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FILED
MAY -6 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	NO. H-8842 SF
RAYMOND JABRA NASMEH,)	
)	OAH NO. N-2004090546
Respondent.)	
)	

ORDER STAYING EFFECTIVE DATE

On April 12, 2005, a Decision was rendered in the above-entitled matter to become effective on May 9, 2005.

On May 5, 2005, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision of April 12, 2005.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of April 12, 2005, shall become effective at 12 o'clock noon on June 8, 2005.

DATED: May 6, 2005.

JEFF DAVI
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 Accusation Against:

RAYMOND JABRA NASMEH,

Respondent.

Case No. H-8842 SF

OAH No. N2004090546

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on December 15, 2004, in Oakland, California.

Deidre L. Johnson, Counsel, Department of Real Estate, appeared on behalf of complainant.

Mary E. Work, Esq., appeared on behalf of Raymond Jabra Nasmeh, who was also present.

Submission of the case was deferred pending submission of closing argument. Complainant's Closing Argument was submitted on February 4, 2005, and marked as Exhibit 10 for identification. Respondent's Closing Argument was received on February 18, 2005, and marked as Exhibit N for identification.

The case was submitted for decision on February 18, 2005.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt is a Deputy Real Estate Commissioner of the State of California. He made and issued the accusation in his official capacity.

2. Raymond Jabra Nasmeh (respondent) 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. His broker license will expire on May 14, 2007, unless renewed.

3. Complainant seeks disciplinary action against respondent's broker license based upon convictions involving moral turpitude and/or that bear a substantial relationship to the qualifications, functions or duties of a real estate broker. Respondent does not contest the fact of his convictions and essentially stipulates to the factual matters set forth in the Accusation. Respondent was convicted of the following criminal offenses:

- a. On September 5, 2001, in the Superior Court of California, County of Santa Clara, respondent was convicted of a violation of Penal Code section 290, subdivision (e) (failure to provide true registration information). Respondent was required to register as a sex offender based on a 1982 conviction for violation of Penal Code section 314.1. Registration consists of providing, among other things, the license plate number of any vehicle owned by, regularly driven by, or registered in the name of the offender. Respondent failed to do so. He avers that he registered some, but not all the vehicles to which he held title. In this case, the failure to provide automobile registration information was not a crime involving moral turpitude. And this offense does not bear a substantial relationship to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, because it was not also established that respondent's failure to provide registration information, primarily an oversight, was the result of "bribery, fraud, deceit, falsehood or misrepresentation to achieve an end." (See Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).)
- b. On April 9, 2002, in the Superior Court of California, County of Santa Clara, respondent was convicted of violations of Penal Code sections 242/243, subdivision (e) (battery on a spouse), 415, subdivision (1) (fighting in public place) and 594, subdivisions (a) and (b)(2)(A) (vandalism of police vehicle). The spousal battery and fighting in public offenses are substantially related to the qualifications, functions or duties of a real estate licensee because respondent engaged in an unlawful act with the intent of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) The vandalism offense involved willful damage to public property and is also substantially related to the qualifications, functions or duties of a real estate licensee. (*Id.*) However, it was not established that respondent was convicted of crimes involving moral turpitude, given the underlying circumstances. Respondent was sentenced to serve 60 days in jail. He was placed on formal probation for three years and ordered to participate in separate domestic violence and parenting without violence programs. The terms of his sentence were modified on July 5, 2002, and he was sentenced to 12 days in jail, credited for 12 days served, and then released. He completed the domestic violence and parenting programs. Respondent remains on probation for these convictions.

c. On March 14, 2003, in the Superior Court of California, County of Santa Clara, respondent was convicted, after jury trial, of a violation of Vehicle Code section 20001, subdivisions (a) and (b)(1) (hit and run resulting in injury), a felony. This is a crime involving moral turpitude. It is also an offense that bears a substantial relationship to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8), (10).) Respondent was sentenced to the amount of time he served between August 23, 2002, and the date of his sentencing, which he believes was April 29, 2003, around 250 days. He was placed on probation for three years. He intends to petition for an early termination of probation and to reduce his offense to a misdemeanor and have it expunged.

4. As a matter in aggravation, on April 5, 2001, in the Superior Court of California, County of Santa Clara, respondent was convicted of a violation of Penal Code section 148, subdivision (a)(1) (resisting/delaying/obstructing peace officer).

5. Respondent's most recent conviction arose out of a driving incident involving a motorcyclist on June 28, 2002. Respondent believes that the motorcyclist became upset because of a maneuver respondent made. The motorcyclist then began following respondent for two miles. Respondent attempted to turn down a different road and the motorcyclist continued to follow. He avers that the motorcyclist kicked his vehicle and subsequently caught the foot peg of the motorcycle on his rear wheel and fell. Respondent also avers that he did not know that the motorcyclist fell down until after he traveled about 900 feet and his wife alerted him to this fact. He turned around and went back to assist the motorcyclist. He also indicates that he called 911 for assistance. There were no police or other incident reports to either corroborate or contradict respondent's account of events.

Respondent denies expressing rage at the motorcyclist. However, it does appear that this was a "road rage" incident and respondent notes that if faced with the same situation again he would now exercise greater control and just pull his vehicle over to the side of the road, let the individual kick his vehicle and then seek insurance coverage for any property damage. Respondent acknowledges that he was taking an anger management course at the time of this incident. He had enrolled in that program in April 2002, and had completed 13 weeks before he was arrested and incarcerated. Upon his release from jail he enrolled a second time in an anger management program and attended 52 more weeks, a total of 65 weeks. He also enrolled in a five-week aggression control workshop sponsored by the National Traffic Safety Institute that he completed on August 9, 2003.

In a report that respondent submitted to the Department, he indicates that he is very remorseful for being involved in this incident and that "[t]o this day this incident has changed my life and my viewpoint on the value of life."

6. The circumstances of respondent's 2002 conviction are that he and his wife were involved in an argument on July 20, 2001. Neighbors contacted the police and he was arrested. Respondent notes that they were experiencing stress at a time when they had a newborn child and two other children. They were in the front porch area of their residence and were yelling and engaging in a "pushing match." He avers that he did not hurt his wife. Respondent did not elaborate on the circumstances underlying his conviction for vandalizing a police vehicle on that same date.

Respondent had been convicted earlier that year (April 5, 2001) for resisting a police officer. This related to an incident after a traffic stop on August 3, 2000. In the conviction detail report that respondent submitted to the Department he minimized his role in this incident, simply explaining that "When I was asked to turn off the vehicle I did not respond quickly enough because I was scared and talking to the officer." And also "I was unaware of the fact that I could be arrested for trying to negotiate my way out of speeding ticket." In fact, respondent showed absolutely no respect for the police officers and he refused to cooperate with their repeat requests that he turn off the vehicle's ignition. Respondent was verbally abusive to the arresting officer, telling him, "This is fucking bullshit!" He also called the officer "a piece of shit," and after being told to turn off the ignition, he responded, "Fuck you, I'll crush you." When the officer asked respondent to exit his vehicle, respondent started cursing and refused. He locked the car door, started the engine again and revved the engine. A second officer arrived to assist. As respondent began pulling the car away, the two officers had to open the door and pull him out of the vehicle. Respondent continued resisting the police, swinging his arms and legs so as to break their hold on him. He was eventually brought to the ground and handcuffed.

At hearing, respondent acknowledges that he was involved in an escalating argument with the officer, and that matters escalated even more when the second officer arrived. He admits to swearing at the officer but suggests that he was only responding in kind to what was stated to him. He indicates that he "only recently learned" that he needed to show respect for police officers. Respondent minimizes how his own attitudes and anger aggravated the situation.

7. As part of the conviction detail report, respondent disclosed eight additional convictions between January 8, 1980, and March 5, 1997. One was a conviction for a battery offense in 1987. Respondent was returning home from a light opera and avers that he was followed back home. After arriving at his residence he was involved in a fight on his driveway.

8. Respondent is age 43. He was born, and has spent most of his life in Santa Clara County. He attended DeAnza College, and then San Jose State where he received a bachelor's degree in finance and economics. He later obtained a real estate broker license.

