

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 15 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

* * *

In the Matter of the Accusations of)
JEFF HANDWERGER, and) NO. H-8828 SF
SOMA INVESTMENT CORPORATION,) OAH NO. N-2004080484
Respondents.) NO. H-8829 SF
OAH NO. N-2004080485

DECISION

The Proposed Decision dated January 13, 2005, 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.

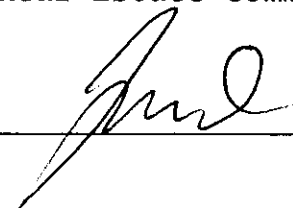
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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 Respondents.

This Decision shall become effective at 12 o'clock noon on March 7, 2005.

IT IS SO ORDERED 2-9, 2005.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JEFF HANDWERGER,

and

SOMA INVESTMENT CORPORATION,

Respondent.

No. H-8828 SF

OAH No. N2004080484

No. H-8829 SF

OAH No. N2004080485

PROPOSED DECISION

These matters were consolidated for hearing and heard by Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, on November 12, 2004, in Oakland, California.

Department of Real Estate Counsel Deidre L. Johnson represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Attorney at Law Maxine Monaghan represented respondents Jeff Handwerger and Soma Investment Corporation.

The matter was submitted on November 12, 2004.

FACTUAL FINDINGS

1. Respondent Jeff Handwerger (Handwerger) is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker.
2. Respondent Soma Investment Corporation (Soma) is presently licensed and/or has license rights under the Real Estate Law as a real estate broker corporation. Since Soma was first licensed in 2000, Handwerger has been the designated officer and the owner of 100 percent of the stock of the corporation.
3. On August 21, 2001, in the Superior Court of California, County of San Francisco, Handwerger was convicted on a plea of no contest of violating Penal Code section

236 (false imprisonment). This conviction was pursuant to a plea bargain in which additional charges of violating Penal Code section 273.5, subdivision (a) (willful infliction of corporal injury on spouse or cohabitant), and section 245, subdivision (a)(1) (assault with force likely to produce great bodily injury), were dismissed. Imposition of sentence was suspended and Handwerger was placed on formal probation for 36 months. Conditions of probation included serving one day in jail, with credit for time served of one day; completing 52 weeks of domestic violence counseling; and staying away from Donna Coquilla (contact during business hours and by telephone was allowed).

4. The conviction pertained to an incident on June 27, 2001, between Handwerger and his girlfriend Donna Coquilla. They had been together about a year and a half, and living together about six months. (Coquilla had her own apartment, but she was spending six nights a week at Handwerger's house.) Their relationship was a tumultuous one, with frequent arguments. Coquilla was very jealous of Handwerger's female friends, and this was one of the issues they were working on in "couples counseling."

On June 27, 2001, Coquilla had arranged for some musicians to come over to Handwerger's house to play music with her. Handwerger arranged to visit an old friend, Lisa Meltzer, whom he had dated for a couple of years in college during the mid-1980's. (During their counseling session the previous week, Coquilla had agreed that it was okay for Handwerger to have a friendship with Meltzer; Coquilla just did not want to be involved.) On his way home from seeing Meltzer, Handwerger phoned Coquilla. When he mentioned that he had been to visit Meltzer, Coquilla became very angry. She was angry when Handwerger got home around 6:00 or 7:00 p.m. Handwerger recalls one of the musicians saying as he left, something like, "We'll leave so you guys can fight." As Handwerger started to make dinner, Coquilla accused him of still being in love with his "ex-girlfriend." Handwerger then brought up the fact that during the previous week, Coquilla had disappeared when they were supposed to go out to celebrate his birthday. He told her how hurt he was by this, and Coquilla said something like, "I'll do it again, too." At this point, Handwerger told Coquilla that he wanted her to get out of his house, but she refused to leave. When Coquilla would not leave despite Handwerger's repeated requests that she do so, he went over to her, put his hands on her shoulders, walked her downstairs (from the living room on the third floor) to her car in the garage, and told her to leave. As Handwerger went back upstairs, though, Coquilla followed behind him, screaming at him. Near the top of the stairs was a ledge on which art pieces were displayed. One of the pieces was a small vase that meant a lot to Coquilla because she and Handwerger had purchased it on a trip to Vietnam and it was purported to be quite old. Handwerger picked up the vase and tossed it underhand down the stairway toward Coquilla, apparently thinking that she would catch it to keep it from dropping. The vase hit Coquilla and rolled to the floor. (Handwerger claimed he thought the vase hit her in the chest, though he later conceded that he does not know where it hit her.) Saying, "You threw this at me," Coquilla picked up the vase and threw it to the floor, breaking it. Coquilla then ran up to the bedroom, telling Handwerger that he had hit her and she was bleeding. Concerned that she might really be hurt, Handwerger followed Coquilla. She told him to get away from her and swung her purse at him, hitting him near his eye with the strap. Next, Coquilla demanded that Handwerger take her to the hospital.

