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**FILED**  
DEC 16 2011

DEPARTMENT OF REAL ESTATE  
By R. Mat

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Application of	)	
	)	CASE NO. H-5657 SAC
JAMES NICANOR SALONDAKA,	)	
	)	OAH NO. 2011090662
Respondent.	)	
_____	)	

DECISION

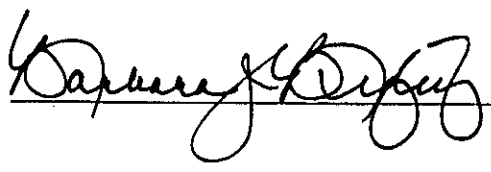
The Proposed Decision dated November 8, 2011, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on  
JAN 6 2012

IT IS SO ORDERED 12/13/11

BARBARA J. BIGBY  
Acting Real Estate Commissioner



BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

JAMES NICANOR SALONDAKA,

Respondent.

Case No. H-5657 SAC

OAH No. 2011090662

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 2, 2011, in Sacramento, California.

K. Brooke Jensen, Legal Intern, supervised by Richard Uno, Counsel, represented Tricia D. Sommers (complainant), a Deputy Real Estate Commissioner with the Department of Real Estate (Department).

James Nicanor Salondaka (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on November 2, 2011.

**FACTUAL FINDINGS**

1. Complainant made and filed the Statement of Issues in her official capacity.
2. On April 8, 2010, the Department received respondent's application for a real estate salesperson license. Complainant seeks to deny respondent's application based upon his convictions described below.

*Respondent's Convictions*

3. On October 1, 1999, in the Placer County Superior Court, in Case Number 62-4670, respondent, after a jury trial, was convicted of violating Penal Code sections 243, subdivision (d), battery on a person: serious bodily injury, and 245, subdivision (a)(10), assault by means of force likely to produce great bodily injury, both felonies. Respondent was placed on formal probation for four years. He was ordered to serve 365 days in jail, all but 90 days of which were suspended. He was also ordered to pay fines and fees. At the

hearing, respondent testified that he spent some of the 90 days in jail, and the remainder working on the sheriff's work project, cleaning up the Roseville utility yard and performing maintenance work.

4. The incident underlying respondent's 1999 felony convictions occurred on June 12, 1998. While at a bar with friends, respondent punched the male victim in the face and broke his jaw. Respondent was born on September 14, 1973. He was 24 years old at the time of this incident.

5. The court records presented at hearing were confusing as to whether respondent's 1999 felony convictions have been expunged under Penal Code section 1203.4. They indicate that on November 8, 2002, respondent's motion to reduce his felonies to misdemeanors under Penal Code section 17, subdivision (b), was denied, but his motion to dismiss his felonies under Penal Code section 1203.4 was granted. The court records also indicate that on December 19, 2002, respondent's motion to reduce his felonies to misdemeanors under Penal Code section 17, subdivision (b), was granted. Although felonies must generally be reduced to misdemeanors before they will be expunged under Penal Code section 1203.4, at the hearing, complainant conceded that the court records could be interpreted as indicating that respondent's 1999 felony convictions have been expunged.

6. On October 20, 2010, in the Placer County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating: (1) Penal Code section 273.5, subdivision (a), inflicting corporal injury upon a spouse, a felony; (2) Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor; and (3) Vehicle Code section 14601.1, subdivision (a), driving with a suspended license, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on formal probation for three years. He was ordered to serve 150 days in jail, and was given credit for one day served. He was also ordered to complete 20 hours of community service, successfully complete an Anger Management Level III program, totally abstain from the use of intoxicants, satisfactorily complete a DUI First Offender Program, attend a victim impact panel, successfully complete a one-year batterer's program, and pay fines, fees and restitution.

7. At the hearing, respondent explained that the 150 days he was ordered to serve in jail was initially divided into 60 days of jail time, 60 days of sheriff's work project, and 30 days of checking into jail at night. Before he served the 30 days of night check-in, the county eliminated that program, and his 30 days of night check-in were converted to 240 hours of community service. He also testified that the terms of his probation were modified further to eliminate the requirement that he successfully complete an anger management program.

8. The incident underlying respondent's 2010 convictions occurred on May 5, 2010, about a month after respondent submitted his real estate salesperson application. Respondent testified that, at the time, he and his then wife had been having marital problems for about six months. Respondent and his wife went to a restaurant, where they met another couple. At the restaurant, respondent drank numerous shots of alcohol.

When his wife tried to stop him from driving, he pushed her, causing her to stumble backwards. Respondent eventually drove away. The couple respondent and his wife were with drove respondent's wife to her vehicle, which she had left near her work. When they arrived at that location, respondent was there. He opened the vehicle's door, hit his wife in the face, grabbed her blouse, and pulled her out of the vehicle, ripping her shirt, undershirt and bra. She fell to the ground, sustaining an abrasion on her elbow. When the male of the couple exited his vehicle and asked respondent what he was doing, respondent began pushing and trying to hit him. The police later measured respondent's blood alcohol content at .142 and .133 percent.

9. At the hearing, respondent testified that he completed the 20 hours of court-ordered community service, three-month First Offender DUI course, and Mothers Against Drunk Driving program. He has completed 29 of the 52 weeks of the batterer's treatment program. He is still making payments toward the fines, fees and restitution he was ordered to pay. On his own, he attended 13 anger management group sessions, six one-on-one counseling sessions, and marriage counseling. He has completed 76 hours of his required additional community service. According to respondent, the last time he drank was on May 5, 2010, the night of the incident. He has completely abstained from alcohol since then.

10. Respondent is now divorced from his wife. He has two children from previous relationships, a 19-year-old son and a nine-year-old daughter. His son attends college at Boise State in Idaho. Respondent testified that he is active in his son's life and has a good relationship with him. Respondent has full custody of his daughter. Respondent volunteers three time a week with his daughter's cheerleading program. He also volunteers once a week in her class and in extracurricular activities at her elementary school.

11. Respondent graduated from high school in 1991. He attended American River College, where he played football and baseball. He also attended Sacramento State University, where he obtained 60 credits, but did not graduate. This fall, he enrolled in Sierra College, where he is taking 12 units, including three business classes and a history class. He is nine hours away from obtaining his pilot's license.

12. From 1996 to 2002, respondent worked for Southwest Airlines, beginning as a bag loader and rising to the level of marketing director. From October 2005 to May 2009, he was the owner of California Loan Servicing, Inc., a mortgage loan company. According to respondent, he held a California Finance Lender License, which is currently not active. From May 2009 to October 2010, he owned a consulting business. He has not worked since October 2010.

13. Respondent submitted three letters at the hearing, which were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>1</sup>

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<sup>1</sup> Government Code section 11513, subdivision (d), in relevant part, provides:

- (a) Nicole Paul, MFT, is the Clinical Director of Sierra Mental Wellness Group. She wrote a letter dated November 1, 2011, summarizing respondent's participation in services at her agency. According to Ms. Paul, respondent: (1) attended 13 anger management group sessions from May 13 to August 19, 2012, thus successfully completing the program; (2) attended six counseling sessions from June 8 to September 7, 2010; and (3) has attended four of the required 52 group sessions of the domestic violence program.
- (b) Victoria Lowry is respondent's Probation Officer. Ms. Lowry wrote a letter dated November 1, 2011, which states that, to date, respondent has: (1) attended his scheduled probation appointments; (2) provided negative drug and alcohol tests; (3) not accrued any new charges or violation of probation petitions; (4) completed 76 hours of community service; and (5) completed 29 of the 52 weeks of his required counseling program.
- (c) Steve Jedlowski is the President of the EAS Parent Club. Mr. Jedlowski wrote a letter dated September 7, 2011. In his letter, Mr. Jedlowski states that, starting in May, respondent has performed 76 hours of community-based service helping the EDGE All-Star parent club. According to Mr. Jedlowski, respondent has been "flexible with the duties [they] have tasked him with, conducting himself in a very mature and professional manner and showed pride in accomplishing tasks with [their] group."

14. In California Code of Regulations, title 10, section 2911, the Department has set forth the rehabilitation criteria to be applied when considering whether a real estate license should be issued to an applicant who has been convicted of a crime.<sup>2</sup>

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Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

<sup>2</sup> California Code of Regulations, title 10, section 2911 provides:

Criteria of Rehabilitation (Denial).

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

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- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct 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 applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (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 conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

15. Respondent has engaged in some rehabilitation. At the hearing, he took responsibility for his convictions. He expressed remorse. He recognized the issues he had with anger management. To address these issues, he has not only attended the court-ordered programs, he has also participated in additional counseling on his own. He has completely abstained from alcohol since the May 2010 incident underlying his most recent convictions. He now appears to have a stable family life and is fulfilling his parental responsibilities. He is involved in community programs. His recent efforts at rehabilitation are commendable and encouraged.

But when all the rehabilitation criteria in California Code of Regulations, title 10, section 2911 are considered, respondent did not established that he is sufficiently rehabilitated to assume the duties and responsibilities of a real estate salesperson. Three of his convictions are violent felonies. He sustained his most recent convictions about one year ago. His criminal probation is not scheduled to end until October 2013. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on

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(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his 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 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.

(o) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has been convicted of any felony within seven (7) years from the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation.

(p) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation.

the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole.”].) The incident underlying his most recent convictions occurred only one month after he applied for a real estate salesperson license. He has not yet paid all his court-ordered fines, fees and restitution, nor completed the court-ordered batterer’s treatment program. More time must pass without any convictions or wrongdoing for respondent to establish that he is fit to receive a real estate salesperson license. Given the recency and nature of respondent’s 2010 convictions, it would not be consistent with the public interest, safety or welfare to grant respondent a real estate salesperson license at this time.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a license may be denied if an applicant has been convicted of a crime that is “substantially related to the qualifications, functions, or duties of the business or profession for which application is made.” Pursuant to Business and Professions Code section 493, the Department may “inquire into the circumstances surrounding the commission of the crime in order ... to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.”

2. Business and Professions Code section 10177, subdivision (b), provides that an application for a real estate license may be denied if the applicant has “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....”

3. In California Code of Regulations, title 10, section 2910, the Department has set forth criteria for determining whether a conviction is substantially related to the qualifications, functions or duties of a licensee. Subdivision (a) of section 2910, in relevant part, provides that a conviction will be deemed to be substantially related if it evidences:

(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.

[¶] ... [¶]

(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.<sup>3</sup>

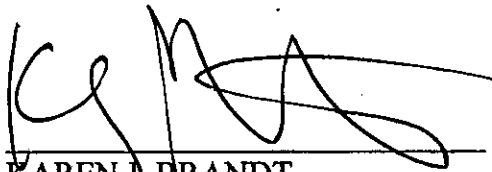
4. Respondent was convicted of two violent felonies in 1999 and one violent felony in 2010. His 1999 and 2010 convictions included acts done with the intent or threat of doing substantial injury to another. When taken together, respondent's convictions demonstrate a pattern of repeated and willful disregard for the law. His 2010 convictions involved both the consumption of alcohol and driving. Respondent's 1999 and 2010 convictions are therefore substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivisions (a)(8), (10) and (11). These convictions establish cause to deny respondent's real estate salesperson application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

5. As set forth in Finding 15, while respondent submitted some evidence of rehabilitation, given the recency and nature of his 2010 convictions, he did not establish that it would be consistent with the public interest, safety and welfare to issue him a real estate salesperson license at this time. Consequently, his license application must be denied.

#### ORDER

The application of respondent James Nicanor Salondaka for a real estate salesperson license is DENIED.

DATED: November 8, 2011

  
KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> During closing argument, complainant also asserted that subdivision (a)(7) of section 2910 applied. That subdivision provides that a crime or act will be deemed to be substantially related when an applicant had "[w]illfully violat[ed] or fail[ed] 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." Complainant did not include sufficient allegations in the Statement of Issues or provide sufficient evidence at the hearing to establish that California Code of Regulations, title 10, section 2910, subdivision (a)(7), applies in this case.

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**FILED**  
AUG - 9 2011

DEPARTMENT OF REAL ESTATE  
By R. Miller

7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 ) H-5657 SAC  
13 JAMES NICANOR SALONDAKA, )  
14 ) STATEMENT OF ISSUES  
15 Respondent. )

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner  
17 of the State of California, for Statement of Issues against JAMES NICANOR SALONDAKA  
18 ("Respondent"), is informed and alleges as follows:

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20 Complainant makes this Statement of Issues against Respondent in her official  
21 capacity.

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23 Respondent made application to the Department of Real Estate of the State of  
24 California for a real estate salesperson license on or about April 8, 2010.

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On or about October 20, 2010, in the Superior Court of the State of California, County of Placer, Case No. 62-99427, Respondent was convicted of violating Section 273.5(a) (corporal injury to spouse) of the California Penal Code, a felony, and Sections 23152(a) (driving under the influence) and 14601.1(a) (driving with suspended license) of the California Vehicle Code, misdemeanors, and crimes which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations ("the Code"), to the qualifications, functions or duties of a real estate licensee.

On or about October 1, 1999, in the Superior Court of the State of California, County of Placer, Case No. 62-4670, Respondent was convicted of violating Sections 245(a)(1) (assault by means likely to produce great bodily injury) and 243(d) (battery with serious bodily injury) of the California Penal Code, felonies and crimes which bear a substantial relationship under Section 2910 of the Code, to the qualifications, functions or duties of a real estate licensee.

Respondent's criminal convictions, described in Paragraphs 3 and 4, above, constitute cause for denial of Respondent's application for a real estate salesperson license pursuant to the provisions of Section 480(a) (denial of license - conviction of crime) and 10177(b) (conviction of crime substantially related to qualifications, functions or duties of real estate licensee) of the Code.

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1                    WHEREFORE, Complainant prays that the above-entitled matter be set for  
2 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to  
3 authorize the issuance of, and deny the issuance of, a real estate salesperson license to  
4 Respondent, and for such other and further relief as may be proper under the provisions of the  
5 law.

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9 TRICIA D. SOMMERS  
Deputy Real Estate Commissioner

10 Dated at Sacramento, California,  
11 this 14<sup>th</sup> day of August, 2011.  
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