Respondent's recent incarceration was emotionally distressing for him. It was a time when he was forced to assess where he was in life. After going through the process of listing and accounting for all his convictions from age 19, he saw that the person he thought he was appeared very different than the one portrayed on paper. He realized that every few years he had been in incidents involving law enforcement and that he needed to make some changes as guardian of his own life, and as guardian of his family's life. While incarcerated he read the Bible twice through. For him, it became a point of reference and contrast to his own "negative record." He resolved to change. He fulfilled his court ordered obligations and, more importantly, took them seriously and to heart. He attended courses with the intent to learn and to change. Through this process he now believes he understands what triggers anger in him and what techniques/tools to use in response. He has learned the value of time outs, walking away and verbal techniques. He has also learned to control competitive or impulsive responses, and to allow for greater respect for others and more calm. Respondent believes he is now more "internally peaceful." He observes that it is only when you lose everything you have achieved that you either change or are destined to have a sad life.

Following his release after incarceration respondent found that he had only family left. He had substantial financial losses from which the recovery has been slow. He has been with his wife 25 years, married for 13. He has three children, ages 12, 11 and 3. Respondent characterizes his relationship with family as completely healthy and one of the best joys in life. He is sole provider for his family and is dependent upon his work as a real estate broker, work that has allowed him to rebuild himself professionally as well as financially.

9. Respondent has been licensed since 1991 as a real estate broker and it has been his only means of work. He specializes in high-end residential development in Santa Clara and San Francisco Counties. His business and clients are essentially on a 90 percent referral basis. He is currently an associate broker with the Cashin Company with offices in Menlo Park.

Robert Scott Raffanti, a real estate broker, testified on behalf of respondent. He has known respondent for six years and the two worked together at Century 21 for one year. Mr. Raffanti believes respondent's work was superlative. He describes respondent as a "top notch" real estate broker who does work in the high-end market. He believes respondent enjoys a good reputation in the industry. Mr. Raffanti is aware of respondent's criminal history. He would be willing to oversee respondent's work were he to be issued a restricted license. He sees no risk to the public in having respondent continue in real estate practice.

10. Respondent was evaluated by Alan D. Garton, Ph.D., a licensed psychologist, in November 2004. Dr. Garton administered a number of tests including the Minnesota Multiphasic Personality Inventory - 2 (MMPI-2), the Millon Clinical Multiaxial Inventory (MCMI-II), and the Rorschach. He also reviewed a

prior psychological evaluation conducted by Dr. David F. Dahl dated June 17, 2002, and respondent's criminal history. Dr. Garton found both the MMPI-2 and the MCMI-II profiles to be well within normal limits. He did find that respondent was vulnerable to depressive experiences and that failures to meet his own expectations may lead to "intense disappointment in himself and negative judgment or perceived rejection by others can be crushing." Dr. Garton felt that the Rorschach showed no evidence of underlying aggressive or hostile tendencies. He opines that there was "no evidence to suggest that respondent suffers from any psychopathology or that he is prone to act out in an impulsive or aggressive manner."

Dr. Garton acknowledges that this opinion is inconsistent with respondent's history and he does recommend that respondent attend weekly therapy for a year. He believes that the more respondent "over-learns" anger management skills and focuses upon these skills in individual therapy, the more likely that he will not revert to past angry responses. Respondent indicates that he will be attending weekly sessions. However, he is vague as to detail and he had not yet done so at the time of hearing.

11. Respondent enjoys a good reputation within his local real estate community. He has practiced in this field for 14 years with no prior license discipline. He continues to provide for his wife and three children and he appears to enjoy stability within his home and community at this time. Respondent has also taken positive steps towards rehabilitation, most notably from the time of his release from custody, and he has expressed remorse for past actions. He has successfully completed anger managements and parenting courses that have provided him important insights and tools to manage conflict situations as they arise.

12. It does appear, however, that respondent's rehabilitation remains in an early stage. He continues to minimize his own role in the hit and run incident, in the spousal battery incident and in the incident when he resisted a peace officer. With regard to the latter, he suggests that he did not know that he could be arrested for "trying to negotiate" his way out of a speeding ticket and that he "only recently" learned that he needed to show respect for peace officers. He avers that he was arrested because he did not turn the ignition off fast enough. In fact, respondent was verbally abusive, profane, uncooperative and physically resistant to police when reasonable and multiple requests were directed at him. This conviction was in 2001, before respondent completed an anger management program, but it is rather disturbing that he continues to minimize his own role in, and responsibility for that incident.

Similarly, respondent suggests that his recent conviction was not really a hit and run incident. Respondent had a jury trial where the issues were fully litigated and he was represented by counsel. He was jousting with a motorcyclist on a roadway when emotions were surely running high. After the vehicles collided he failed to respond properly. The offense of which he was convicted has as its elements actual or constructive knowledge that an accident has occurred, that the defendant was

involved in it, that he failed to immediately stop and that he failed to leave identification or render aid. (*People v. Hamilton* (1978) 80 Cal.App.3d 124.) Knowledge of injury is also an element of the offense. (*Id.*) At the time of this incident he had just been convicted for spousal battery and he had been convicted the year before for obstructing a peace officer. He was on probation when he was involved in the incident with the motorcyclist. And respondent also suggests that the spousal battery conviction was a normal quarrel between a husband and wife that was "misunderstood" by neighbors who then called police. There is a recurring theme to respondent's explanations of past events – he minimizes his own responsibility and he fails to fully acknowledge the role his own attitude and actions played in each case.

13. Less than two years have passed since respondent's most recent criminal conviction. Under Department regulations the passage of not less than two years since the most recent criminal conviction is a suggested criterion of rehabilitation and a longer period is typically required if there is a history of criminal convictions. (Cal. Code Regs., tit. 10, § 2912, subd. (a).) Respondent's criminal history is rather substantial, with many uncharged prior convictions spanning from 1980 through 2002. Respondent's convictions have not been expunged. He continues on probation until 2006. He is petitioning for an early release from probation that is scheduled to be heard on March 23, 2005.

Finally, Dr. Garton recommends that respondent be in counseling on a weekly basis for a year. Respondent, apart from vague plans to pursue counseling, has presented no evidence that he has done so.

14. The above matters having been considered, it does not appear that respondent has presented evidence that he is substantially rehabilitated. Accordingly, it would not be in the public interest to issue him a restricted real estate broker's license at this time.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 490, a board may take disciplinary action against a license on the ground that the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. Cause for disciplinary action exists under Business and Professions Code section 490, by reason of the matters set forth in Finding 3b and 3c.


2. Under Business and Professions Code section 10177, subdivision (b), the Commissioner may take discipline a real estate licensee who has been convicted of a felony or a crime involving moral turpitude. Cause for disciplinary action exists under Business and Professions Code section 10177, subdivision (b), by reason of the matters set forth in Finding 3c.

3. The matters set forth in Findings 4 through 14 were considered in making the following Order. It would not be in the public interest to issue respondent a restricted license at this time.

ORDER

All licenses and licensing rights of respondent Raymond Jabra Nasmeh under the Real Estate Law are revoked pursuant to Legal Conclusions 1 and 2, jointly and individually.

DATED: March 18, 2005



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

00VJ0000

FILED
OCT 26 2004

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreas

In the Matter of the Accusation of

RAYMOND JABRA NASMEH,

}
}

Case No. H-8842 SF

OAH No. N2004090546

Respondent

**FIRST CONTINUED
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 **DECEMBER 15, 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: OCTOBER 26, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

FILED
OCT - 4 2004

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

RAYMOND JABRA NASMEH,

}

Case No. H-8842 SF

OAH No.

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 **NOVEMBER 1, 2004**, at the hour of **1:30 PM**, 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.

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DEPARTMENT OF REAL ESTATE

Dated: OCTOBER 1, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
2 State Bar No. 66322
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6 Telephone: (916) 227-0789

FILED
AUG 04 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
RAYMOND JABRA NASMEH,) NO. H-8842 SF
Respondent.) ACCUSATION

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against RAYMOND JABRA NASMEH (hereinafter "Respondent"), is informed and alleges as follows:

I

The Complainant, LES R. BETTENCOURT, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in his official capacity.

II

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

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III

On or about September 5, 2001, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 290(e) of the California Penal Code (Failure to Register as a Sex Offender), 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

On or about April 9, 2002, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 242/243(e) (Battery on a Spouse) and Section 415(1) (Fighting/ Challenging Another to Fight in a Public Place) and Section 594(a) (b) (2) (a) (Vandalism of a Police Vehicle) of the California Penal Code, crimes involving moral turpitude and/or crimes which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

On or about March 14, 2003, in the Superior Court, County of Santa Clara, Respondent was convicted of a violation of Section 20001(a) (b) (I) of the California Vehicle Code (Hit and Run), 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.

///

