

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 15 2007
DEPARTMENT OF REAL ESTATE

By K. Contreras

* * *

In the Matter of the Accusation of)
DAREN EDWARD BELAME,) NO. H-4692SAC
Respondent.) OAH NO. N-2007030998
_____)

DECISION

The Proposed Decision dated July 11, 2007, 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 September 4, 2007.

IT IS SO ORDERED 6-14, 2007.

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAREN EDWARD BELAME,

Respondent.

Case No. H-4692

OAH No. N2007030998

PROPOSED DECISION

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 17, 2007, in Sacramento, California.

Daniel E. Keyhew, Staff Counsel, Department of Real Estate (Department), represented the complainant.

Daren Edward Belame (respondent) represented himself.

The record was held open until the close of business on May 31, 2007, to allow respondent to submit evidence regarding the early termination of his probation. Respondent's then-scheduled hearing in the Placer County Superior Court on that matter was postponed. Respondent forwarded a letter from the court explaining the circumstances of the delay. Respondent requested that OAH continue to hold open the record pending the conclusion of his rescheduled court hearing.

On the morning of June 11, 2007, the Placer County Superior Court heard the matter, and granted respondent's motion requesting it to terminate his probation. Later that same morning, respondent filed a copy of the Order with OAH and served the same on the Department. The Order and the letter from the court were marked jointly as Respondent's Exhibit 12 and were included in the record. The record was then closed, and the matter was submitted on June 11, 2007.

FACTUAL FINDINGS

1. Complainant, Charles W. Koenig, Deputy Real Estate Commissioner, State of California, made the Accusation, while acting in his official capacity. The Accusation is based on respondent's suffering criminal convictions.

2. At all times relevant to this Decision, respondent was a licensed real estate broker and subject to the laws governing the holders of such licenses.

Respondent's convictions

3. On January 24, 2005, in the County of Placer, State of California, on his plea of no contest, respondent was convicted of violating Penal Code section 245, subdivision (a)(1), Assault with Force Likely to Cause Great Bodily Injury; section 273.5, subsection (a), Willful Infliction of Corporal Injury Upon a Spouse or Cohabitant; and section 273a, subsection (b), Willful Harm or Injury to a Child. All of respondent's convictions were misdemeanors.

4. Respondent was sentenced to serve 90 days in jail; all but five days of his sentence were suspended. Respondent was also sentenced to serve three years of informal probation, to not own possess any deadly weapon or firearm, and to have only peaceable contact with the victims (his wife and stepson). Respondent was further sentenced to complete a 52-week "Batterers'-Program," and to continue with his mental health therapy. Lastly, respondent was ordered to pay \$320 in fines.

Circumstances surrounding respondent's convictions

5. The circumstances that gave rise to respondent's convictions were as follows:

On November 13, 2004, respondent was involved in a domestic violence incident with his wife and stepson. After several days of "bickering," an intense verbal argument occurred between respondent and his wife, after which respondent attempted to leave their home. Respondent could not find the keys to any of his automobiles, but did locate the keys to his motorcycle, parked in his garage. When respondent went to the garage, his wife followed him and the couple continued to argue. At some point, respondent struck a glancing blow to his wife's head with a motorcycle helmet. Respondent's wife testified that she was hit unintentionally while she was trying to "help [respondent] to leave."

Respondent wished to spend the night at a hotel, however, in his haste to leave to leave the house, respondent failed to take his wallet that contained his credit cards and money with him. Respondent used his cell phone to call his home to tell his wife that he needed to briefly return to pick up his wallet. Respondent called a number of times, however, his wife and stepson refused to answer the phone.

Respondent then returned home to get his wallet. When he arrived, his wife refused to answer the door. While respondent attempted to get someone else in the home to open the door, he overheard his stepson, along with several of his stepson's friends who were attending a party that was occurring in the home at the time, laughing and ridiculing him while refusing to unlock the door.

Ultimately, respondent's wife opened the door slightly and then uttered an inflammatory comment; respondent immediately grabbed her in anger. She then hit him. Respondent's stepson interceded, striking respondent in the head and face, bloodying respondent's nose. All three combatants testified in this matter, each explaining that the fight lasted approximately ten to twenty seconds.

After he was told that his wife had called the Sheriff's Department, respondent waited outside his home for the deputies to arrive. After their arrival, they soon arrested respondent; respondent was taken by the deputies to the Placer County jail, where he spent five days.

