

FILED

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEC 28 2007

DEPARTMENT OF REAL ESTATE

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By 

In the Matter of the Accusation of )  
JOHNNY M. WILLIAMS, )  
Respondent. )

NO. H-4789 SAC

OAH NO. N-2007080869

DECISION

The Proposed Decision dated November 15, 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.

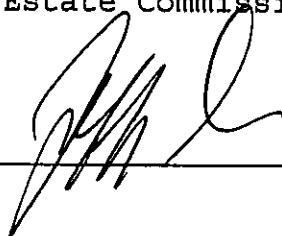
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 JAN 18 2008.

IT IS SO ORDERED

12/28/07  
JEFF DAVI  
Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHNNY M. WILLIAMS,

Respondent

Case No. H-4789 SAC

OAH No. N2007080869

**PROPOSED DECISION**

Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on October 16, 2007.

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

Respondent, Johnny M. Williams, represented himself.

Evidence was received, the record was closed and the matter submitted for decision on October, 16, 2007.

**FACTUAL FINDINGS**

1. On May 29, 2007, complainant Charles W. Koenig, Deputy Real Estate Commissioner of the State of California, made the Accusation in his official capacity. The Accusation was filed on June 13, 2007. Respondent filed a Notice of Defense on Accusation on June 19, 2007. The matter was set for hearing on October 16, 2007.

2. Johnny M. Williams (respondent) is licensed as a real estate broker under license number B/01255428. He has been a real estate broker for five years, and was previously a real estate salesperson for three and one-half years. His license is currently active with an expiration date of September 26, 2010. Respondent is currently doing business as JMW Realty and Williams Home Loans.

### *Respondent's Criminal Conviction*

3. On January 19, 2007, in the Superior Court of California, County of Sacramento, case number 06F07618, respondent was convicted, after his plea of nolo contendere (no contest), of violating Penal Code section 245, subdivision (a)(1), Assault By Means of Force Likely to Produce Great Bodily Injury, a misdemeanor. The court suspended imposition of sentence and placed respondent on formal probation for three years, subject to several terms and conditions. The court ordered respondent to serve 180 days in county jail, with credit for two days served, to pay fines, fees and assessments of \$860, and to have no contact with the victim, respondent's fiancé, without prior approval of his probation officer. The court also ordered respondent to participate in the Batterer's Treatment Program.

4. The conduct leading to respondent's conviction occurred on July 1, 2006, at about 11:00 a.m., when he and his fiancé got into a verbal argument about some problems in their relationship. Respondent told her that he wanted the engagement ring back, so she took it off and threw it across her living room. Respondent got mad and pushed his fiancé, then picked her up and dropped her on a large, glass top coffee table, causing injury to her jaw and breaking the glass table. He then left the apartment.

Sheriff's deputies, responding to the scene, observed the victim's injuries and the scene of the incident. They noted that the victim had a red swollen jaw, and two one-inch scratches on her left shoulder area. They also documented the victim's complaint of pain on the right side of her head. The deputies noted that the living room showed signs of a struggle and that the marble coffee table with glass insert was tipped over, with broken glass and display items from the table strewn all over the living room floor.

In the follow-up investigation, the victim made hearsay statements to a detective that, after respondent dropped her on the coffee table, he punched her in the jaw when she stood up. The victim stated that she had surgery for a fractured jaw and that her jaw was wired shut. She also reported experiencing back pain from being dropped on the coffee table.

5. At hearing, respondent insisted that the incident happened quite differently from the way it was described in the Sacramento County Sheriff's Department crime report. Respondent testified that one week before the incident, he learned from a mutual acquaintance that his fiancé was not the person she seemed to be. He learned that she used to be an escort and owner of an escort service. On the night of the incident, he confronted his fiancé with this information and she became enraged. Respondent testified that she told him she would ruin him and make him lose everything. He suggested that they call off the engagement and "went for the ring." His fiancé then jumped on him and they both fell through the coffee table. Respondent did not sustain any injuries from the fall. He left the apartment because

his fiancé asked him to go. Respondent admitted that he and his fiancé had an argument, but claimed that he did not "throw her through the table or hit her with a closed fist." He eventually surrendered to sheriff's deputies after charges were filed.

#### *Rehabilitation Criteria*

6. Less than two years have passed since respondent's criminal conviction occurred on January 19, 2007. The offense took place only ten months ago.

7. There was no evidence presented to indicate that respondent has made restitution to the victim for injuries which she sustained or for damage to her property.

8. Respondent remains on probation until January 19, 2010 and has not sought to have the conviction dismissed or expunged. Respondent believes that his formal probation will be modified to informal, once he completes his anger management program on April 4, 2008.

9. There is no evidence to indicate that controlled substances or alcohol played a part in respondent's offense.

10. There was no evidence presented to indicate that respondent has paid the fines imposed as a condition of his probation. Respondent testified that he served 120 days on an electronic monitor and had restricted movement during that time. He has completed half of the 52-week anger management program ordered by the court.

11. Respondent has had no contact with the victim since the offense occurred. He does not have a new relationship because he is trying to be more cautious since the incident with his fiancé. Respondent presented no evidence of new and different social relationships from those that existed at the time of his offense.

12. Respondent is 43 years old and has lived in Sacramento for 31 years. He was previously married for ten years, but then divorced. He is the father of two daughters, ages 10 and 16 years. They live with him half-time and with their mother the other half.

13. Respondent has worked in real estate for ten years and considers it his life and his "passion." He operates both JMW Realty and Williams Home Loans from his residence and has no sales agents working for him. Respondent has no other employment. He describes himself as being "in limbo, trying to work the real estate market."

14. Respondent offered no evidence that he has completed or sustained enrollment in formal educational or vocational training courses for economic self-improvement.

15. There was no evidence that respondent has any significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. He attends Christian Faith Baptist Church, but is not involved in any of their ministries.

16. Respondent presented no evidence from family members, friends, employers or other persons familiar with his previous conduct and subsequent attitudes and behavioral patterns. He presented no evidence from probation or law enforcement officials concerning his social adjustments. Respondent indicated that he did not ask for testimony from others because he did not know what kind of hearing it would be. When testifying about the offense, respondent stated that he could "bring in friends to say that I am not violent."

17. Respondent's testimony was an odd combination of defensiveness, feistiness, and fatalism. His defensiveness was apparent in his insistence that he is not violent and that the offense did not happen as the victim described. Respondent also perceives himself as the victim of not only the incident, but also the criminal justice system. These efforts by respondent to impeach his assault with a deadly weapon conviction were unavailing as the nolo conviction stands as conclusive proof of respondent's guilt of the offense. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.) The far more important issue is whether he has achieved any significant amount of rehabilitation. Respondent's feistiness ("I want it known that I will fight," and "I'm here to fight for my rights.") and his fatalism ("whatever will happen, let it manifest," and "looking to whatever happens, happens."), along with his unchanged attitude about the offense, indicates that he has not begun the process of rehabilitation. He is apparently still caught in a tangle of emotions and justifications.

## LEGAL CONCLUSIONS

### *Purpose of Disciplinary Action*

1. The object of an administrative proceeding to discipline a professional license is to protect the public, that is, to determine whether a licensee has exercised his privilege in derogation of the public interest. A second purpose is to keep the regulated business clean and wholesome. Such proceedings are not conducted for the primary purpose of punishing an individual. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

### *Burden and Standard of Proof*

2. In a disciplinary proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Small v. Smith, supra*, 16 Cal.App.3d 450, 457.)

3. The proper standard of proof in an administrative action to revoke or suspend a professional license is clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

### *Moral Turpitude and Substantial Relationship*

4. Under *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4<sup>th</sup> 554, the Department may not take disciplinary action pursuant to Business and Professions Code section 10177, subdivision (b), when a misdemeanor offense is alleged, unless it is a crime of moral turpitude. Respondent's conviction for assault by means of force likely to produce great bodily injury, as set forth in Factual Finding 3 through 5, is a crime of moral turpitude per se because it involved assaultive conduct with the intention to inflict serious injury upon another, indicating moral laxity. (*People v. Thomas* (1988) 206 Cal.App.3d 689; *People v. Elwell* (206 Cal.App.3d 171; *People v. Cavazos* (1985) 172 Cal.App.3d 589.)

