

FILED

JUN - 5 2008

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By R. Henry

* * *

In the Matter of the Accusation of)	
)	NO. H-3750 SD
ASSAD SULEIMAN,)	
)	OAH NO. 2008010797
Respondent.)	
)	

DECISION

The Proposed Decision dated May 21, 2008, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon
on JUN 25 2008.

IT IS SO ORDERED 6-4-08

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ASSAD SULEIMAN,

Respondent.

Case No. H-3750-SD

OAH No. 2008010797

PROPOSED DECISION

Administrative Law Judge Yolanda Gammill, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on April 17, 2008.

Truly Sughrue, Staff Attorney, represented complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Assad Suleiman represented himself and was present throughout the hearing.

The matter was initially submitted on April 17, 2008. On April 22, 2008, respondent submitted a motion to reopen the record and offered additional documentary evidence. After receiving written objection from complainant, the record was reopened and additional evidence marked as respondent exhibit "R" was received into evidence. The record was closed and the matter was submitted on April 22, 2008.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 7, 2008, Joseph Aiu (complainant), Deputy Real Estate Commissioner, Department of Real Estate (department), State of California, signed the first amended accusation in his official capacity. The first amended accusation alleged that Assad Suleiman (respondent) had a license and licensing rights under Real Estate Law and that cause existed to revoke or suspend his real estate license based on convictions for crimes that involved moral turpitude and are substantially related to his qualifications, functions or duties as a real estate licensee.

The first amended accusation and other required jurisdictional documents were properly served on respondent.

Respondent timely filed a notice of defense.

Respondent's Conviction

2. On September 6, 2005, respondent was convicted on his plea of guilty of violating Vehicle Code section 23103 subdivision (a) Reckless Driving, a misdemeanor, in the Superior Court of California, County of San Diego, in case number CN195507 captioned *People of the State of California v. Assad Suleiman*.

Respondent was placed on three years informal probation and he was ordered to pay \$905 in fines and fees. Respondent was on probation for a prior conviction when he was convicted of this offense.

3. On October 20, 2006, respondent was convicted on his plea of guilty of violating Penal Code section 273.5, subdivision (a)(1), Spousal Abuse, a misdemeanor, in the Superior Court of California, County of San Diego, in case number M986497DV captioned *People of the State of California v. Assad Suleiman*.

The facts and circumstances of respondent's conviction were that respondent became angry with his wife, Rosa Barraza (Barraza), about how she handled their rental property. Respondent hit Barraza in her head, pushed her into the closet doors, and threw her to the ground.

Barraza testified at the administrative hearing that respondent did not hit her, push her or throw her to the ground. She explained that she called the police because she was angry with respondent and wanted him to leave the house. However, Barraza's statement in the police report¹ differed from her testimony at the hearing. Barraza told the police that respondent hit her in her head, pushed her into the closet doors, and threw her to the ground. Furthermore, Barraza's claim that she only called the police because she wanted respondent to leave the house was unpersuasive since respondent was gone before the police arrived and Barraza still reported to the police that respondent battered her. Also, a witness told the police that she saw respondent hit Barraza in the head. Moreover, the police officer noted that Barraza's right hand ring finger had a minor cut on it and that she had redness on her left ear where she claimed respondent hit her. The police officer also noticed that there was broken glass from a picture on the floor and the sliding closet doors were off their tracks.

¹ The narrative report was received under *Lake v. Reed* (1997) 16 Cal.4th 448, which considered what kinds of hearsay evidence are admissible under the Government Code section 11513. That opinion concluded an officer's direct observations which are memorialized in the officer's report are admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and are sufficient to support a factual finding. The opinion also concluded that admissions by a party that were memorialized in such a report were also admissible as under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the Supreme Court concluded that the other hearsay statements set forth in a police officer's report could be used for the purpose of supplementing or explaining other evidence but were not sufficient by themselves to support a factual finding unless – as with the public employees records exception to the hearsay rule and the party admission exception to the hearsay rule – such hearsay would be admissible over objection in civil actions.

Respondent was placed on three years informal probation, ordered to complete a parenting class and a domestic violence class, and he was order to stay away from Barraza. Respondent was on probation for a prior conviction when he committed this crime.

