

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

OCT 26 2010

DEPARTMENT OF REAL ESTATE

By L. Frost

In the Matter of the Accusation of

ARISTEO ALVAREZ,

Respondent.

)
)
)
)
)
)

NO. H-10922 SF

OAH NO. 2010070499

DECISION

The Proposed Decision dated October 4, 2010, 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 NOV 15 2010

IT IS SO ORDERED 10/20/2010

JEFF DAVI
Real Estate Commissioner

Jeff Davi

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ARISTEO ALVAREZ,

Respondent.

Case No. H-10922 SF

OAH No. 2010070499

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 20, 2010.

Jason D. Lazark, Counsel, represented complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California.

Respondent was present and represented himself.

The matter was submitted on September 20, 2010.

FACTUAL FINDINGS

1. E. J. Haberer II made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent was originally licensed as a real estate salesperson on June 26, 2004. Since December 4, 2006, respondent has been licensed and had licensing rights under the Real Estate Law as a real estate broker.

3. On September 22, 2009, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Penal Code sections 242/243, subdivision (e) (battery on a spouse) and 591 (obstructing telephone lines). The imposition of sentence was suspended and respondent was placed on formal probation for three years with terms that included serving 15 days in the weekend work program, the completion of a 52-week domestic violence counseling program, and various fines and fees. Probation is scheduled to terminate on September 22, 2012. Respondent has completed the weekend work program and is scheduled to complete his domestic violence course in October, 2010. Payment of the fines was stayed until November, 2010.

4. The facts and circumstances underlying the conviction are that on July 25, 2009, respondent and his former wife got into an argument that escalated into a physical altercation. His wife told police that he had tried to strangle her, punched her twice, and said he was going to kill her. The arresting officer observed red marks on her neck, a swollen upper lip and a bump on the right side of her forehead.

5. Respondent was upset because his wife came home late from a party. He admits pushing his wife and putting his hands around her neck for 30 seconds. He does not recall punching his wife or threatening to kill her. He admits that he threw her cell phone down when she tried to call 911, and then yanked the landline telephone out of the wall when she tried to use it to call 911. She later put her cell phone back together and called the police. Their five-year old son witnessed the fight.

6. Respondent and his wife are now divorced. They share custody of their son, who spends weekends with him. Respondent maintains relationships with his mother and siblings.

7. Respondent has completed 48 sessions of a 52-session domestic violence course that was ordered as one of his probation conditions. He has made progress toward changing his behavior in the program. He has also completed a 15-hour online course entitled Domestic Violence 101, which was not ordered by the court.

8. In addition, respondent has completed online courses in accounting, economics, bookkeeping, physiology and self-esteem building. He has taken these courses in an effort to better himself.

9. Respondent works full-time in retail sales. Due in part to the bad economy, respondent has not earned a real estate commission since February 2008.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490, subdivision (a), authorizes the suspension or revocation of a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business 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 has been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another (subd. (a)(8).) Respondent's convictions for battery on a spouse and obstructing telephone lines are substantially related to the qualifications, functions or duties of a real

estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). By reason of the matters set forth in Findings 3 through 5, the convictions constitute cause to revoke respondent's real estate broker license pursuant to Business and Professions Code sections 490, subdivision (a), and 10177, subdivision (b).

3. California Code of Regulations, title 10, section 2912, sets forth criteria for determining the rehabilitation of a licensee in a disciplinary proceeding. Factors to be considered in evaluating rehabilitation include the following: the passage of two years since the date of the most recent criminal conviction (subd. (a)); the expungement of the conviction (subd. (c)); the successful completion of probation (subd. (e)); the payment of fines imposed in connection with the criminal conviction (subd. (g)); a stable home life and fulfillment of parental and familial responsibilities (subd. (j)); the completion or sustained enrollment in formal education or vocational training courses for economic self-improvement (subd. k); and a change in attitude from that which existed at the time of the conviction (subd. l).


4. Respondent was convicted one year ago and will remain on formal probation until September 22, 2012, unless probation is extended or terminated early. He has not begun to pay the fines imposed by the court, sought early discharge from probation, or expungement of his conviction. Respondent has taken courses on domestic violence ordered by the court and on his own, as well as other online courses to better himself. He has made progress in the court-ordered domestic violence program and appears to have maintained a relationship with his son and other family members. While he has made progress in acknowledging his role in the battery on his ex-wife, he has not taken full responsibility for his actions. (Factual Findings 3 to 9.)

5. The purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate brokers and salespersons will be honest, truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). Respondent is on the right path, but needs more time for rehabilitation.

ORDER

All licenses and licensing rights of respondent Aristeo Alvarez under the Real Estate Law are revoked.

DATED: 10/4/10


JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

FLAG.

1 JASON D. LAZARK, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Office: (916) 227-0789
6 Direct: (916) 227-0822

FILED
MAY 13 2010
DEPARTMENT OF REAL ESTATE
By [Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Accusation of)
11) No. H-10922 SF
12 ARISTEO ALVAREZ,) ACCUSATION
13 Respondent.)

14 The Complainant, E.J. HABERER, II, a Deputy Real Estate Commissioner of the
15 State of California, acting in his official capacity, for cause of Accusation against ARISTEO
16 ALVAREZ (herein "Respondent"), is informed and alleges as follows:

17 1.

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

21 2.

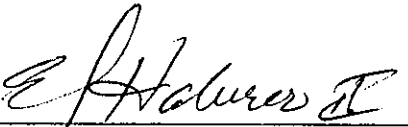
22 On or about September 22, 2009, in the Superior Court of the State of California,
23 County of Santa Clara, Case No. CC949820, Respondent was convicted of Penal Code §
24 242/243(e) (battery on a spouse) and Penal Code § 591 (obstructing telephone lines),
25 misdemeanors which bear a substantial relationship under Section 2910, Title 10, California
26 Code of the Regulations, to the qualifications, functions or duties of a real estate licensee.

27 ///

3.

The facts alleged in Paragraphs 2 above constitute grounds under Sections 490 and 10177(b) of the Code for suspension or revocation of all licenses and license rights of Respondent under Part 1. of Division 4 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 licenses and license rights of Respondent under the Real Estate Law, and for such other and further relief as may be proper under the provisions of law.


E.J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,

this 11th day of May, 2010.