5. Pursuant to Factual Findings 3 through 5, and California Code of Regulations, title 10, section 2910, subdivision (a)(8), respondent's crime of assault by means of force likely to produce great bodily injury involved the doing of an unlawful act with the intent or threat of doing substantial injury to the person or property of another. Pursuant to this criterion, respondent's crime of assault by means of force likely to produce great bodily injury is substantially related to the qualifications, functions or duties of a real estate licensee.

### *Grounds for Revocation or Suspension*

6. Pursuant to Business and Professions Code section 10177, subdivision (b), in conjunction with section 490, legal grounds exist to revoke or suspend respondent's license because his misdemeanor conviction for assault by means of force likely to produce great bodily injury is a crime of moral turpitude, and is substantially related to the qualifications, functions or duties of a licensee of the Department.


## *Rehabilitation*

7. Pursuant to Factual Findings 6 through 17, respondent has failed to show that he has achieved any rehabilitation. From all the evidence, it is clear that he has not accepted responsibility for his conduct, which must be his first step toward rehabilitation. Respondent's offense involved significant violence in that he caused his fiancé to suffer serious personal injury. There was no evidence that respondent has acknowledged his anger management problem or made any effort to remediate it, despite his involvement in a 52-week, court-ordered program for that purpose. This is a matter of significant concern for those who will deal with him in his licensed capacity. Respondent's conviction occurred just ten months ago and he remains on probation for two years and two months. Without any progress toward rehabilitation, respondent's conduct could place members of the public at risk, even if he were to be granted a restricted salesperson's license. Therefore, respondent's license as a real estate broker must be revoked in order to protect members of the public.

## ORDER

All licenses and licensing rights of respondent Johnny M. Williams under the Real Estate Law are revoked pursuant to Legal Conclusions 4 through 7, individually and collectively.

DATED: Nov. 15, 2007

  
JOANN I. ESHELMAN  
Administrative Law Judge  
Office of Administrative Hearings

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4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789  
6 -or- (916) 227-0805 (Direct)

FILED  
JUN 19 2007

DEPARTMENT OF REAL ESTATE

By K. Mat

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 JOHNNY M. WILLIAMS, )  
14 )  
15 Respondent. )

H-4789 SAC

ACCUSATION

16 The Complainant, Charles W. Koenig, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Accusation against JOHNNY M. WILLIAMS (hereinafter  
19 "Respondent"), is informed and alleges as follows:

20 I

21 Complainant, Charles W. Koenig, a Deputy Real Estate  
22 Commissioner of the State of California, makes this Accusation  
23 against Respondent in his official capacity.

24 II

25 Respondent is presently licensed and/or has license  
26 rights under the Real Estate Law, Part 1 of Division 4 of the  
27 Business and Professions Code (hereinafter "the Code").

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III

At all times herein mentioned, from and after September 27, 2002, Respondent was and now is licensed by the Department of Real Estate (herein "Department") as a real estate broker.

IV

On or about January 19, 2007, in the Superior Court of the State of California, County of Sacramento, Case Number 06F07618, Respondent was convicted of the crime of Assault With A Deadly Weapon: Likely to Produce Great Bodily Injury in violation of Penal Code Section 245(a)(1), a misdemeanor and a 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 Respondent's license under the Real Estate Law.

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1           WHEREFORE, Complainant prays that a hearing be  
2 conducted on the allegations of this Accusation and that upon  
3 proof thereof, a Decision be rendered imposing disciplinary  
4 action against all licenses and license rights of Respondent  
5 under the Code, and for such other and further relief as may be  
6 proper under provisions of law.

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8   
9 CHARLES W. KOENIG  
Deputy Real Estate Commissioner

10 Dated at Sacramento, California  
11 this 29th day of May, 2007.  
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