

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 29 2006

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Accusation of)
TERESITA ISABEL DEL ROSARIO HINES,)
Respondent.)

NO. H-9610 SF
OAH NO. N-2006060857

DECISION

The Proposed Decision dated August 28, 2006, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

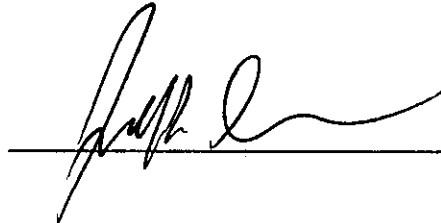
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon
on OCT 20 2006.

IT IS SO ORDERED

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

TERESITA ISABEL DEL ROSARIO HINES,

Respondent.

Case No. H-9610 SF

OAH No. N2006060857

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 3, 2006.

Real Estate Counsel David B. Seals represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondent Teresita Isabel Del Rosario Hines appeared and represented herself.

The matter was submitted on August 3, 2006.

FACTUAL FINDINGS

1. Respondent Teresita Isabel Del Rosario Hines¹ is 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 salesperson.

2. On January 11, 2005, respondent was convicted on her plea of no contest of a violation of Vehicle Code sections 23103 and 23103.5 (wet reckless), with one prior conviction, and a violation of Penal Code section 148, subdivision (a)(1) (resisting, delaying, or obstructing a peace officer), both misdemeanors. Respondent was ordered to serve 30 days in jail, but imposition of sentence was suspended on the conditions (among others) that respondent serve five days in jail, with a recommendation to the sheriff's work program, pay fines and fees in the approximate amount of \$800, enroll in

¹ Respondent has remarried and now goes by the name "Teresita Del Rosario Pereira."

an SB-38 alcohol education program within 72 hours of January 11, 2005, and complete three years of summary probation.

Respondent has completed her obligation to the sheriff's work program and she has paid the fines and fees imposed by her conviction. Respondent chose to perform her work service in Sacramento County so that her friends and clients in Antioch would not see her.

Respondent did not enroll in the SB-38 program within the time ordered by the court. She testified that she had "a lot going on at work and with [her] kids." Respondent tried to enroll almost two months late, and was informed that she needed to return to court for another referral. As of the date of this hearing, respondent had not paid the fee for the program – approximately \$1,700 – and had not started the program.

3. The facts and circumstances leading to respondent's conviction are that, on October 24, 2004, Sacramento police officers responded to a fight in progress at a gas station. When the officers arrived, they observed a man – respondent's husband, Michael Pereira – jump from respondent's van and charge another person. When the officer tried to take Pereira into custody, respondent interfered; according to the officer's report, respondent "took two swings (punches)" at the officer and wrestled with him. Respondent was arrested. An intoxylizer test was administered at the jail and, at that time, respondent's blood alcohol concentration was 0.09 percent. Respondent was charged with violations of Vehicle Code section 23152, subdivision (a) (driving under the influence), with one prior conviction, Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level 0.08 percent or higher), with one prior conviction, and Penal Code section 148, subdivision (a)(1). Upon respondent's no contest plea to wet reckless, with a prior conviction, and resisting arrest, the remaining charges were dismissed.

4. Respondent's prior conviction occurred on July 23, 1999, when she was convicted of a violation of Vehicle Code section 23152, subdivision (a). Under the terms of her conviction, respondent was required to attend a four-month DUI school; it took respondent a year to complete the program. She testified that she had problems finding babysitters for her children. The Accusation alleges this conviction as a matter in aggravation, not as cause for discipline.

5. On July 10, 2002, respondent was convicted of a violation of Vehicle Code section 12500, subdivision (a) (driving without a valid driver's license). The Accusation alleges this conviction as a matter in aggravation, not as cause for discipline.

6. Respondent is a 25-year-old, divorced mother of three; she married Pereira on October 23, 2004.

Respondent was first licensed as a salesperson in 2000. Currently, respondent works for Best Haven Realty in Pittsburg where her mother, Teresita Del Rosario, is her employing broker. Respondent emphasizes that she is a competent and honest salesperson. She has represented more than 25 buyers and sellers, and sold over \$8 million of real estate without any complaints. Respondent states that she works hard on her transactions and she is attentive to her clients. As she puts it, "I know I'm fit to sell real estate." Respondent intends to help her mother's business grow. She plans to become an insurance broker and, ultimately, to take over her mother's business.

7. Respondent believes that her 2005 conviction was the result of being "in the wrong place at the wrong time." On October 24, 2004, the day after her wedding, respondent, Pereira, and two friends had a champagne brunch in Reno. Respondent acknowledges that she drank alcohol at the brunch and then drove her party from Reno to Sacramento. According to respondent, when they stopped for gas in Sacramento, a group of people accused her – falsely, she states – of trying to "run someone over." Pereira, and perhaps others, jumped out of respondent's van and a fight ensued. The police responded. Respondent states that an officer gave her the chance to leave, but she could not get her husband under control. Then, respondent states, the officer became abusive towards her, and grabbed her and threw her to the ground. She believes that she was arrested because she "threatened to get his badge."² In retrospect, respondent feels that she should have fought the charges against her and sued the county; her attorney, however, advised her to plead no contest and assured her that the conviction would not affect her real estate license. Respondent believes that her attorney was incompetent, and she has filed a complaint against the attorney with the state bar.

8. Respondent states that she "learned a lot" from her 2005 conviction, and that she is sorry. She does not intend to let such an incident occur again; next time, she will "call a cab or a limo."

9. Respondent feels that she does not have a problem with alcohol. She does not drink alcohol regularly; the last time she had a drink was a glass of wine with dinner, three months ago.

10. Respondent's mother is a minister, and respondent is involved in her mother's church. Respondent helps with child care and Bible study.

11. Mary Caldwell testified on respondent's behalf. She and respondent have been friends since childhood. Caldwell testified that respondent has always wanted to

² Although the point is not completely clear, respondent appears to be claiming that she acted in self-defense toward the arresting officer. If indeed that is her claim, it cannot be accepted. Respondent was under the influence of alcohol at the time of her arrest; her observations of the event are not reliable.

become a real estate broker and take over the family business. Respondent has helped Caldwell on real estate matters and Caldwell would recommend respondent to others.

Caldwell was one of the friends traveling in respondent's van the day respondent was arrested. Caldwell was inside the van during respondent's encounter with the arresting officer. Caldwell testified that she "did not see [respondent] resisting arrest." She feels that the officer used unnecessary force on respondent, and that it was the officer who assaulted respondent.

The evidence did not establish that Caldwell observed, or was in a position to observe, the entire encounter between respondent and the arresting officer. Caldwell's testimony therefore fails to impeach the statement of the arresting officer that respondent took two "swings" at him.

12. Irma Y. Ruiz testified on respondent's behalf. Ruiz has been the manager at Best Haven Realty since September 2004. Ruiz has found working with respondent to be "great." She has never seen respondent do anything immoral or dishonest in connection with her real estate duties.

13. Larry Johnson is the pastor of Our Father's House Worldwide Ministry in Pittsburg, California. He testified on respondent's behalf. Johnson praises respondent as a role model for young women. He has found respondent to be honest. Johnson does not feel that respondent's conviction for DUI in 1999 should be held against her, because she was only 18 years old at the time.

14. Respondent's mother testified on respondent's behalf. In addition to being licensed as a real estate broker, Del Rosario is an insurance broker, a notary public, and a tax preparer. She praises her daughter as a very responsible person, who is also ambitious and mature. Respondent takes very good care of clients and is extremely patient with them – more patient than Del Rosario herself would be. Respondent is a very hard-working salesperson and her clients love her.

Del Rosario states that, in the incident in Sacramento, the police "beat [respondent] up" and that it was respondent who was assaulted. Del Rosario apparently reached this conclusion based upon bruises she observed on her daughter after the incident.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that a license may be revoked if 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. California Code of Regulations, title 10, section 2910, states that, when considering whether a license should be suspended or revoked on the basis of the conviction of a crime, the crime shall be deemed to be substantially related to the

qualifications, functions or duties of a real estate licensee if it involves “[d]oing any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another” (subd. (a)(8)), or “[c]onduct which demonstrates a pattern of repeated and willful disregard of law” (subd. (a)(10), or “[t]wo 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” (subd. (a)(11)).

2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be revoked if the applicant has been convicted of a felony or a crime involving moral turpitude. Although section 10177, subdivision (b), does not contain the “substantially related” language, the law is clear that a conviction is not actionable under that section unless it is substantially related to the qualifications, functions or duties of a real estate salesperson.³

3. Respondent’s convictions for wet reckless and resisting arrest are substantially related to the qualifications, functions or duties of a real estate salesperson under title 22, California Code of Regulations, section 2910, subdivision (a)(8). These convictions, viewed against the background of respondent’s 1999 DUI conviction and her 2002 conviction for driving without a license, also reveal a pattern of repeated and willful violation of the law, and are therefore substantially related under subdivision (a)(10). Respondent’s wet reckless conviction is also substantially related under subdivision (a)(11), as it represents her second conviction involving the use or consumption of alcohol, and both convictions involved driving. Cause exists to discipline respondent’s real estate salesperson license under Business and Professions Code section 490.

4. It was not established that a violation of Penal Code section 148, subdivision (a)(1), is a crime of moral turpitude. Nor is a violation of Vehicle Code section 23103 a crime of moral turpitude per se. Although the language of the statute – driving “in willful and wanton disregard for the safety of person or property” – suggests a crime of moral turpitude, the crime of “wet reckless” is a legal fiction, allowing someone charged with driving under the influence to plead to a lesser offense under certain circumstances. Pleading no contest to this crime does not establish that respondent actually engaged in reckless driving.

But even if a crime does not involve moral turpitude per se, the circumstances under which it was committed may involve moral turpitude. Here, respondent was convicted of DUI in 1999. Under the terms of her sentence, she was required to attend a four-month driving under the influence program, which she completed in April 2001. If respondent was not aware of the dangers of drunk driving before she took that course, she certainly knew after she completed it. On October 24, 2004, however, respondent

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

drank in Reno and then drove her husband and her friends to Sacramento. Continuing the same dangerous activity despite the knowledge of the risks:

is indicative of a 'conscious indifference or "I don't care attitude" concerning the ultimate consequences' of the activity [Citation omitted] from which one can certainly infer a 'depravity in the private and social duties which a man owes to his fellowman, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.'⁴

Respondent's failure to timely enroll in the SB-38 program, and her delayed completion of the four-month DUI program following her 1999 conviction, reinforces the impression of an "I don't care" attitude. Respondent's 2005 wet reckless conviction is found to constitute a crime involving moral turpitude. Her conviction of that offense constitutes cause to discipline her salesperson license under Business and Professions Code section 10177, subdivision (b).

5. Evidence of respondent's rehabilitation is equivocal. Respondent has apologized for her conduct and stated that it will not happen again, and she has completed her obligation to the sheriff's work program and paid her fines. But she did not enroll in an SB-38 program in the time required by the court, and she has still not done so. While she apologizes for her crime, respondent's attitude toward her conduct does not appear to be any different than it was at the time of her arrest: she feels that she was the victim and that she did nothing wrong. Although respondent testified that she does not drink alcohol regularly, it is not clear that respondent's use of alcohol is any different now than it was before her arrest.

There is a real issue of whether respondent's license should be revoked. She has poor judgment concerning her use of alcohol. Of equal or greater concern is respondent's failure to comply with the terms of her probation. Her failure to enroll in the SB-38 program as required by the court calls into question respondent's ability to comply with the rules and regulations that govern real estate licensees. Respondent, however, has an otherwise good record as a salesperson. There is at least some reason to believe, therefore, that her conduct is due to immaturity rather than a general disrespect for the law. It is also significant that respondent enjoys the support of her mother – who is also her broker, her manager, and the pastor of her church: these individuals are in a position to observe respondent's rehabilitation, and to influence it (if necessary) in a positive way. Respondent states that she has learned her lesson; it would not be contrary to the public interest to allow respondent to demonstrate that she has done so, under the heightened supervision of a restricted license. Any restricted license issued to respondent must be subject to appropriate terms and conditions, including a condition that respondent comply with the terms of her probation.

⁴ *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757.

ORDER

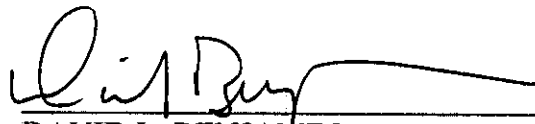
All licenses and licensing rights of respondent Teresita Isabel Del Rosario Hines under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the department 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. Respondent shall obey all laws and regulations of the State of California, the United States of America, and every state and foreign government (and political subdivision thereof) having jurisdiction over respondent.
2. Respondent shall comply with all terms and conditions of probation imposed by the Sacramento County Superior Court in connection with the conviction set forth in Factual Finding 2. Any violation of respondent's criminal probation shall be deemed to be a violation of the restricted license.
3. 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 or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
4. 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.
5. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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.
6. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

- (a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license;
and
- (b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

7. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent 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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: August 28, 2006



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
MAY 30 2006

DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of	)	No. H-9610 SF
12 TERESITA ISABEL DEL ROSARIO HINES,	)	<u>ACCUSATION</u>
13 Respondent.	)	
14	)	

15 The Complainant, E. J. Haberer II, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against TERESITA ISABEL DEL ROSARIO HINES
18 (hereinafter Respondent), is informed and alleges as follows:

19 I

20 The Complainant, E. J. Haberer II, a Deputy Real
21 Estate Commissioner of the State of California, makes this
22 Accusation in his official capacity.

23 II

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

1 III

2 On or about January 11, 2005, in the Superior Court of
3 California, County of Sacramento, Respondent was convicted of
4 violation of California Vehicle Code Section 23103 per Section
5 23103.5 (Wet Reckless) and Penal Code Section 148(a)(1)
6 (Resisting or Obstructing Public Officer, Peace Officer, or
7 Emergency Medical Technician), crimes involving moral turpitude
8 and/or which are substantially related under Section 2910, Title
9 10, California Code of Regulations (herein after the
10 "Regulations") to the qualifications, functions or duties of a
11 real estate licensee.

12 IV

13 The facts alleged above constitute cause under
14 Sections 490 and 10177(b) of the Code for suspension or
15 revocation of all licenses and license rights of Respondent
16 under the Real Estate Law.

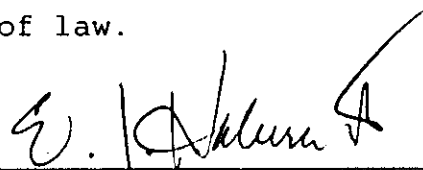
17 MATTERS IN AGGRAVATION

18 On or about July 23, 1999, Respondent was convicted of
19 violation of California Vehicle Code Section 23152(a) (Driving
20 While Under the Influence of Alcohol or Drugs), a crime
21 involving moral turpitude and/or which is substantially related
22 under Section 2910 of the Regulations to the qualifications,
23 functions or duties of a real estate licensee.

24 On or about July 10, 2002, in the Superior Court of
25 California, County of Contra Costa, Respondent was convicted of
26 violation of California Vehicle Code Section 12500(a)
27 (Unlicensed Operation Unlawful), a crime involving moral

1 turpitude and/or which is substantially related under Section
2 2910 of the Regulations to the qualifications, functions or
3 duties of a real estate licensee.

4 WHEREFORE, Complainant prays that a hearing be
5 conducted on the allegations of this Accusation and that upon
6 proof thereof, a decision be rendered imposing disciplinary
7 action against all licenses and license rights of Respondent,
8 under the Real Estate Law (Part 1 of Division 4 of the Business
9 and Professions Code) and for such other and further relief as
10 may be proper under other provisions of law.

11
12 
13 E. J. HABERER II
14 Deputy Real Estate Commissioner

15 Dated at Oakland, California,
16 this 3rd day of May, 2006.
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