

FILED
MAR 29 2004

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Shelly Ely

* * *

In the Matter of the Accusation of)
DERRICK MARCEL MOORE,) NO. H-3903 SAC
Respondent.) N-2003110118

DECISION

The Proposed Decision dated February 26, 2004, 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 with the following correction:

Pursuant to Section 11517(b)(3) of the Government Code, "Cause for revocation of respondent's Real Estate Salesperson license" is substituted for "Cause for denial of respondent's application for a Real Estate Salesperson's license" in line 1 of Paragraph 3 of the "Legal Conclusions" on page 4 of the Proposed Decision.

This Decision shall become effective at 12 o'clock
noon on April 19, 2004.

IT IS SO ORDERED March 19, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DERRICK MARCEL MOORE,

Respondent.

Case No. H-3903 SAC

OAH No. N2003110118

PROPOSED DECISION

This matter was heard by Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on January 6, 2004.

Michael B. Rich, Counsel, Department of Real Estate, represented the complainant.

Respondent Derrick Marcel Moore (respondent) appeared and represented himself.

Evidence was received and the record left open for the submission of additional character reference letters written on respondent's behalf. Such letters were received on January 23, 2004, marked exhibit B and received as hearsay. Complainant's January 27, 2004, letter indicating no objection to the receipt of the letters as hearsay was marked exhibit 6. The matter was submitted on January 27, 2004.

FACTUAL FINDINGS

1. Complainant Charles W. Koenig (Complainant), Deputy Real Estate Commissioner, Department of Real Estate, State of California, filed the Accusation against respondent in his official capacity.
2. Respondent is presently licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson.
3. On or about April 18, 2002, in the Sacramento Superior and Municipal Courts, County of Sacramento, respondent was convicted upon his plea of nolo contendere of violating Penal Code section 240 (assault) a misdemeanor. The offense was a crime involving moral turpitude and because the offense involved acts done with the intent or threat

of substantial injury to the person of another, the offense is substantially related to the qualifications, functions and duties of a real estate salesperson.¹ As a result of respondent's conviction, imposition of sentence was suspended and respondent placed on three years informal probation. The terms and conditions included 10 days in jail with credit for 2 days served and a recommendation by the court that respondent serve the time in the sheriff's work program, payment of approximately \$291 in fines, fees and restitution, and no contact with the victim, his wife from whom he is legally separated.

4. The circumstances of respondent's offense were that respondent telephoned his wife at approximately 10:45 on the evening of March 17, 2002, to discuss his picking up their two young children the next day. Respondent and his wife had been legally separated since in or about July of 2001. Respondent and his wife had a tacit understanding that neither would entertain friends of the opposite gender at inappropriate hours when the children were in their respective residences. Respondent learned that a male friend of his wife's was in her residence. He drove to her home to pick up the children. When he arrived, he pounded on the door and she let him in. The male friend had departed. Once inside, respondent became enraged. He picked up a statue from a table and waved it at his wife, threatening to hit her. Although unarmed, he verbally threatened to shoot her and her friends. He stopped her attempt to call for help and pushed her against the wall and onto furniture. She suffered minor bruising. Respondent's wife, greatly fearing for her safety, allowed him to take the two girls and called the police after he left. Respondent was arrested at his residence and his wife retrieved their daughters.

5. Respondent is 35 years old. He holds an Associate of Arts degree in liberal arts and attended California State University, Fresno, for four years majoring in Business with a marketing emphasis. He needs approximately 24 units to obtain his degree. He has worked in the real estate mortgage business since in or about 1990 when he began as a loan processor with his current employer Oro Financial Corporation headquartered in Fresno, California. He was first licensed as a real estate salesperson in or about 1991 when he became an associate loan officer. A top producer, he was asked to head their Stockton office in September of 1993. He continues in that capacity, supervising three others in the office. Respondent remains legally separated from his wife and they are in the process of arriving at terms to dissolve their marriage. He sees his two daughters, now 10 and 11, approximately three times each week and has them on alternate weekends. He pays \$400 in child support. The no contact order is still in effect so respondent communicates with his wife by e-mail and telephone and they meet at a fast food restaurant to arrange exchange of the children. He describes his relationship with his wife as amicable now. Respondent was not ordered to take an anger management course or a domestic violence course. He took no such course but he has counseled with the pastor of his church about his conduct. He attends church at least once a month now. He is a member of the San Joaquin Mortgage Association and served on the Board of Directors and as Vice President in the past.

¹ Title 10, California Code of Regulations section 2910(a)(8).

6. Respondent testified about the events leading to his arrest. He became very angry after entering the house and considering his circumstances of their separation. His wife had met someone else on the internet and was considering moving out of state with their children. Respondent was also still mourning the loss of his mother who died on January 6, 2001. He was an only child and was raised exclusively by his mother. He described the incident as an out of character episode brought on by a combination of factors including the lingering stress of his mother's death and his part time parental status. He had never been arrested before that and has not been arrested since then. Respondent acknowledged that his business often involves stressful situations including irate clients, short deadlines, and demanding real estate sales agents. He successfully handles unhappy clients and agents by simply allowing them to vent. During an interview with the Department relating to his conviction, respondent admitted that his wife had good reason to fear for her safety on the evening when he threatened her.

7. The additional character letters were authored by respondent's former wife, his employing broker, his church pastor, a professional colleague, a long time friend, and several people with whom respondent has had business dealings. These letters confirm that respondent is by nature a calm and patient man, even in the midst of difficult financial transactions. His former wife said that there have been no further physical attacks directed toward her.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 reads:

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.

2. California Business and Professions Code section 10177(b) provides:

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. Cause for ~~denial~~ ^{Revocation} of respondent's ~~application for a~~ Real Estate Salesperson's license was established for violation of Business and Professions Code sections 490 and 10177(b) based on Factual Findings 3 and 4.

4. The criteria for rehabilitation are found in Title 10, California Code of Regulations section 2912:

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

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

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

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

"(d) Successful completion or early discharge from probation or parole.

"(e) 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.

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

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

“(h) 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.

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

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

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

“(l) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

“(1) Testimony of applicant.

“(2) Evidence from family members, friends or other persons familiar with the licensee’s previous conduct and with subsequent attitudes and behavioral patterns.

“(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant’s social adjustments.

“(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.”

5. Applying the relevant criteria for rehabilitation, respondent is a fit person to continue to be licensed as a real estate salesperson, with restrictions. It has been less than two years since respondent was convicted and he remains on probation. Presumably, he has paid the fines associated with his conviction, or is in the process of paying them. He has not sought an early release from probation and he is not eligible for expungement. His relationship with his wife has improved since the incident. Most importantly, while the incident was very serious and could easily have escalated into serious injury or perhaps death based on respondent’s rage, there is no indication that respondent’s reprehensible conduct evidences a general propensity toward violence which would render him unfit to deal in the real estate profession. In fact, respondent has worked as a real estate professional and supervisor for more than ten years without such behavior. His pastor and long time associates and friends confirmed that the

conduct which led to respondent's conviction was an isolated, situational incident unlikely to ever be repeated.

ORDER

All licenses and licensing rights of respondent under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

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

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

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

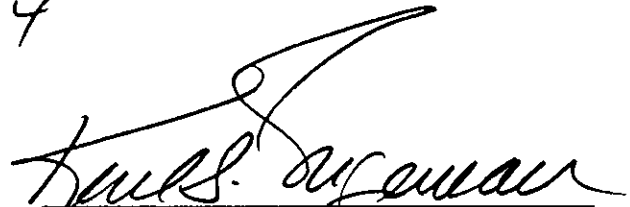
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

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

5. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that

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

Dated: March 8, 2004

A handwritten signature in cursive script, appearing to read "Karl S. Engeman", written over a horizontal line.

KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
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DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

DERRICK MARCEL MOORE

Case No. H-3903 SAC

OAH No. N2003110118

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the **OFFICE OF ADMINISTRATIVE HEARINGS, 560 J STREET, SUITE 340/360, SACRAMENTO, CALIFORNIA 95814** on **TUESDAY--JANUARY 6, 2004**, at the hour of **1:30 PM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: DECEMBER 4, 2003

By

Michael B. Rich
MICHAEL B. RICH, Counsel

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FILED

OCT 16 2003

DEPARTMENT OF REAL ESTATE

By Jean Armon

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of) NO. H-3903 SAC
12 DERRICK MARCEL MOORE,)
13 Respondent.) ACCUSATION

14 The Complainant, CHARLES W. KOENIG, a Deputy Real
15 Estate Commissioner of the State of California, for cause of
16 Accusation against DERRICK MARCEL MOORE (hereinafter
17 "Respondent"), is informed and alleges as follows:

18 I

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

23 II

24 The Complainant, CHARLES W. KOENIG, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Accusation in his official capacity.

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III

On or about April 18, 2002, in the Superior Court of the State of California for the County of Placer, Respondent was convicted of violating Section 240 of the California Penal Code (Assault), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

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

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 other provisions of law.



CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,

this 14th day of October, 2003.