The facts and circumstances of the incident reflect that at the time of the altercation, respondent intended to inflict substantial injury upon another, within the meaning of California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Mitigating factors

6. Without diminishing respondent's culpability for committing the acts for which he was convicted, there were mitigating factors that should be considered in assessing whether respondent remains fit to hold a real estate broker's license:

At the time of the incident, respondent was undergoing extensive dental work that included grinding 24 of his teeth to the "nubs" so that veneers could be applied to them later. Respondent elected to have all of his teeth ground down on the same day. The procedure took place approximately one month prior to the date of the incident. The procedure caused respondent to suffer great pain, far greater than he anticipated would be the case. As a consequence, he was given a prescription for Vicodin (a narcotic pain-reliever). Respondent took the Vicodin for approximately three weeks; however, several days before the incident, he abruptly discontinued using it because of unpleasant side effects. As was established by respondent's testimony, that of his wife, as well as, a long time friend, respondent's physical pain made him uncharacteristically "agitated and irritable" during this time. On the date of the incident, respondent was also taking several psychotropic medications that had been prescribed for treating his depression, as well as taking an over-the-counter medication to treat a sinus infection. Respondent submitted credible and persuasive evidence that the combination of these drugs factored into the cause of his actions on the night of the incident.

Respondent entered into evidence a report from Dr. Mehtani. Dr. Mehtani is an M.D. who specializes in the practice of "addiction medicine." In his report, Dr. Mehtani opines that the combination of the prescription and over-the-counter drugs taken by

respondent made him, "vulnerable to losing impulse control and becoming more agitated and having angry outbursts and rage reactions."

An alcohol and drug test was administered to respondent following his arrest. The results showed no alcohol in respondent's system, but the test established the presence of benzodiazepines (sedatives). The test results were consistent with respondent's use of the sedatives prescribed by his doctor.

In addition to respondent's lack of emotional and physical well-being, brought on by his drug interaction and painful dental procedure, there was considerable stress between respondent and his wife during this time. Respondent's wife was in an agitated emotional state because it was near the anniversary of her father's suicide; she testified that the particular time of year the incident occurred is always a difficult and emotional time period for her.

The weekend of the incident was also a time designated by respondent's wife to celebrate respondent's stepson's fourteenth birthday. Respondent's wife planned three consecutive birthday parties, starting on a Thursday night (the incident occurred on a Saturday night). Respondent actively participated in each of the three parties. Because of Friday night's party, respondent did not go to sleep until approximately 4:00 a.m. Saturday morning, as he was busy overseeing the teenagers. A few hours after going to sleep, respondent was awakened by his wife and asked to assemble a motor-scooter that they purchased as a birthday present for respondent's son. Respondent told his wife that he was "not doing well," and he asked that she let him sleep because he was "drained." His wife insisted that he get out of bed and assemble the scooter, which he did. He then helped to complete the chores necessary for the ensuing night's party. Late that afternoon, respondent attempted to take a nap, again expressing to his wife that he "was not feeling-well." He was also upset by the on-going tension between he and his wife and told her that he needed to retire to their bedroom so that he could "de-stress." He was, however, repeatedly awakened by his wife, who insisted that he help host the "pizza party," as she was, based on her testimony, overwhelmed by attempting to complete the task alone. Ultimately, respondent left his bedroom and went downstairs to help host the party; and the fracas described above followed.

7. Respondent was 43 years old at the time of the incident; other than the convictions listed in Finding 3, respondent has lived a law-abiding life.

8. Respondent's has been in the mortgage business since 1991. The last seven years he has been the president of his company, "Foundation Mortgage." His company has employed as many as eight people, including respondent's wife. By all accounts, respondent has built a successful mortgage business, primarily because of his ability to "get along" with customers and fellow real estate professionals. Substantial evidence, in the form of letters of recommendation from fellow real estate professionals, as well as from former clients, attests to respondent's professionalism and integrity. Respondent's wife described respondent as the "bread winner" in the family, and a "good provider" to her and her son.

9. Respondent is quite generous: over the last five years, his financial donations to various causes and charities exceeded tens of thousands of dollars.

10. Respondent coached his stepson's Little League baseball teams with his biological father for approximately six years. The teams were successful and won championships, in large part, due to respondent's time and effort spent coaching the boys. Respondent continues to share friendships with the parents of the boys he coached, as well as with the boys themselves. The mother of one of the players provided persuasive testimony regarding respondent's showing of respect towards the boys, as well as his patience in dealing with them during practices and games. She expressed her opinion that respondent's conduct in grabbing his wife was "out of character" for respondent based on her observations of him over the prior six years.

11. Respondent's stepson described respondent in his testimony as being his "best friend" and that he believed respondent is genuinely remorseful for what occurred between the three of them. Respondent's stepson also expressed his opinion that there is greater stability in their family life than was the case at the time of the incident.

12. Respondent and his wife are active members of their church. They attend church regularly and tithe.

13. Respondent continues to receive psychological therapy, and he and his wife participate in marriage counseling. Respondent also attends Alcoholics Anonymous and Narcotics Anonymous to support his wife with her recoveries.

14. Respondent obtained further medical attention for the treatment of his mood disorder and is following a different drug regimen that has stabilized his mood swings.

