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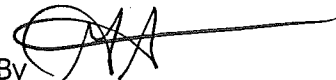
BEFORE THE

July 12, 2012

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By  _____

In the Matter of the Accusation of)
)
PAK SHING WAN,)
)
Respondent.)
_____)

NO. H-11330 SF
OAH NO.2012021089

DECISION

The Proposed Decision dated June 11, 2012, 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 AUG 02 2012.

IT IS SO ORDERED 7/10/2012.

Real Estate Commissioner



By **WAYNE S. BELL**
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

PAK SHING WAN,

Respondent.

Case No. H-11330 SF

OAH No. 2012021089

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on May 22, 2012, in Oakland, California.

Real Estate Counsel Richard K. Uno represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

Pak Shing Wan (respondent) appeared at the hearing, but he was not otherwise represented.

On May 22, 2012, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On March 26, 2008, Complainant E.J. Haberer II, (complainant), in his capacity of Deputy Real Estate Commissioner, Department of Real Estate, State of California (the department), made and filed the accusation against respondent Pak Shing Wan.

2. Currently respondent Pak Shing Wan (respondent) is licensed and has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate broker. The real estate broker license issued to respondent will expire on December 13, 2014.

Record of Criminal Conviction

3. On June 13, 2011, under Case Number 215300, in the California Superior Court for San Francisco County, respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 243, subdivision (d) (Battery that Inflicts Serious Bodily Injury On Another Person), a misdemeanor.

4. The crime of battery that inflicts serious bodily injury onto another person is substantially related to the qualifications, functions, or duties of a real estate licensee.

5. The facts and circumstances giving rise to his June 2011 conviction are that, on November 1, 2010, respondent pushed an elderly woman so that she fell onto her back and sustained injuries.

A felony criminal complaint, dated December 2, 2010, alleged respondent's violations of Penal Code section 245, subdivision (a)(1) (Assault with Force Likely to Cause Great Bodily Injury); as well as Penal Code section 368, subdivision (b)(1) (Inflicting Injury on an Elderly Adult Likely to Cause Great Bodily Injury-"Elder Abuse"), and Penal Code section 422 (Criminal Threats). As a result of a plea bargain, the three felony charges were dismissed and the criminal complaint against respondent was amended to charge respondent with the misdemeanor offense to which he entered a plea of nolo contendere in June 2011.

6. As a consequence of the June 2011 conviction, the court suspended imposition of sentence and placed respondent on unsupervised probation for three years under certain terms and conditions. The terms and conditions of probation required respondent to be incarcerated in county jail for three days, with credit for time served. Also the court required respondent to perform 24 hours of community service. Further the court directed respondent to not threaten, molest or contact the crime victim, and to stay 150 yards away from that person. Also the court directed respondent to pay fines and fees in an approximate aggregate amount of \$540. And the court ordered respondent to pay restitution to the crime victim, and the court retained jurisdiction regarding the restitution owed by respondent to the crime victim.

Respondent's Background and Matters in Mitigation

7. Respondent is 54 years old as he has a date of birth of August 14, 1957.

8. In May 1977 respondent emigrated from Hong Kong to the United States. He was 17 years old when he moved to America.

9. In 1980 respondent graduated from Burlingame High School. He attended one year of college in 1984 at the College of San Mateo.

10. Respondent had a nearly five-year active duty tour of military service with the United States Air Force from 1987 until 1991. He spent several years at Travis Air Force Base during the first Iraqi War. Thereafter, respondent spent six years in the Air Force Reserves. He ended his military service in approximately 1998.

11. In January 1999, the department issued a real estate salesperson license to respondent. Since December 14, 2002, respondent has been licensed as a real estate broker.

12. As a real estate broker, respondent has operated since 2002 a main office on San Bruno Avenue in San Francisco. Also he has owned a branch office in Milpitas, California, for approximately 10 years.

On January 21, 2011, respondent acquired an Individual Mortgage Loan Originator License Endorsement. But that endorsement became inactive on December 19, 2011.

In the past, respondent has been an officer of two distinct real estate corporate brokers. From May 20, 2006, to November 12, 2006, he was an officer for National One Realty Corp. And, from December 30, 2010, to December 18, 2011, he was an officer for Western Standard Financial, Inc.

13. No evidence exists that any consumer has been adversely affected by respondent's acts or omissions in the performance of duties, functions or services of a real estate broker.

14. Respondent had no record of past arrests or criminal convictions before he received a misdemeanor criminal conviction for battery in June 2011.