4. On April 20, 2007, respondent was convicted on his plea of guilty of violating Penal Code section 245, subdivision (a)(1), Assault with Deadly Weapon or Force Likely to Cause Great Bodily Harm, a felony, in the Superior Court of California, County of San Diego, in case number SCD201445 captioned *People of the State of California v. Assad Suleiman*.

Respondent admitted in his plea of guilty that on September 5, 2006, he committed an "assault upon another human being by means of force likely to produce great bodily injury."

The facts and circumstances of respondent's conviction were that on September 5, 2006, respondent assaulted a reporter who was conducting an interview as part of an investigation into respondent's real estate activities. Respondent attacked the reporter without warning and left the reporter battered and bruised. Respondent was on probation for a prior conviction when he was convicted of this crime.

On July 6, 2007, respondent was sentenced to 365 days in jail, placed on three years formal probation, ordered to pay \$1,303 in fines and fees, and to stay away from the victim. Respondent's probation is scheduled to terminate on July 5, 2010.

Respondent's Testimony and Other Evidence

5. Respondent testified at the administrative hearing that he lost his temper when he found out that the reporter was interviewing a person who had accused him of identity theft. He stated that the he felt the reporter was trying to ruin him by doing a series of investigative reports accusing respondent of stealing the identity of several persons. Respondent testified that he believed that the reporter's injuries were not as serious as the reporter claimed and that the reporter's allegations were all false because the theft charges (based upon the reporter's investigation) the District Attorney's Office filed were dismissed by the court.

6. Respondent also testified that on January 8, 2008, he completed a parenting education class, a domestic violence class, and a 90-day Anger Management class at Kaiser Permanente. Additionally, respondent testified that he has been diagnosed with an obsessive-compulsive disorder and that he is now receiving outpatient psychiatric treatment for this disorder. Respondent testified that his first restitution payment begins May 1, 2008.

Aggravating Factors

7. On June 6, 2001, the Insurance Commissioner filed an accusation against respondent charging that respondent forged signatures of policyholders, used an unregistered fictitious business name, and failed to complete applications truthfully and accurately. On

July 18, 2001, the Insurance Commissioner entered a default decision against respondent revoking respondent's life agent and variable contracts licenses.

Respondent testified that he signed the policies on behalf of his customers who had already agreed to purchase the insurance policies. He testified that he only signed the policies because the customers were too slow in sending in the policies and he needed to "get paid" for obtaining the policies for them.

8. On May 1, 2002, respondent was convicted on his plea of guilty of violating Penal Code section 415, subdivision (1), Fighting in Public, a misdemeanor, in the Superior Court of California, County of San Diego, in case number M862381 captioned *People of the State of California v. Assad Suleiman*.

Respondent was placed on three years informal probation and he was ordered to pay \$375 in fines and fees. Respondent was also ordered to stay away from the victim.

Respondent testified that he got into a fight with a man whom he thought had shown disrespected to his sisters.

9. On May 13, 2003, respondent submitted a salesperson renewal application to the department. Question 3 on the renewal application states:

"Within the past four year period have you been convicted of any violation of law? Convictions expunged under Penal Code section 1203.4 must be disclosed. However you may only omit minor traffic citations which do not constitute a misdemeanor or felony offense. If yes, complete items 15-16 on page 2."

Respondent answered "no" to question 3. On May 20, 2003, the department sent a letter to respondent that asked for clarification of his residency. On June 3, 2003, respondent submitted a second renewal application and again answered "no" to question 3. Respondent signed the renewal application under penalty of perjury and certified that his answers and statements were true and correct. Respondent failed to disclose on the application that he was convicted on May 1, 2002, of fighting in public. Respondent testified at the administrative hearing that he erroneously omitted the conviction because he simply overlooked it.

LEGAL CONCLUSIONS

Purpose of Disciplinary Action

1. The basic reason for disciplinary action in matters of this kind is the protection of the public against unethical and dishonest conduct on the part of those engaged in the real estate business. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456.)

Burden and Standard of Proof

2. In an action seeking to impose discipline against the holder of a real estate license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

3. The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.)

Applicable Statutes

4. Business and Professions Code section 490 provides in part:

“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”

5. Business and Professions Code Section 10177 provides in part:

“The commissioner . . . may suspend or revoke the license of a real estate licensee who has done any of the following . . .