They went down to Handwerger's car, where Handwerger noticed a few drops of blood on Coquilla's finger. He believes she could have cut her finger on the vase, which had some sharp edges because of the seashells encrusted in it. Handwerger did not see any bleeding from Coquilla's head. It was around 8:00 p.m. when Handwerger drove Coquilla to the California Pacific Medical Center and took her into the emergency room. There, Coquilla was holding her head and saying that it hurt. Handwerger waited for hours in the waiting room without being allowed to see Coquilla. Eventually, a police officer came and detained him. After being questioned by police, Handwerger was arrested and taken to jail.

The police officer who prepared the incident report observed a four-inch lump on the back of Coquilla's head where she claimed the vase had hit her. Handwerger does not dispute that Coquilla's head was hurt, though he never saw the lump. Coquilla was treated and released.

5. Handwerger completed a 52-week anger management and domestic violence program. In this program, he learned techniques to keep from acting out in anger and he learned better methods of communication. He also learned what constitutes violence in a domestic situation.

6. Donna Coquilla was unhappy with the restraining order that prevented Handwerger from seeing her, and she went to court to get it lifted. In April 2002, Handwerger and Coquilla got together for a brief time, thinking they both had changed. During this time, Handwerger apologized to Coquilla for the June 2001 incident, and she accepted his apology. But, according to Handwerger, he soon realized that Coquilla had not changed, and their relationship ended. Coquilla ended up filing a civil lawsuit against Handwerger, which they settled before trial.

7. Handwerger successfully completed his criminal probation, and on August 23, 2004, the court set aside his conviction under Penal Code section 1203.4.

8. Handwerger graduated from the State University of New York at Binghamton in 1985, and in 1990 he obtained a master's degree from New York University in real estate development investment. He moved to California in 1990, initially working as a commercial real estate appraiser, something he had done in New York. After getting his real estate broker license in 1992, Handwerger worked in residential sales, specializing in live-work properties. He worked for another broker for a time before starting Soma Investment Corporation in 2000. Handwerger has been involved in some real estate development projects. He has one real estate salesperson working for him at Soma.

9. Handwerger is on the site selection committee for Habitat for Humanity San Francisco, and he handles all of the organization's real estate transactions on a pro bono basis.

10. Fiona Ma, a member of the San Francisco Board of Supervisors, wrote a letter on Handwerger's behalf in which she noted his involvement with Habitat for Humanity San

Francisco and commended him for his professionalism, courtesy and genuine concern about community issues.

11. Lisa Meltzer testified that she has known Handwerger for 25 years. Since they dated in college, they have maintained a friendship. Meltzer moved to California in 1995, and she is now married, with two children. She knows Handwerger to be a "pretty reasonable" person who can get angry but who is not destructive or violent when he is angry. She described him as honest, gentle, and a good listener. Meltzer did not know about the June 27, 2001 incident until about a month later, when Handwerger told her about it. At that time, he was "very broken up and concerned" about what had happened.

12. Handwerger is now married, and he supports his wife.

13. Handwerger realizes that it was wrong for him to behave as he did on June 27, 2001, and he sincerely regrets the incident. He asserted that he has never acted violently in any other relationship with a woman. And, while acknowledging that people can get emotional in real estate transactions, Handwerger denied ever getting into arguments with clients or other real estate agents.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 authorizes the suspension or revocation of an occupational or professional license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed occupation or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the suspension or revocation of a license if the licensee (or if the licensee is a corporation, an officer, director or person owning or controlling 10 percent or more of the stock) has been convicted of a felony or a crime involving moral turpitude. Although the latter statute does not contain the "substantially related" language, the law is clear that a conviction is not actionable under this section unless it is for a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.¹

California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. Under subdivision (a)(8) of that section, a crime is deemed to be substantially related if it involves "[d]oing of any unlawful act...with the intent or threat of doing substantial injury to the person or property of another."