Matters in Rehabilitation

15. Respondent claims that under his real estate broker's license he provides employment opportunities for 25 to 30 salespersons and two administrative staff/receptionist personnel at his San Francisco real estate office that operates under the name Success Real Estate and Finance. He asserts that his branch real estate broker's office in Milpitas employs seven real estate salespersons and one administrative staff/receptionist person.

16. Respondent is entirely committed to his business operations. He proclaimed that "my life is my business, and without my business I have no life."

17. Respondent asserts that he maintains his personal residence approximately one mile from his real estate broker's office. Hence, generally he can quickly reach his main office site. He often remains at his office until 10:00 p.m. (The department's records, however, show respondent to maintain his personal residence in the City of Alameda.)

Matters that Suggest Respondent Is Not Fully Rehabilitated.

18. Respondent engaged in an impermissible collateral attack on the factual basis that led to his conviction that occurred in June 2011.

The conviction resulted from an incident on commercial real estate premises in San Francisco's Chinatown, shortly before noon on November 1, 2010.

On that date and time in November 2010, respondent went into a business's address¹ on Stockton Street in San Francisco. At the hearing of this matter, respondent unpersuasively claimed that he went to the subject business site for the sole purpose of sending money overseas by way of a transmission from Money Gram International, which was one of three business enterprises conducted from the commercial building. While he was on the premises, an argument ensued between respondent and Ms. Tang who owned a clothing store, which was located within the business premises. The argument ended after respondent pushed the woman so that Ms. Tang, who was a 66-year-old woman, fell to the floor to sustain injuries to parts of her back and arms. Following respondent's push and the resulting fall by Ms. Tang, the crime victim telephoned the San Francisco Police and respondent fled the scene.

The arrival of police led to an investigation whereby police made observations and recorded their observations and conclusions² in a police report. During the investigation, the crime victim made excited utterances and spontaneous statements³; and those statements, which fall within exceptions to the hearsay doctrine, include:

Ms. Tang recognized respondent on his previous visits to the Money Gram business;

Ms. Tang had heard other persons associated with Money Gram's operation say respondent's name as "Pak";

Respondent initiated a conversation with Ms. Tang and told the woman that she was "going to be out of the store" because she had not paid rent, and that he was going to take over the commercial space;

When Ms. Tang protested and said that she had been a 20-year rent payer for the commercial space, respondent pushed over a rack of her merchandise;

Respondent then pushed Ms. Tang three times and he voiced unpleasant statements. On the third push by respondent, Ms. Tang

¹ The business premises had been occupied for many years by Ms. Tang's clothing store. Because her rent had been increased to an amount above \$4,000 per month, without knowledge of the building's owner, Ms. Tang sublet her rented space to two other businesses, namely, the owner of a travel agency and Ms. Takahashi, who operated Money Gram International. Money Gram International was situated at the front of the premises.

² Evidence Code section 1280.

³ Evidence Code section 1240.

fell backwards, fell onto the floor and sustained injuries to her arms and back;

Respondent moved to the front of the business premises and falsely claimed "she hit me first"; and,

When Ms. Tang called the police, respondent exited the store.

During the course of the law enforcement investigation, a police officer interviewed the only known witness, Ms. Wa. Police recorded that Ms. Wa was an employee of Money Gram. Ms. Wa described respondent as being her boss. According to the witness's account, both Ms. Wa and respondent arrived together at the business premises to lock the steel security gate at the store's entrance. Ms. Tang arrived approximately 20 minutes after the opening of the premises. Ms. Wa claimed that she did not observe the interactions between respondent and Ms. Tang because she was occupied with providing service to three or four customers of the Money Gram business. Ms. Wa presented the police officer with a business card, which was copied and attached to the police report. The business card sets out a business name of Money Gram International-Oriental Finance LLC, shows the business's Stockton Street address, and reflects respondent's name (Pak Wan) and his position as "Director."

19. Respondent's criminal conviction occurred approximately eight months before the accusation was issued against him. And at the time that the hearing in this matter was conducted less than one year had passed since the date of his criminal conviction.

20. Respondent's term of probation due to his conviction has not ended. Unless, respondent files a petition for early termination of probation, the court probation will not end before June 2014.

21. Respondent provided no competent, corroborating evidence that he has paid the fines and fees imposed upon him as part of the terms and conditions of probation.

22. Respondent expressed no contrition or sincere sorrow for the pain and injury that he caused his crime victim due to the crime respondent committed in November 2010.

23. A term of probation required respondent to make restitution to the crime victim, who sustained bruises and other injuries to her arms and back. Respondent provided no evidence that he has paid restitution to the victim of his criminal conduct.

24. Respondent offered no evidence that outside of his business that he has persons or institutions that lend towards his personal stability. Respondent seven-year-long marriage resulted in divorce during April 2012, and he has no children. Respondent's father resides in San Mateo; however, they are not close. Respondent did not state that he has any family support.

25. Respondent did not show proof that he has significant and conscientious involvement in community, religious or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

26. Respondent called no witness to the hearing to offer testimony regarding respondent's attitude regarding his criminal acts that led to injuries being suffered by his crime victim.

Other Matters

27. Respondent offered no competent, corroborating evidence that he has informed the salespersons in his offices, or other brokers with whom he has been associated with over the years, about the fact of his criminal conviction for battery.

28. Other than taking the required number of continuing education course to retain his license and to acquire knowledge regarding the recent mortgage loan business developments, respondent does not participate in any real estate oriented trade associations or professional networking group.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that the Commissioner "may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued"

2. Business and Professions Code section 10177, subdivision (b), establishes that "the commissioner may suspend or revoke the license of a real estate licensee . . . who has . . . been convicted of . . . a crime substantially related to the qualifications, functions, or duties of a real estate licensee"

3. 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. 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 . . . of another." (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)) When respondent committed battery upon a woman by forcibly pushing the victim to the floor of a store, respondent's offense demonstrated an unlawful act with the intent of doing substantial injury to another person.

Respondent's conviction for battery is substantially related to the qualifications, functions or duties of a real estate broker under California Code of Regulations, title 10, section 2910, subdivision (a)(8).

4. Cause for disciplinary action against the license issued to Respondent exists under Business and Professions Code section 10177, subdivision (b), together with Business and Professions Code section 490, by reason of the matters set forth in Factual Findings 3 and 4.

5. Respondent's progress towards rehabilitation is impaired by his refusal to accept full responsibility for his past criminal conduct.

Respondent was not credible at the hearing of this matter when he asserted that he had not intended to push the elderly woman, who fell and was injured. Rather, he blamed the incident on the "misunderstanding" of the woman who uttered misinformation regarding the reason for his presence at the site of the incident, and that the woman had pushed him and then fallen through her own accord and misstep. Respondent's representations exist as a collateral attack against the basis of the facts upon which the superior court determined respondent to be guilty of the crime of battery. In an administrative proceeding, a respondent cannot challenge the validity of prior conviction. (*Garcia v. Superior Court* (1997) 14 Cal.4th 953; *People v. Coffey* (1967) 67 Cal. 2d 204). "A final judgment of conviction is a fact; and, its effect cannot be nullified . . . either by [an] order of probation or by [a] later order dismissing the action after judgment." (*In re Phillips* (1941) 17 Cal.2d 55.) It has long been established that it is improper for a licensee to come before a licensing agency after a criminal conviction to attempt to impeach a plea of guilty or a no contest plea and a resulting conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449-452.)

6. In addition, respondent remains on probation from the June 2011 conviction. *In re Gossage* (2000) 23 Cal.4th 1080, 1104-1105, establishes, among other things, that from the standpoint of a licensing agency's regulatory oversight of licensees, and applicant's for licensure, rehabilitation of an applicant for licensure or a licensee cannot begin to be accurately assessed until the applicant, who has been convicted of a crime, is beyond the restrictions of criminal probation and the prospect of incarceration no longer looms over the head of the applicant for licensure or holder of a license. In this matter, respondent will not be released from probation for his criminal conviction until, at least, June 13, 2014. Hence, a correct assessment of his progress towards full rehabilitation cannot take place until a point in the future.

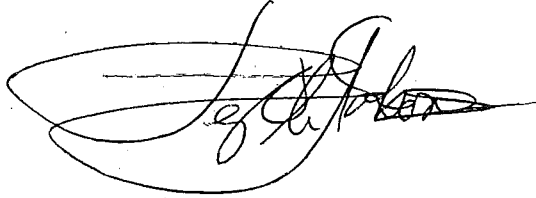
7. Respondent has not attained many of department's criteria of rehabilitation. Only one year has passed since his criminal conviction for battery that inflicts bodily injury onto another person. He remains on criminal probation. Respondent offered no proof that he has either paid all fines and fees or made full monetary restitution to his crime victim. He expresses no remorse for the emotional upset and physical injury suffered by his crime victim. Respondent presented no evidence that he benefits from stability of a family life or fulfillment of parental or familial responsibilities. He is not involved in any community, religious or privately-sponsored programs designed to provide social benefit or to ameliorate social problems. And he has not changed his attitude regarding the conduct that led to his conviction.

8. It would be contrary to the public interest to permit respondent to retain a real estate broker's license, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent Pak Shing Wan under the Real Estate Law are revoked.

DATED: June 11, 2012

A handwritten signature in black ink, appearing to read "Perry O. Johnson", written over a horizontal line.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings