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NOV 15 2010

DEPARTMENT OF REAL ESTATE

By L. Zui

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of

WINNIE WANG,

Respondent.

No. H-8506 SF

ORDER GRANTING UNRESTRICTED LICENSE

On December 22, 2003, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on March 10, 2004, and Respondent has operated as a restricted licensee since that time.

On February 17, 2010, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of

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1 an unrestricted real estate salesperson license and that it would not be against the public interest  
2 to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
4 restrictions is granted and that a real estate salesperson license be issued to Respondent if  
5 Respondent satisfies the following requirements:

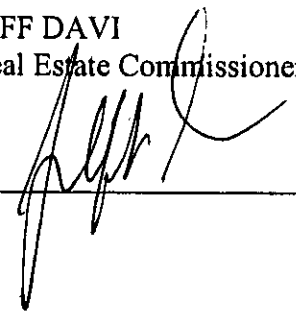
6 1. Submits a completed application and pays the fee for a real estate  
7 salesperson license within the 12 month period following the date of this Order; and

8 2. Submits proof that Respondent has completed the continuing education  
9 requirements for renewal of the license sought. The continuing education courses must be  
10 completed either (i) within the 12 month period preceding the filing of the completed  
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 IT IS SO ORDERED 11.9.2010  
14 \_\_\_\_\_

15 JEFF DAVI  
16 Real Estate Commissioner

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18 \_\_\_\_\_

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BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
JAN - 9 2004  
DEPARTMENT OF REAL ESTATE

\* \* \*

In the Matter of the Application of )  
  )           NO. H-8506 SE  
      WINNIE WANG,                    )  
  )           N-2003100563  
  )             

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  )           Respondent.           )

DECISION

The Proposed Decision dated December 10, 2003, 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, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon  
on January 30, 2004.

IT IS SO ORDERED December 22, 2003.

Real Estate Commissioner

By: \_\_\_\_\_

John R. Liberator  
JOHN R. LIBERATOR  
Chief Deputy Commissioner

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

WINNIE WANG,

Respondent.

Case No. H-8506 SF

OAH No. N2003100563

**PROPOSED DECISION**

John K. Markley, Administrative Law Judge, Office of the Administrative Hearings, State of California, heard this matter on November 25, 2003, in Oakland, California.

The Department of Real Estate of the State of California ("Department") was represented by Deidre L. Johnson, Counsel.

Winnie Wang, respondent, was present and appeared on her own behalf without legal counsel.

Evidence was received, the record was closed and the matter was submitted.

**FACTUAL FINDINGS**

1. Les R. Bettencourt ("complainant") made and filed this statement of issues in his official capacity of Deputy Real Estate Commissioner of the State of California.

2. On January 23, 2003, respondent applied to the Department for a real estate salesperson license. In response to Interrogatory 25, respondent properly disclosed a prior criminal conviction.

3. On January 31, 2002, respondent pled guilty and was convicted of battery, a misdemeanor violation of California Penal Code section 242/243(a), in Santa Clara County Superior Court.

4. The underlying facts and circumstances are: On the third anniversary of their relationship, respondent went to the San Jose Computer Academy to meet and be with her boyfriend. She suspected she was then pregnant by her boyfriend, even though it had not yet been medically confirmed (was later confirmed). Respondent had not yet

informed the boyfriend of her suspected pregnancy. She also suspected that her boyfriend had been seeing another girl (Jane Doe) who was also a student at this academy. When respondent arrived at the school, she saw her boyfriend talking to Jane Doe. Words were exchanged between the girls and this escalated into physical violence when respondent pushed Jane Doe. Both girls then began wrestling, hair pulling and hitting. The boyfriend tried to intervene by grabbing respondent and pinning her down in a chair. While respondent was pinned down, Jane Doe continued to strike at respondent. Respondent then kicked out to ward off Jane Doe. The kick hit Jane Doe in the forehead and resulted in a cut over one eye. The cut was not a serious injury, but it did require medical attention.

5. Respondent, acting without legal counsel, pled guilty to the misdemeanor battery and was sentenced to time served (two days) and was placed on court probation for two years (ending January 30, 2004). Respondent was also required to pay a fine of \$235.00. The fine was subsequently paid in full.

6. Counsel for the Department stipulated that respondent's actions and conviction did not involve moral turpitude.

7. The initiating of physical violence against Jane Doe and respondent's conviction for battery are substantially related to the qualifications, functions or duties of a real estate salesperson in that it involved the doing of an unlawful act with the intent or threat of doing substantial injury to another person. Real estate salespersons encounter events involving very significant stress, high emotions and upset people. It is necessary that the licensee be able to remain calm, be in control, and be able to avoid physical violence between all involved parties.

8. The evidence of mitigating circumstances is:

A. On the date of their third anniversary, respondent's relationship with her boyfriend, the father of the child she then believed she was carrying, was directly threatened by Jane Doe. While these circumstances do not excuse or justify respondents physical retaliation, these circumstances are unique and are not likely to be duplicated if and when respondent acts as a real estate salesperson.