2. Handwerger's false imprisonment conviction was for a crime that involves moral turpitude, if not as a matter of law then certainly by its facts and circumstances (injuring Coquilla by throwing a vase at her, when Handwerger had to have known that he might injure her). The offense is substantially related to the qualifications, functions or

¹ *Brandt v. Fox* (1979) 90 Cal.App.3d 737.

duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). Cause therefore exists to suspend or revoke Handwerger's real estate license under Business and Professions Code section 490 and section 10177, subdivision (b). Cause exists to suspend or revoke Soma's real estate license under Business and Professions Code section 10177, subdivision (b).

3. Handwerger's offense occurred over three years ago, and he has successfully completed his criminal probation. Further, the offense appears to have been an isolated incident in an otherwise law-abiding and productive life. Handwerger has established that he is sufficiently rehabilitated that it would not be contrary to the public interest to allow him and Soma Investment Corporation to retain their real estate licenses on a restricted basis.

ORDER

Respondent Jeff Handwerger

All licenses and licensing rights of respondent Jeff Handwerger 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 he makes application therefor and pays to the Department of Real Estate the appropriate fee 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, including by a plea of nolo contendere, of a crime which is substantially related to the qualifications, functions or duties of 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 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 he has, since the most recent issuance of an original or renewal real estate license,

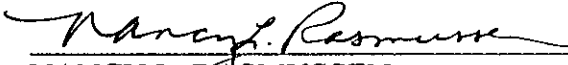
taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until he presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

Respondent Soma Investment Corporation

All licenses and licensing rights of respondent Soma Investment Corporation under the Real Estate Law are revoked; provided, however, a restricted real estate broker corporation 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 fee 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 that an officer, director or person owning or controlling 10 percent or more of respondent's stock is convicted, including by a plea of nolo contendere, of 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 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.

DATED: January 13, 2005


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

FILED
SEP - 8 2004

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

DEPARTMENT OF REAL ESTATE

By Kathleen Conteras

In the Matter of the Accusation of

JEFF HANDWERGER, AND
SOMA INVESTMENT CORPORATION,

}

Case No. H-8828 SF AND
H-8829 SF

OAH No. N-2004080484 AND
N-2004080485

Respondents

**FIRST CONTINUED
NOTICE OF HEARING ON ACCUSATION**

To the above named respondents:

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

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

on **NOVEMBER 12, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: SEPTEMBER 8, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

FILED
AUG 27 2004

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

JEFF HANDWERGER, AND
SOMA INVESTMENT CORPORATION,

}

Case No. H-8828 SF AND
H-8829 SF

OAH No. N-2004080484 AND
N-2004080485

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

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

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

on **OCTOBER 20, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation 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.

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: AUGUST 27, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 SBN 66322
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789

FILED
JUL 23 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 SOMA INVESTMENT CORPORATION,) NO. H-8829 SF
13 Respondent) ACCUSATION

14 The Complainant, LES R. BETTENCOURT, a Deputy Real
15 Estate Commissioner of the State of California, for cause of
16 Accusation against SOMA INVESTMENT CORPORATION, is informed and
17 alleges as follows:

18 I

19 The Complainant, LES R. BETTENCOURT, a Deputy Real
20 Estate Commissioner of the State of California, makes this
21 Accusation against SOMA INVESTMENT CORPORATION (hereafter
22 Respondent) in his official capacity.

23 II

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

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III

Beginning at least on or about August 9, 2000, and continuing thereafter, JEFF HANDWERGER was an officer, director, or person owning or controlling ten (10) percent or more of the corporate stock of Respondent.

IV

On or about August 21, 2001, in the Superior Court of the State of California, County of San Francisco, JEFF HANDWERGER was convicted of violation of California Penal Code Section 236 (FALSE IMPRISONMENT), a crime involving moral turpitude, and/or a crime which bears a substantial relationship under Section 2910 of Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

The facts alleged above are grounds for the suspension or revocation of the real estate license of Respondent SOMA INVESTMENT CORPORATION under Section 10177 of the Code.

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 license(s) and license rights of Respondent under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 15th day of June, 2004.