006, the hearing commenced. The Department's case-in-chief consisted solely of documentary evidence. Exhibit 3 contained the court records from the battery conviction, and Exhibit 5 contained a police report purportedly related to that conviction. Respondent made an oral motion to exclude all evidence of the

battery conviction because it was not a crime involving moral turpitude and because it was not substantially related to the qualifications, functions, or duties of a licensee. That motion was denied without prejudice pending further briefing.

On May 22, 2006, the Administrative Law Judge (ALJ) issued an order setting a briefing schedule on the motion to exclude evidence related to the battery conviction. The parties filed briefs before the second day of hearing.

On July 21, 2006, the ALJ ruled that the Department was entitled to admit facts underlying the conviction. (*In re Higbee* (1972) 6 Cal.3d 562, 572.) Because the hearing had not concluded, the admissibility issue could not be decided until the close of evidence. Respondent continued presenting his case, and eventually respondent testified. In his testimony, Respondent discussed the facts surrounding the battery conviction, and for the first time, the parties learned that the police report admitted as Exhibit 5 was the wrong report. Exhibit 5 related to another incident that had not resulted in criminal charges. Complainant conducted cross-examination of Respondent but, before completing cross-examination, complainant requested a continuance to obtain the relevant police report. The request was granted.

On August 21, 2006, complainant informed the ALJ and opposing counsel that the police report could not be located. Respondent quickly completed his case, complainant put on rebuttal testimony, and respondent put on surrebuttal testimony. In surrebuttal, Respondent's criminal lawyer testified that the superior court expunged respondent's conviction of receiving stolen property. In cross-examination, the parties discovered that the defense lawyer had in his file a copy of the police report related to respondent's battery conviction. After a discussion in chambers, the parties agreed that the defense lawyer would identify the arresting agency and the number of the report, but that the copy of the report in defense counsel's file would not be turned over or admitted.¹ Subsequently, the ALJ excluded Exhibit 5 (the wrong police report) because it was irrelevant and prejudicial. (Gov. Code, § 11513, subd. (f).)²

At the conclusion of the hearing on August 21, 2006, the ALJ granted respondent's request to hold the record open until August 28, 2006, to enable respondent to produce a certified copy of the record of expungement related to respondent's conviction of receiving stolen property. Due to unforeseen delay, that document was not procured until September 12, 2006, when the matter was submitted.

¹ Ordering respondent's defense lawyer to turn over the report raised issues regarding attorney-client privilege, authentication, certification, and discovery. (See Gov. Code, §§ 11507.5, 11507.6, 11513, subds. (c) and (e).) The parties chose not to continue the hearing a fourth time to brief these issues.

² The contents of this police report were not considered in any aspect of this Proposed Decision.

Respondent's Enterprise

4. Respondent is the president of Carmac Industries, Inc., doing business as American Mortgage and Credit (AMAC), a real estate and mortgage company respondent built from the ground up. AMAC has offices in Santee at 214 Town Center Parkway, and San Diego at 9765 Aero Drive. AMAC employs over 100 real estate agents. About 74 percent of AMAC's agents and staff are minorities, including Hispanics, African Americans, and Asians. AMAC is the largest privately-owned brokerage in San Diego.

AMAC represents underprivileged people and helps them achieve the American Dream – buying a home. It primarily markets its services to Hispanics who are renting, and attempts to find them affordable properties and loans. After nearly ten years in business, AMAC is approaching 10,000 Hispanic borrowers. AMAC has concentrated its efforts in East San Diego County, especially in Santee. AMAC hold a major market share in that area.

Respondent's Battery Conviction

5. Court Proceedings: On January 5, 2004, Respondent pled guilty to misdemeanor battery in the San Diego County Superior Court. (Pen. Code, § 242; Case No. S178315.) The court placed respondent on summary probation for three years on the condition, among others, that he violate no laws, pay fines and fees, attend and complete an anger management class, and stay away from the victims. The court also issued a protective order and an order to destroy all weapons. As part of the plea bargain, the district attorney agreed not to oppose the reduction of the crime to a disturbing the peace offense after 18 months.

Respondent completed all the terms and conditions of probation. On June 14, 2006, the court granted Respondent's motion for early termination of probation. On July 12, 2006, the court dismissed the battery conviction under Penal Code section 1204.4.

6. Respondent's Testimony: Respondent testified that he was in a relationship with a woman named Celia, whose daughter was named Sophia. For a time after his divorce, respondent and his older daughter lived with Celia and Sophia. Respondent supported them.

There was tension between Celia and Sophia, and they often fought. After a particularly disturbing fight, respondent's older daughter said that she did not want to live there anymore. Respondent decided to end the relationship, and he asked Celia and Sophia to move out. Tensions escalated, but respondent put their possessions in his Mercedes and took them to Sophia's grandmother's house. As respondent was removing their things from the car, Celia and Sophia got into a physical altercation. Sophia scratched Celia, and Celia grabbed Sophia by the throat. Respondent separated them with a "push." Respondent testified that he merely jumped in between them. Sophia's grandparents grabbed her, and respondent left.

An emotional Celia telephoned respondent and asked him to return. Respondent picked her up (but not Sophia) and returned to his home. The next morning, a police officer was at respondent's door to check on Celia; the officer left without incident. The same day, respondent told Celia that she had to find a job and move out. He gave her money to carry her over and to rent an apartment. Celia offered no opposition.

The next day, Respondent found a police officer's card on his door. He telephoned the officer, who informed him that a police report had been filed related to his having battered Sophia. The officer told respondent, "The grandmother wants you in trouble."

Later, respondent's criminal lawyer spoke with Sophia's grandmother. The lawyer learned that the grandmother wanted \$275,000.00, otherwise she would sue and invent charges. Respondent refused to be extorted, which he characterized as a mistake at the hearing. He entered the plea of guilty to the battery offense on the advice of counsel.

Respondent's Conviction of Receiving Stolen Property

7. Court Proceedings: On June 26, 2004, respondent pled guilty to receiving stolen property, charged as a felony, in the San Diego County Superior Court. (Pen. Code, § 496, subd. (A); Case No. SCD182481.) On August 13, 2004, the court sentenced respondent to three years summary probation on the condition, among others, that he complete 20 days of public work service and provide 1,000 hours of volunteer work, sign a Fourth Amendment waiver, and pay fines and victim restitution. Over the prosecutor's objection, the superior court reduced the crime to a misdemeanor.

Respondent completed all the terms and condition of probation. On June 14, 2006, the court granted respondent's motion for early termination of probation. On July 12, 2006, the court dismissed the conviction under Penal Code section 1204.4.

8. The Theft and Investigation: Sometime between March 27 and 29, 2004, burglars entered the Salvation Army in Downtown San Diego and stole 12 Toshiba Tecra A-1 laptop computers. One of the computes had serial number 93056893H (the stolen laptop). An employee from the Salvation Army testified that the laptops cost \$1,586.00 each.

Each of the laptops had Computrace software developed by the Absolute Software Corporation. When the laptop was connected to a telephone line or the internet, the software periodically contacted the Computrace Monitoring Center. The monitoring center captured the caller identification of the telephone line or the Internet Protocol (IP) address.

The stolen computers were owned by the Beaumont Foundation of America, in Beaumont, Texas. The foundation supplies computers to communities, schools, and individuals to support digital inclusion for underserved individuals.³ Shortly after the thefts, the foundation gave permission to Absolute Software to monitor all communications on the

³ The parties stipulated that these facts could be officially noticed.

computers. The stolen laptop was first monitored on March 31, 2004, at IP address 68.7.3.148. The laptop was monitored at that IP address several times thereafter.

The criminal investigation was assigned to Detective James Boyd, who worked for the San Diego Police Department's Special Investigations Unit. On April 15, 2004, Detective Boyd received two e-mails from a theft recovery officer at Absolute Software. The first was a call log showing all the transmissions from the stolen laptop, which was last used at 2:04 a.m. that morning. The second email identified respondent as the person who last used the laptop. It included a picture of respondent that he had posted on an internet dating service.

9. Contact of Respondent: At 8:30 a.m., Detective Boyd and Detective Johanna Thrasher contacted respondent at his home.⁴ They had never met him before. The detectives interviewed respondent at the door; they never searched his house, cars, or garage. The detectives told respondent that the laptop was stolen. Respondent said that he had the laptop at his Santee office, but before going there, he had to drop his children off at school. He agreed to meet the detectives at the Santee office around 10 a.m.

10. Attempts to Recover the Laptop: The detectives went to the Santee office but respondent did not arrive. Around 10:45 a.m., Detective Thrasher went into the office and asked the receptionist when respondent planned to arrive, but she said she did not know. About 10 minutes later, another employee came out and told the detectives that "[respondent] called and said he was going to the office on Aero Drive for training and he would be back and forth all day." The detective then traveled to the office on Aero Drive.

11. At the Aero Drive Office, Detective Boyd asked the receptionist whether respondent had arrived. The receptionist said that respondent telephoned and said that there would not be a meeting because something had "come up." Detective Boyd asked the receptionist to telephone respondent, which she did. Detective Thrasher then spoke with respondent on the telephone.

12. Respondent was not cooperative, and his responses were vague. He said that the laptop was in his office in Santee. He could not recall exactly when he got it, but believed it was within a week. He initially received it from his landscaper, Gilbert Vasquez. Vasquez met the supplier in the parking lot of a Home Depot and had six laptops for sale. The supplier did not want to meet respondent directly, so Vasquez brought one laptop top to respondent. Respondent asked whether the computers were stolen, and Vasquez said that the supplier said they were not. Respondent had been trying to get in touch with the individual who supplied the laptop, but he had not paid for it because he wanted to see whether it would meet his business needs. Respondent said that he was supposed to pay \$500 for the laptop, and that he had spoken with his "IT guy," Ron Seymour, in an effort to ascertain whether it was stolen. Seymour told him that, if the laptop had its components and programs, it

⁴ Detectives Boyd and Thrasher testified in rebuttal. Their testimony was incorporated into the facts set forth below.

probably was not stolen. Respondent gave Seymour's telephone number to the detective. Respondent said that he did not know the name of the supplier, but that he had the supplier's name and phone number on a sticky note attached to the laptop's monitor.

At some point in the conversation, respondent asked Detective Thrasher how they discovered that he used the computer. Thrasher responded, "You put your picture on the website. You know what I'm talking about." Respondent did not say anything in response. Respondent told the detective that he had nothing to hide. He said that he did not give these facts to the detectives earlier because he was afraid. He said that the last he knew the laptop was on his desk in the Santee office. Respondent agreed to meet the detectives there.

13. En route to the Santee Office, Detective Thrasher telephoned Seymour, who was a former police officer running a computer technology business. Seymour said that respondent contacted him "a couple of weeks" earlier because four or five computers had been offered for sale. Seymour thought the computers were used and were worth about \$800.00 each. He said he tried to steer respondent away from the purchase because he believed that they might be counterfeit. There was no discussion about the laptops possibly being stolen.

14. The detectives arrived at the Santee office before respondent arrived and went inside to try to locate the stolen laptop. They did not find it. Employees who were present said that they had not seen the laptop, but they knew that respondent worked on one.

15. Respondent's Arrest and Interview: Sometime between 11:15 and 11:45 a.m., respondent and Gilbert Vasquez arrived at the Santee office. Detective Boyd arrested respondent and handcuffed him. Respondent waived his rights and agreed to speak. Respondent said that Vasquez brought the laptop to him. Vasquez said that the laptop came from a guy in the parking lot at the Home Depot. Vasquez said the supplier wanted \$500.00 for it, and that he was going to deliver the receipts and power cord the next day. Respondent thought that was a good deal, and he called his Seymour, who said that it would be a good deal if it came with power cord, original software, and a receipt.

Respondent said that the detectives scared him when they showed up at his door. He admitted that, after the detectives left, Vasquez telephoned him and they spoke on the telephone. Respondent told Vasquez to go to the office, to get the laptop, and to find the individual who delivered it. Respondent said that he did not want to get caught with his "hand in the cookie jar." He wanted nothing to do with the stolen laptop. When asked why he did not meet the detectives at the Santee office as planned, Respondent said that he had to take his children to school, and then remembered that he had to conduct training at the other office.

16. Both officers testified that respondent would not have been arrested if had turned over the stolen laptop.

17. Vasquez's Hearsay Statements: Detective Thrasher spoke separately with Vasquez. Vasquez made statements about respondent's lack of knowledge (which if believed would be beneficial to respondent), and he said that respondent told him to get rid of the stolen laptop (which if believed would be beneficial to complainant's theory of the case).⁵ Vasquez's statements to Detective Thrasher were inadmissible and unreliable hearsay and were not considered in this proceeding.⁶

18. Failure to Locate the Laptop: The officers went to the location where Vasquez allegedly disposed of the laptop. They could not find it, and respondent and Vasquez were transported to jail. The stolen laptop was never recovered.

19. Seymour's Testimony: Seymour was a retired law enforcement officer who owned and operated Seycom Consultants, Inc., a company engaged in servicing and selling computer and telecommunications systems. He had known respondent and had serviced his company for ten years.

Before the arrest, respondent telephoned Seymour and asked about purchasing 12 used laptops. Respondent said that someone was closing a business had come into the office offering them for sale. Respondent wanted to know whether it was a good deal. Seymour researched their value on the internet and testified that the machines were worth around \$1,200.00 to \$1,300.00 new and about \$600.00 to \$700.00 used. Thus, Seymour had no reason to believe the computers were stolen because they were being offered at the average

⁵ In his interview with Detective Thrasher, Vasquez said that the whole thing was his fault; respondent did not know the laptop was stolen. Vasquez said that he telephoned respondent that morning, and respondent told him the laptop was stolen. Respondent told Vasquez to get rid of it, so Vasquez went to the office, got the laptop, telephoned the supplier, informed him the computer was stolen, and asked him to meet at the Home Depot so that he could return it. Vasquez went there, but the supplier did not show and so Vasquez then left the laptop on the ground. After the conversation, Detective Thrasher learned that Vasquez was the uncle of AMAC's vice president, and that Vasquez functioned as the maintenance man at the Santee office. Vasquez was arrested.

While waiting for transportation, Detective Thrasher asked Vasquez some additional questions. Vasquez reiterated that he telephoned Respondent that morning. He would not tell the detective where he was when they spoke. Vasquez said that he did not know the supplier's name or telephone number. But he also said that he called the supplier and arranged to meet at the Home Depot. The detectives and Vasquez went to the Home Depot but they could not find the stolen laptop.

⁶ Vasquez's statements about his own conduct could not qualify as statements against interest (Evid. Code, § 1230) because there was no reliable showing that Vasquez was unavailable. (Evid. Code, § 240.) Vasquez was the uncle of Respondent's vice president, and Vasquez was recently seen at a recent funeral in California. Further, Vasquez's statements about Respondent's statements were double hearsay, and neither party proffered viable reasons for both layers of hearsay. (See *Lake v. Reed* (1997) 16 Cal.4th 448.) It is possible that Respondent's statements to Vasquez could be statements by a conspirator (Evid. Code, § 1223), but that assumes there was sufficient independent evidence of a conspiracy. Even if section 1223 would supply a hearsay exception for the first level of hearsay, no viable theory was proffered for Detective Thrasher's reiteration of those statements. They were not statements against interest because Vasquez was not shown to be unavailable. Moreover, they were testimonial statements made to a police officer. (See *Crawford v. Washington* (2004) 531 U.S. 36, 56.) Finally, Vasquez's statements were not reliable. (Gov. Code, § 11513.) They were made under circumstances that failed to indicate trustworthiness, and there was a strong suspicion that Vasquez made them up. They could not be credited without the benefit of cross-examination.

market price. He said that he provided this information to the detectives who were investigating the case, but they believed the laptops were worth \$2500 and were reluctant to accept the lower valuation (which went to the issue of knowledge). Seymour also testified that the police report did not accurately reflect his conversation with Detective Thrasher because he never said the computers were counterfeit or that they were worth \$800.

20. Respondent's Testimony: Around the time of the crime, respondent was negotiating a lease for another office and was discussing the possibility of having laptops and dummy terminals. Vasquez, who cut respondent's grass and watched his children, said he knew someone who had eight to ten new laptops for sale because his store was going out of business. Respondent trusted Vasquez and allowed him to bring over one of the laptops. Respondent thought the laptop looked used, but Vasquez said it was just a "demo" and the rest were still in boxes. Respondent telephoned Seymour, who obtained the model number and looked for the computers on line. Seymour could not find the model numbers and so he believed the laptops might be "clones." Seymour did not think that the \$500.00 asking price was that good a deal. Seymour advised respondent that, if he elected to purchase the laptops, he should make sure the machines were not used and he should obtain receipts and the registration materials. Seymour was going to check the laptops, but the next day the detectives appeared at respondent's front door.

21. The detectives told respondent that the laptop was stolen. He said that he did not know it was stolen and said it was at his Santee office. The detectives initially appeared to believe him, but their attitude changed when respondent said that he had a real estate business with multiple branches, and the detectives saw his Lamborghini and Hummer in the garage. The detectives asked respondent, "What else do you do," and began asking about drugs. Respondent said the male detective got "real ghetto." They searched his cars.

22. Respondent agreed to meet the detectives at the Santee office. He telephoned Seymour who advised him to return the computer. When respondent arrived at the office, the laptop was gone, and Vasquez claimed that he gave it back. The detectives arrested respondent, and then drove him around for four hours, all the while trying to get information from him.

23. The district attorney and the trial judge believed respondent was protecting someone. The judge was willing to let respondent off lightly if he disclosed who stole the computers, but respondent said that he did not know. Respondent pled guilty on advice of counsel and because he could not risk going to jail because of his daughters. Nevertheless, he now regretted pleading guilty and maintained that he was "innocent" of the charge of receiving stolen property.

24. Respondent believed that the detectives thought he was a drug dealer. He constantly had trouble with minority law enforcement officers because they could not believe a Hispanic legitimately earned so much money. Seymour told respondent that he believed the police were "setting him up." Respondent echoed this concern by stating that much of the information in the police reports was untrue, and suggesting that the detectives attributed

to him statements made by Vasquez. Specifically, respondent denied that Vasquez told him the laptops were from a stranger at a Home Depot parking lot, or that he told police that fact. He denied making an agreement with detectives to meet at the Santee office at 10 a.m. He denied instructing Vasquez to remove the laptop from the office. He denied that, in the telephone call with detective Thrasher, he said that he was trying to get in touch with the supplier, that the price of the laptops was \$500.00, or that the name of the supplier was on a post-it on the laptop monitor. Respondent denied using the laptop at 2 a.m. He denied having the computer for more than a week. He did not recall putting his picture on the website, or asking Detective Thrasher how they knew he used the laptop.

25. Respondent's claim of actual innocence was difficult to believe. It was difficult to believe that the detectives were trying to frame him as there was no evidence to corroborate that serious allegation. It was difficult to believe that respondent was not using the laptop because his own picture was posted on it for dating purposes. It was difficult to believe that he had the computer for less than a week because Seymour told Detective Thrasher that respondent contacted him "a couple of weeks" earlier. It was difficult to believe that respondent never agreed to meet the detectives at his Santee office at 10 a.m. because the detectives went there expecting to meet him, entered the office looking for him, and tried to find out from staff where he went. Nothing suggested that these efforts were a farce. It was difficult to believe that respondent lacked knowledge (that the laptop was stolen) because he knew the laptops were being sold by a person in a parking lot, he admitted he had the stolen laptop but did not immediately turn it over, and he avoided the detectives for a long period of time with no credible explanation why. There was a great deal of evidence evincing a consciousness of guilt. Moreover, some of respondent's testimony contradicted the statements he made to Detectives Boyd and Thrasher on the date of the arrest, and there was no showing that the detectives filed false police reports.

Mitigation Evidence

26. Business Practices and Training Procedures: Respondent, the president of AMAC, testified that he has never engaged in any profession other than real estate. He had a "passion" for his profession. During his ten-year licensure, he has been "really compliant" with the Department's rules and regulations. He went from working for a small broker to starting his own small office. He has grown his company from a few agents to over 100 agents, and now is the largest privately owned broker in San Diego. Respondent believed in growing his business and wanted others to share in his success. His employees shared his vision.

27. Regarding AMAC's internal operations, the vice-president testified that the company is going into mortgage banking, and that the real estate business has grown so large that it has become necessary to impose a corporate structure. One consequence will be placing agents on teams with managers providing oversight. AMAC has a controller who does the books, financial statements, expenses, and accounts receivable. The controller testified that AMAC has an accurate accounting system, that it purchases equipment from legitimate suppliers, and that respondent has never asked him to do anything improper or

unethical. AMAC has an operations manager who oversees the infrastructure, including the purchase of equipment. The operations manager testified that respondent has never told him to purchase equipment from questionable sources. Respondent corroborated these facts.

28. Respondent conducts real estate training in his offices a couple times a week. He and other experts supply the training. He trains his agents on client interaction, form and document completion, laws, regulations, credit, and generally legal and proper conduct. He tracks his agents' continuing education requirements. He circulates all newsletters and other updates from the Department. He provides new agents with checklists.

29. Either respondent or one of his senior subordinates reviews the work of all employees. Respondent and his supervisors make certain that the agents timely meet all financial obligations, that they make all disclosures, and that they complete all the required paperwork. Respondent seeks legal advice when necessary. He was and is devoted to supplying his clients with competent, ethical, and responsible service. According to respondent, AMAC has engaged in thousands of transactions and has only been sued once. There was no evidence that respondent had ever engaged in wrongdoing with respect to buyers, sellers, creditors, or financial institutions.

30. Respondent had good rapport with his officers, agents, and staff. He was fair, accessible, respected, trustworthy, and well-liked. He helped struggling agents financially.