15. After respondent grabbed his wife, he knew instantly that he had done something wrong; respondent has taken appropriate steps to ensure that such an incident will not likely occur again. The testimony of respondent, his wife, and his stepson, expressed that they are confident that respondent poses no threat to them, or to the public.

16. Respondent has not been involved in any other events wherein he lost control of his emotions or acted impulsively. Respondent's conduct on the night of the incident was the result of a confluence of unfortunate circumstances that led to him briefly act in a way that had been, theretofore, out of his character.

17. Respondent acted commendably in attempting to restore his character by personally apologizing to each of the children, as well as, to the parents of the boys who were at his home on the night of the incident. As mentioned previously, respondent's probation was terminated early.

18. As mentioned in the Preamble, respondent's probation was terminated by the criminal court early. Early termination of probation reflects the court's satisfaction that

respondent has fully satisfied all the terms of his probation, and that probation supervision is no longer necessary. Therefore, being able to obtain early termination of probation is a significant factor in mitigation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), provides that licensee may have his or her license suspended or revoked if the person has been convicted of a felony or a crime involving moral turpitude. "‘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. Mansfield* (1988) 200 Cal.App.3d.82, 87, citations omitted.)

Moral turpitude and respondent's convictions

2. A conviction for battery on a cohabitant is a conviction for a crime that involves moral turpitude. *People v. Rodriguez* (1992) 5 Cal. App. 4th 1398, at page 1401.

Substantial relationship

3. The Department must also establish that a non-felony conviction bears a substantial relationship to the qualifications, functions and duties of the license holder. California Code of Regulations, title 10, section 2910, subdivision (a) [section 2910], sets forth the criteria for determining whether a criminal conviction is substantially related.¹ By

¹ California Code of Regulations, title 10, section 2910 states:

(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 on 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

virtue of section 2910, subdivision (a), section (8), a conviction for performing a criminal act with the intent to cause substantial injury, established that respondent's convictions are "substantially related" to his licensure.

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.

(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 act 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.

Cause for denial

4. Therefore, legal cause exists to revoke respondent's license under Business and Professions Code section 10177, subdivision (b). Findings 1-5 and Conclusions 1-3.

Rehabilitation

5. When a licensee has sustained criminal convictions that provide legal cause for the Department to revoke his or suspend her license, a licensee may nonetheless retain the license if he or she provides persuasive evidence of their rehabilitation.

6. Rehabilitation is a "state of mind" and the law looks with favor upon one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058). Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940).

7. The Department has enacted a non-exhaustive list of rehabilitation criteria at California Code of Regulations, title 10, section 2912, against which to weigh and evaluate a licensee's evidence regarding their claim of rehabilitation.²

² California Code of Regulations, title 10, section 2912 states:

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.

8. Respondent produced persuasive evidence of partial rehabilitation, as detailed in Findings 6-18 and Conclusions 5-8. Based on respondent's showing of rehabilitation, cause exists to restrict, rather than revoke, respondent's license.

(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.

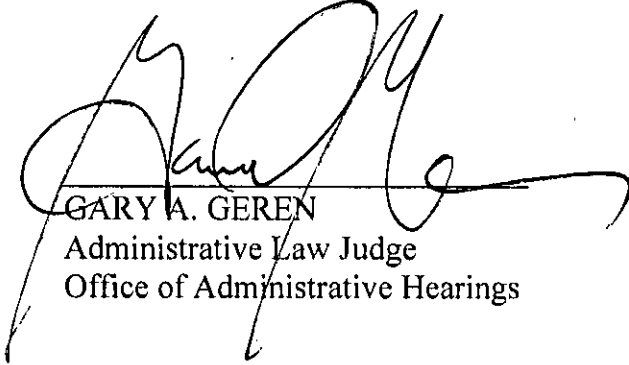
ORDER

All licenses and licensing rights of respondent 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 fees 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 issue 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 renewable 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 hearing pursuant to the Administrative Procedures Act to present such evidence.

Respondent's motion to hold the record open so that he could provide proof of early termination of his probation is granted.

DATED: July 11, 2007.



GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 14 2007

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) H-4692 SAC
13 DAREN EDWARD BALEME,)
14 Respondent.) ACCUSATION

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

19 I

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

24 II

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

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III

On or about January 24, 2005, in the Superior Court of the State of California, County of Placer, Respondent was convicted of the crimes of Assault with Force Likely to Cause Great Bodily Injury in violation of Penal Code Section 245(a)(1), Willful Infliction of Corporal Injury in violation of Penal Code Section 273.5(a), and Willful Harm or Injury to Child in violation of Penal Code Section 273a(b), each a misdemeanor and a crime involving moral turpitude that 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

Respondent's convictions, described in Paragraph III above, constitutes 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.

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 Code, and for such other and further relief as may be proper under provisions of law.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California
this 5th day of March, 2007.