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee”

6. An administrative agency may rely on a plea and a conviction based on that plea to establish a reasonable and substantial relationship to licensed activities. A licensee may introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation, but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled the plea, a conviction based upon the plea stands as conclusive evidence of guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Moral Turpitude

7. “Moral turpitude means a general ‘readiness to do evil,’ i.e., an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756.)

8. *People v. Rodriguez* (1992) 5 Cal. App. 4th 1398, 1401-1402 held:

“An assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable. To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it willfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.”

On October 20, 2006, respondent was convicted on his plea of guilty of violating Penal Code section 273.5, subdivision (a)(1) Spousal Abuse, a misdemeanor. With regard to the domestic battery conviction, it was established at the hearing that respondent specifically intended to injure Barraza and that Barraza was injured and as such the spousal battery conviction was a crime of moral turpitude.

9. The department conceded that a conviction for reckless driving was not a crime of moral turpitude per se, but offered the reckless driving conviction to show that respondent is a habitual violator of the law and his probation conditions.

Substantial Relationship

10. California Code of Regulations, title 10, section 2910 provides in part:

“(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:

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

Respondent was convicted of assault with a deadly weapon with force likely to cause great bodily harm and of misdemeanor spousal battery. Both of the convictions are substantially related to the qualifications, functions, or duties of a licensee of the department. (Cal. Code Regs., tit 10, § 2910, subd. (a)(8).)

Cause Exists to Revoke Respondent's License

11. Cause exists to revoke respondent's real estate salesperson's license under Business and Professions Code sections 490 and 10177, subdivision (b). The clear and convincing evidence established that respondent was convicted on his plea of guilty of assault with a deadly weapon with force likely to cause great bodily harm and of misdemeanor spousal battery, a crime involving moral turpitude. Both convictions are substantially related to the qualifications, functions and duties of a real estate licensee.

Evidence of Rehabilitation

12. Applying the factors set forth in California Code of Regulations, title 10, section 2912, the following matters constitute evidence of rehabilitation: Respondent completed a parenting education class, a domestic violence class, and a 90-day Anger Management class. Respondent has recognized his need to control his anger and has also taken steps to address his mental disorder.

On the other hand, less than two years has passed since respondent's conviction and respondent remains on probation. At the hearing, respondent blamed the reporter for the incident that led to his conviction and asserted that the reporter was not as hurt as he claimed. In further aggravation, respondent has twice violated his probation by being convicted of crimes while he was on probation; he has had his insurance license revoked for acts involving dishonesty and forgery; and, he failed to disclose his fighting in public conviction on his license renewal application.

It cannot be concluded on this record that respondent's rehabilitation has reached the point where it would be in the public's interest to allow him to maintain his real estate salesperson's license. This conclusion is based upon all the Factual Findings 1 - 9 and Legal Conclusions 1 - 11.

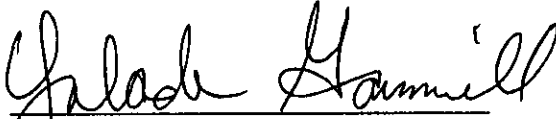
The evidence amply supports the revocation of respondent's real estate license and all licensing rights under the Real Estate Law to protect the public.

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

ORDER

All licenses and licensing rights of respondent Assad Suleiman under the Real Estate Law are revoked.

DATED: May 21, 2008


YOLANDA GAMMILL
Administrative Law Judge
Office of Administrative Hearings

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0781

FILED

JAN 16 2008

DEPARTMENT OF REAL ESTATE

By H. M. M.

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) No. H-3750 SD
13)
14) ASSAD SULEIMAN,)
15) FIRST AMENDED
16) ACCUSATION
17) Respondent.)

18 The Complainant, JOSEPH AIU, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against ASSAD SULEIMAN (hereinafter "Respondent"), is informed
21 and alleges as follows:

22 I

23 The Complainant, JOSEPH AIU, a Deputy Real Estate
24 Commissioner of the State of California, makes this Accusation in
25 his official capacity.

26 II

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

III

1 On or about September 6, 2005, in the Superior Court,
2 County of San Diego, Respondent was convicted of a violation of
3 Section 23103(a) of the California Vehicle Code (Dry Reckless
4 Driving), a misdemeanor and crime involving moral turpitude which
5 bears a substantial relationship under Section 2910, Title 10,
6 California Code of Regulations, to the qualifications, functions,
7 or duties of a real estate licensee.
8

IV

9 On or about October 20, 2006, in the Superior Court,
10 County of San Diego, Respondent was convicted of a violation of
11 Section 273.5 of the California Penal Code (Spousal Abuse), a
12 misdemeanor and crime involving moral turpitude which bears a
13 substantial relationship under Section 2910, Title 10, California
14 Code of Regulations, to the qualifications, functions, or duties
15 of a real estate licensee.
16

V

17 On or about April 20, 2007, in the Superior Court,
18 County of San Diego, Respondent was convicted of a violation of
19 Section 245(A)(1) of the California Penal Code (Assault with
20 Deadly Weapon/Force Likely to Cause Great Bodily Injury), a
21 felony and crime involving moral turpitude which bears a
22 substantial relationship under Section 2910, Title 10, California
23 Code of Regulations, to the qualifications, functions, or duties
24 of a real estate licensee.
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VI

1 The facts alleged above constitute cause under Sections
2 490 and 10177(b) of the Code for suspension or revocation of all
3 licenses and license rights of Respondent under the Real Estate
4 Law.

5
6 MATTERS IN AGGRAVATION

7 VII

8 On or about May 31, 2002, in the Superior Court, County
9 of San Diego, Respondent was convicted of a violation of Section
10 415(1) of the California Penal Code (Fighting in Public), a
11 misdemeanor and crime involving moral turpitude which bears a
12 substantial relationship under Section 2910, Title 10, California
13 Code of Regulations, to the qualifications, functions, or duties
14 of a real estate licensee.

15 VIII

16 On or about July 18, 2001, after proceedings comparable
17 to the Administrative Procedure Act in which Respondent was given
18 fair notice of the charges, an opportunity for a hearing, and
19 other due process protections, the State of California,
20 Department of Insurance, ordered that the Respondent's license to
21 act as a Life Agent and to transact Variable Contracts be revoked
22 for acts which, if done by a real estate licensee, would be
23 grounds for the suspension or revocation of a California real
24 estate license pursuant to the provisions of Sections 10177(d),
25 and 10177(j).

IX

1 Respondent made application to the Department of Real
2 Estate of the State of California for renewal of a real estate
3 salesperson license on or about May 12, 2003. In Response to
4 Question 3 of said application, to wit: "Within the past four
5 year period, have you been convicted of any violation of law?",
6 Respondent answered "No," and failed to disclose the conviction
7 described in Paragraph VII.
8

9 WHEREFORE, Complainant prays that a hearing be
10 conducted on the allegations of this Accusation and that upon
11 proof thereof, a decision be rendered imposing disciplinary
12 action against all licenses and license rights of Respondent
13 under the Real Estate Law (Part 1 of Division 4 of the Business
14 and Professions Code), and for such other and further relief as
15 may be proper under the provisions of law.
16

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18 
19 JOSEPH AIU
20 Deputy Real Estate Commissioner

21 Dated at San Diego, California,
22 this 1 day of January, 2007
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27

1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781

FILED

DEC 11 2007

DEPARTMENT OF REAL ESTATE
By K. Mar

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 ASSAD SULEIMAN,)
13 Respondent.)

No. H- 3750 SD
ACCUSATION

14
15 The Complainant, JOSEPH AIU, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against ASSAD SULEIMAN (hereinafter "Respondent"), is informed
18 and alleges as follows:

19 I

20 The Complainant, JOSEPH AIU, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law (Part 1 of Division 4 of the
26 Business and Professions Code) (Code) as a real estate broker.
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III

On or about October 20, 2006, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 273.5 of the California Penal Code (Spousal Abuse), a misdemeanor and crime involving moral turpitude 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 April 20, 2007, in the Superior Court, County of San Diego, Respondent was convicted of a violation of Section 245(A)(1) of the California Penal Code (Assault with Deadly Weapon/Force Likely to Cause Great Bodily Injury), a felony and crime involving moral turpitude 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 above constitute cause under Sections 490 and 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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