B. While respondent's arms were being held down by her boyfriend, Jane Doe was unrestrained and she continued to hit at the respondent. At this point respondent felt the need to ward off Jane Doe and then kicked out with her foot.

C. No weapons were involved in this incident.

D. This was a single and spontaneous incident which did not involve planning, premeditation or stalking.

E. No drugs or alcohol were involved in this incident.

F. Counsel for the Department stipulated that no moral turpitude was involved in this incident.

9. The evidence regarding respondent's rehabilitation is:

A. Respondent paid the court-imposed fine.

B. Respondent has, to date, successfully served her continuing probation.

C. Respondent's two-year probation will terminate on January 30, 2004, in less than two months. At that time respondent will seek to have the conviction expunged under Penal Code 1203.4.

D. Respondent has been supported in her rehabilitation by her mother. Together they decided to seek a real estate salesperson license. They have both studied for the real estate exam and have both taken and passed the real estate exam.

E. In an attempt to learn more about real estate practice, respondent has observed at real estate offices.

F. Respondent is currently a college student. She seeks a career in real estate and expects to become gainfully employed if she is licensed as a real estate salesperson.

G. Respondent now realizes that she acted improperly and immaturely, and she regrets her actions.

H. Respondent understands that the practice of real estate can be stressful, but she is confident that such stress will not cause her to resort to physical violence.

10. Respondent's boyfriend testified on her behalf by confirming her version of the events. He also testified that respondent is not normally a violent person. Coincidentally, respondent confirmed that respondent's suspicions were correct; he had been seeing Jane Doe during his relationship with respondent.

## LEGAL CONCLUSIONS

1. By reason of the matters set forth in Finding 6 (no moral turpitude), cause does not exist for disciplinary action under California Business and Professions Code section 10177(b).

2. By reason of the matters set forth in Findings 2, 3, 4, 5 and 7, cause for disciplinary action exists pursuant to Business and Professions Code section 480(a) in that respondent was convicted of battery, a crime which is substantially related to the qualifications, functions or duties of a real estate licensee. Discipline may be imposed under this separate statute in the absence of moral turpitude.

3. By reason of the matters set forth in Findings 8 and 10, respondent has established mitigating circumstances. These mitigating circumstances do not excuse or justify respondent's actions. However, it is unlikely that respondent will experience similar conditions, events and heightened personal emotions while acting as a licensed real estate salesperson, and there is only a minimal risk that respondent will commit physical violence while acting as a real estate salesperson.

4. By reason of the matters set forth in Findings 9 and 10, respondent has demonstrated sufficient progress in her personal rehabilitation that issuance of a restricted salesperson license, with appropriate restrictions and conditions, will adequately protect the public interest.

## ORDER

The application of Winnie Wang for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code.

The restricted license 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 this Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

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

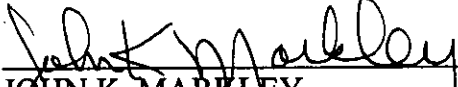
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision of the Commissioner which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a real estate license is required.

4. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest.

Dated: December<sup>10</sup>, 2003

  
JOHN K. MARKLEY  
Administrative Law Judge  
Office of Administrative Hearings



FILED  
OCT 24 2003

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

*In the Matter of the Application of*

WINNIE WANG,

}

Case No. H-8506 SF

OAH No.

*Respondent*

**NOTICE OF HEARING ON APPLICATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at

**OFFICE OF ADMINISTRATIVE HEARING  
THE ELIHU HARRIS STATE BUILDING  
1515 CLAY STREET, SUITE 206  
OAKLAND, CALIFORNIA 94612**

on **NOVEMBER 25, 2003**, at the hour of **1:30 PM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues 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.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

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: OCTOBER 17, 2003

By Deidre L. Johnson  
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel  
SBN 66322  
2 Department of Real Estate  
P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
AUG 28 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

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

11 \* \* \*

12 In the Matter of the Application of )  
13 WINNIE WANG, ) NO. H-8506 SF  
14 Respondent. ) STATEMENT OF ISSUES  
15 )

16 The Complainant, LES R. BETTENCOURT, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Statement of Issues against WINNIE WANG, alleges as follows:

19 I

20 WINNIE WANG (hereafter Respondent) made application  
21 to the Department of Real Estate of the State of California  
22 for a real estate salesperson license on or about January 23,  
23 2003.

24 II

25 The Complainant, LES R. BETTENCOURT, a Deputy Real  
26 Estate Commissioner of the State of California, makes this  
27 Statement of Issues in his official capacity and not otherwise.

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III

On or about January 31, 2002, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of Penal Code Section 242/243(a) (BATTERY), a crime involving moral turpitude, and/or a crime 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.

IV

The crime of which Respondent was convicted as alleged above constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the California Business and Professions Code.

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

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California  
this 26th day of August, 2003