31. Community and Charity Work: Respondent organized a toy drive at Christmas. He personally attended the event, wrapped gifts, and bought most of the toys. He puts on an annual Thanksgiving and Christmas dinner at a homeless shelter, which he participates in and funds. He goes to local schools and encourages underprivileged children to succeed. Respondent cares about his community and gives back to it.

32. Respondent's Family: Respondent is 38 years old. He graduated from the University of California, Berkeley and has a degree in Economics. He is a divorced, single parent who raises two daughters, ages 10 and 13. He has legal custody of his older daughter. He attends church with his family.

Respondent has improved the stability of his family life. Although things were tough after the divorce, his family life has calmed considerably. He supports and gets along with his former wife. He takes exceptional care of his two daughters, who have become excellent students. The instability surrounding his former relationship with Celia has passed.

Respondent is devoted to his family, and they are devoted to him. Respondent employs and financially supports many members of his family. He is close to his mother, visits her often, and pays her living expenses. Respondent's family is a significant support system.

33. Change in Attitude: Respondent admitted that his crimes were mistakes and were serious in nature. He called the receiving-stolen-property conviction "the biggest

mistake of my life.” He testified that he has learned and grown from these mistakes. He promised never to repeat them. He counseled everyone close to him not to repeat his errors.

Respondent was concerned about losing his license because of the number of people he supports and the number of employees who rely on AMAC for income. Respondent was concerned about the impact of the disciplinary proceeding on his personal reputation. He and other witnesses asked that respondent’s broker’s license not be suspended or revoked.

LEGAL CONCLUSIONS

Burden Of Proof

1. The Department had the burden to prove the allegations in the accusation by clear and convincing evidence. (*Reality Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) This standard means “highly probable.” (CACI § 201.)

Applicable Statutes and Regulations

2. The Accusation seeks discipline on Respondent’s license under Business and Professions Code sections 490 and 10177, subdivision (b). Section 490 provides:

“A board may suspend or revoke a license 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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.”

Section 10177 provides in relevant part:

“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, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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, and the time for

appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information."

3. The Department enacted regulatory guidelines for determining what convictions or acts are substantially related to real estate licensees. These guidelines are contained in California Code of Regulations, title 10, section 2910.⁷

⁷ Section 2910 provides:

"(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the 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:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.
 - (2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.
 - (3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.
 - (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.
 - (5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.
 - (6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.
 - (7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.
 - (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.
 - (9) Contempt of court or willful failure to comply with a court order.
 - (10) Conduct which demonstrates a pattern of repeated and willful disregard of law.
 - (11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.
- (b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

4. On August 30, 2006, the California Court of Appeal decided the case of *Petropoulos v. Department of Real Estate* (2006) __ Cal.App.4th __, 2006 Cal.App.Lexis 1318. That case held that section 490 of the Business and Professions Code does not provide an independent basis for imposing discipline. Rather, it “operates solely to limit” the Department’s power to “suspend or revoke under section 10177, subdivision (b).” In other words, in order to establish cause for discipline of a broker’s license based on a criminal conviction, the Department must prove that the crime involves moral turpitude and that it is substantially related to the qualifications, functions or duties of a licensee. Neither a finding of moral turpitude nor substantial relationship is sufficient by itself to impose discipline.

Receiving Stolen Property

5. Cause exists to discipline respondent’s broker license for his conviction of receiving stolen property. Respondent plead guilty to a violation of Penal Code section 496, subdivision (a). Although Respondent maintained that he was not guilty of that crime, his guilty plea conclusively proved each of the elements of the offense. In administrative disciplinary proceedings, a licensee may not seek to impeach a prior criminal conviction by means of an “an inquiry into the circumstances surrounding the offense.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

6. The crime of receiving stolen property involves moral turpitude. (*People v. Turner* (1990) 50 Cal.3d 668, 705; *People v. Rodriguez* (1986) 177 Cal.App.3d 174, 178-179.) It bears a substantial relationship to the qualifications, functions, or duties of a real estate broker under California Code of Regulations, title 10, section 2910, subdivision (a)(1). Accordingly, cause exists to discipline Respondent’s license under Business and Professions Codes sections 490 and 10177, subdivision (b).

These conclusions are based on Factual Findings 7 through 25 and Legal Conclusions 1 through 6.

Simple Battery

7. Complainant failed to prove that Respondent’s conviction of simple battery established cause for discipline. Respondent plead guilty to violating Penal Code section 242, commonly known as simple battery. Battery is a general intent crime. (*People v. Valdez* (2002) 27 Cal.4th 778, 787.) Only the slightest, impermissible touching is required. (*People v. Cox* (2000) 23 Cal.4th 665, 674.) A simple battery is not a crime necessarily involving moral turpitude. (*People v. Thornton* (1992) 3 Cal.App.4th 419, 423.) Thus, the least adjudicated elements of that crime did not establish a crime or act involving moral turpitude.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.”

8. When deciding whether a crime involves moral turpitude, a state agency is not confined to an examination of the crime's elements. The agency may examine the facts giving rise to the guilty plea or verdict. (*In re Higbee, supra*, 6 Cal.3d at 572.) Here, the police report that gave rise to the battery conviction was not admitted into evidence. The only evidence regarding the underlying facts arose out of respondent's testimony.

9. Complainant was entitled to rely on respondent's testimony to show moral turpitude or a substantial relationship. (Gov. Code, § 11513, subd. (b).) However, respondent's touching of Sophia apparently caused no harm and it could not realistically be characterized as child endangerment.⁸ Even if it were, it appeared to be relatively passive, misdemeanor conduct that would not qualify as a crime involving moral turpitude. (See *People v. Sanders* (1992) 10 Cal.App.4th 1268, 1274-1275 [while felony child endangerment might involve moral turpitude, it does not necessarily because it can be committed "by wholly passive conduct, free from any element of force, violence, threat, fraud, deceit, or stealth . . ."].) The superior court's willingness to reduce this crime to disturbing the peace after 18 months gave further credence to this view. Accordingly, complainant failed to show cause to discipline respondent's license for the simple battery conviction under Business and Professions Code sections 490 and 10177, subdivision (b).

10. At the hearing on August 21, 2006, complainant argued that the crime was substantially related under California Code of Regulations, title 10, section 2910, subdivision (10) because the battery in combination with the receiving-stolen-property conviction demonstrated a "pattern of repeated and willful disregard of law." Complainant did not have the benefit of the *Petropoulos* decision, which had not yet been published. The *Petropoulos* decision now forecloses this argument because discipline cannot be imposed unless the crime involves moral turpitude *and* has a substantial relationship. This is not to say that the battery conviction was irrelevant in these proceedings. It was relevant to the issues of rehabilitation and the appropriate level of discipline. Accordingly, it will be addressed in those contexts, but the battery conviction does not form the basis for a second, separate cause for discipline.

These conclusions were based on Factual Findings 5 and 6 and Legal Conclusions 1 through 4 and 7 through 10.

⁸ Respondent was charged with, but did not plead guilty to, a violation of Penal Code section 273a, subdivision (b). That section provides: "Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor."

Rehabilitation

11. The Department has set down criteria for rehabilitation when the discipline sought is suspension or revocation of a license. The criteria are contained in California Code of Regulations, title 10, section 2912.⁹

⁹ Section 2912 provides:

"(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.

(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.

12. Here, respondent pled guilty to receiving stolen property on June 26, 2004. Thus, more than two years have passed since that conviction. A longer period is required if there is a history of substantially-related criminal convictions. (Cal. Code. Regs., tit. 10, § 2912, subd. (a).) Since the battery conviction was not substantially related, this provision does not apply. Respondent met this requirement.

There remains a question "of the weight to be accorded to the crime." (Cal. Code. Regs., tit. 10, § 2910, subd. (c).) As the California Supreme Court noted in *In re Gossage* (2000) 23 Cal. 4th 1080, "the more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be." (*Id.* at 1069.) Receiving stolen property is a relatively serious offense when it comes to the duties of a real estate broker. (See *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 400-403.) Real estate brokers are expected to be "honest, truthful and of good reputation." (*Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.) "Honesty and integrity are deeply and daily involved in various aspects of [real estate] practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) Knowingly receiving stolen property involves conduct that is antithetical to these traits, and a conviction for that offense cannot be taken lightly.

13. Other factors aggravated the crime. Respondent failed to fully cooperate with the police investigation. His testimony lacked complete candor. (See *Franklin v. State Bar* (1986) 41 Cal.3d 700, 709.) He was on probation for another offense when he committed the crime of receiving stolen property. While respondent submitted evidence to explain the crime (*Arneson v. Fox, supra*, 28 Cal.3d at 449), it was not persuasive.

14. What was persuasive was respondent's other evidence in rehabilitation. Especially important was respondent's successful completion of probation, and his early termination of probation in both cases. (Cal. Code. Regs., tit. 10, § 2910, subd. (e).) This required the full payment of restitution (Cal. Code. Regs., tit. 10, § 2910, subd. (b)), as well as the full payment of all fines. (Cal. Code. Regs., tit. 10, § 2910, subd. (g).) There was a substantial showing of rehabilitation that resulted in the superior court expunging both convictions under Penal Code section 1204.4. (Cal. Code. Regs., tit. 10, § 2910, subd. (c).) Respondent felt that he was not treated fairly by the criminal justice system, but he complied with its mandates in an exemplary fashion. This obedience demonstrated the likelihood that he will comply with the Department's discipline, laws, and regulations.

(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."

15. Respondent has a stable family life and fully meets his responsibilities to his children and former wife. (Cal. Code. Regs., tit. 10, § 2910, subd. (j).) More than that, he supports his mother, and he assists other family members, agents, and employees. His divorce was an obvious stressor, but its effects have diminished considerably. Respondent's family constitutes an important support system and significant responsibilities. His family ties make it less likely that he will engage in any future misconduct.

16. Respondent has significant and contentious involvement in his community. (Cal. Code. Regs., tit. 10, § 2910, subd. (l).) He helps the unfortunate and inspires the young.

17. Respondent's testimony showed important changes in his attitude. (Cal. Code. Regs., tit. 10, § 2910, subd. (m)(1).) Although he was still grappling with his criminal conduct, respondent ultimately took full responsibility for his crimes and expressed remorse. Moreover, he has not engaged in any further criminal conduct. (Cal. Code. Regs., tit. 10, § 2910, subd. (m)(5).) Respondent demonstrated that he will be able to conform to societal rules in the future.

18. Respondent's business is large and there are many safeguards in place to protect the public. (Cal. Code. Regs., tit. 10, § 2910, subd. (h).) It bears mention that Respondent had a broker's license for many years without any discipline. Given the number of transactions AMAC engages in, the track record is impressive. It militates against the fear of public harm.

19. Considering all the circumstances, the proper measure of license discipline in this case is to revoke Respondent's broker's license, but to stay the revocation and to provide respondent with the right to a restricted license for a two-year period of probation. Although the complainant is rightfully concerned about respondent's conviction of receiving stolen property, and some of respondent's testimony at the hearing, other factors mitigate against the outright revocation or suspension of his broker's license. Respondent has a long history of licensure without incident. He and his agents have completed literally thousands of real estate transactions without a hint of impropriety. AMAC is a large business, and it has many checks and balances in place. Respondent is concerned with growing the business; he is concerned with his reputation, and he is devoted to his over 100 agents and other employees. He has an extremely supportive family and two daughters he cares for deeply. It is unlikely that respondent will risk further harm to his business, reputation, employees, or family. A two-year period of probation is sufficient to protect the public, since any significant misstep in that time will surely result in a lengthy suspension or the actual revocation of respondent's license.

This conclusion is based on all the Factual Findings and Legal Conclusions.

ORDER

not adopted
All licenses and licensing rights of Respondent, Ricardo Cardenas, under the Real Estate Law are revoked; provided, however, a restricted real estate broker 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:

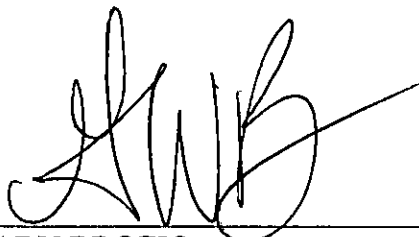
1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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 two years have elapsed from the effective date of this Decision.

4. 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 the 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: 9/21/06


GARY BROZIO
Administrative Law Judge
Office of Administrative Hearings

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FILED
FEB 22 2005

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 RICARDO CHAVEZ CARDENAS,) NO. H-3151 SD
13 Respondent.) ACCUSATION

14
15 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against RICARDO CHAVEZ CARDENAS (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent is presently licensed and/or has
21 license rights under the Real Estate Law (Part 1 of Division 4
22 of the Business and Professions Code) (Code) as a real estate
23 broker.

24 II

25 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
26 Commissioner of the State of California, makes this Accusation
27 in his official capacity.

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III

On or about January 5, 2004, in the Superior Court, County of San Diego, State of California, in case number S178315, Respondent was convicted of a violation of Section 242 of the California Penal Code (Battery), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about August 13, 2004, in the Superior Court, County of San Diego, State of California, in case number CD182481, Respondent was convicted of a violation of Section 496(a) of the California Penal Code (Knowingly receiving stolen property), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

The facts alleged in Paragraphs III and IV, above, individually and/or collectively, constitute cause under Section 490 and/or Section 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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

J. Chris Graves
J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 11th day of February 2005