

FILED

OCT 18 2012

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By L. Jones

\*\*\*

In the Matter of the Accusation of

MARCO ANTONIO CARLOS, JR.,

Respondent.

)  
) NO. H-4369 SD  
)  
) OAH NO. 2012070176  
)  
)

DECISION

The Proposed Decision dated September 13, 2012, 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 NOV 08 2012.

IT IS SO ORDERED

10/11/2012

REAL ESTATE COMMISSIONER

Wayne S. Bell  
By WAYNE S. BELL  
Chief Counsel

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

MARCO ANTONIO CARLOS, JR.

Respondent.

Case No. H-4369 SD

OAH No. 2012070176

**PROPOSED DECISION**

On September 11, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Angela L. Cash, Real Estate Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on September 11, 2012.

**FACTUAL FINDINGS**

1. Veronica Kilpatrick, Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department) filed Accusation No. H-4369 SD in her official capacity on June 13, 2012. Respondent filed a timely Notice of Defense.

2. On June 1, 2009, the Department issued real estate salesperson license number S/01863766 to respondent.

3. On September 7, 2011, in the Imperial County Superior Court, respondent pleaded no contest and was convicted of one count of violating Penal Code section 245, subdivision (a)(1), assault by means likely to produce great bodily injury, with an enhancement that respondent personally inflicted great bodily injury within the meaning of Penal Code section 12022.7, subdivision (a), a felony. On November 3, 2011, the court sentenced respondent to serve five years in state prison, suspended, and granted him probation for three years on terms and conditions that included serving 180 days in county jail, with the sentence served by electronic monitoring, paying fines and fees, and paying restitution to the victim in an amount to be determined at a hearing.

4. Respondent committed the offense on September 12, 2010. According to the police and probation reports, respondent was one of a group of three people who attacked the victim outside a bar in Holtville, California. Respondent and two others had first beaten up another person, and when the victim told them to stop, they attacked him by punching and kicking him. The victim fell to the ground and was in and out of consciousness while respondent and the others beat and kicked him. They continued assaulting him until bouncers from the bar stopped them. The victim had to be hospitalized for his injuries.

5. On October 9, 2002, in the Imperial County Superior Court, respondent pleaded no contest and was convicted of one count of violating Vehicle Code section 23103.5, subdivision (a), wet reckless, a misdemeanor. The court suspended imposition of sentence and placed respondent on probation for three years on condition, among others, he pay fines and fees in the amount of \$894.00 and enroll in an alcohol safety class. Respondent committed the offense on February 10, 2002. Respondent testified his blood alcohol content was 0.08 percent.

6. Respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate salesperson. Tit. 10, Cal. Code of Regs., §2910.

7. Respondent testified that he and three friends, including an off duty police officer, got involved in a fight. He alleged that the officer's role in the fight was covered up because of his connections. He testified that he did not hit the victim when he was on the ground and unconscious. He believed he was guilty of a misdemeanor assault but not a felony. He described his conduct as a judgment error and a mistake involving alcohol.

Respondent served 180 days under house arrest, and recently transferred the remaining portion of his probation to San Diego, where he moved in July 2012. He is making payments on his fines but still has several hundred dollars remaining to be paid. He has not been required to pay restitution although it is possible the victim may seek restitution in the future.

Respondent attended Imperial Valley College but did not obtain a degree and started working in construction. He returned to school for a short time but then began working in the real estate field in 2000 when he worked as a courier. He then worked as a loan officer for Wells Fargo Home Loans until 2009 when the office closed, and he obtained his license and became associated with Eduardo Beltran in El Centro. He was not working at the time he committed the offense. Respondent has completed the courses required to take the broker's examination but is awaiting the outcome of this matter before proceeding with a broker's application. Since moving to San Diego, he has had several interviews but is not presently employed. Respondent has bought and sold several properties, but he lost money when the market crashed and he went into bankruptcy. He has since had his debts discharged and has reestablished his credit.

Respondent lives with his girlfriend who works with a non-profit agency assisting children. He attends church once a week. Respondent testified he drinks socially but limits

his drinking to one or two drinks and he has chosen not to drink any longer. His last drink was several months ago.

8. Respondent offered no testimony or character letters from employers or co-workers, and presented little evidence to corroborate his version of the events which led to his conviction.

## LEGAL CONCLUSIONS

1. 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. . . .”

2. Business and Professions Code Section 10177 provides in pertinent 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, 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 not guilty, or dismissing the accusation or information.”

3. Cause to suspend or revoke respondent's real estate salesperson license was established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), conviction of a crime that is substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of Findings 3, 4, and 6.

4. Title 10, California Code of Regulations, section 2912 provides:

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

(a) The passage of not less than two years from the most recent criminal conviction

that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

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

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

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

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

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

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

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

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

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

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

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

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the

licensee's previous conduct and with subsequent attitudes and behavioral patterns.

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

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

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question."

5. The evidence in light of the Department's criteria of rehabilitation shows that respondent was convicted of one felony offense one year ago, and was also convicted of an alcohol related driving offense 10 years ago. He served 180 days under house arrest, and will remain on probation for two more years. He will be required to pay restitution only if the victim of the aggravated assault seeks restitution, and to this point, he has not. Respondent's convictions have not been expunged. He is continuing to make payments toward his fines.

Both of respondent's convictions involve alcohol. Respondent testified he will abstain from the further use of alcohol, but he presented no evidence to corroborate this testimony, and there is no reason to believe it.

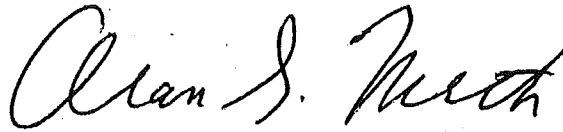
Respondent presented no evidence of rehabilitation. No one testified about any change in attitude, social adjustments, or any other matter suggested by the criteria of rehabilitation.

The record thus establishes that respondent committed an aggravated assault on a person who was trying to break up a fight. Although respondent was not charged with an assault involving the first fight, the police report indicates that respondent had been involved in that one as well. The attack by respondent and his co-defendants was vicious and unprovoked. Respondent expressed no regret or remorse at the hearing. He sought to evade his responsibility for the serious injuries suffered by the victim, claiming that he did not beat or kick him while he was unconscious and that an off-duty police officer was responsible for the fight and his role in this assault was covered up. That is hardly relevant. Respondent was an active participant in the assault and is responsible for its consequences. Based on the evidence presented and in the absence of any evidence of rehabilitation, the only appropriate penalty is revocation of respondent's license and licensing rights.

ORDER

All licenses and licensing rights of respondent Marco Antonio Carlos, Jr. under the Real Estate Law are revoked.

DATED: September 13, 2012

A handwritten signature in cursive script, reading "Alan S. Meth". The signature is written in black ink and is positioned above a horizontal line.

ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings