

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED
MAR 10 2004
DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of
ROBERT THOMAS CADEZ,
Respondent.

) DRE No. H-29788 LA
)
) OAH No. L-2003010525
)
)
)

DECISION AFTER REJECTION

This matter was heard on August 4, 2003, by
Administrative Law Judge ("ALJ") Michael A. Scarlett, at the
Office of Administrative Hearings ("OAH") in Los Angeles,
California.

Elliott Mac Lennan, Counsel, represented the
Complainant.

Respondent ROBERT THOMAS CADEZ ("Respondent") appeared
personally and was represented by Steven Spierer, Attorney at
Law.

///

1 Evidence was received, the hearing was closed.

2 On September 25, 2003, the Administrative Law Judge
3 submitted a Proposed Decision which I declined to adopt as my
4 Decision herein.

5 Pursuant to Section 11517(c) of the Government Code
6 of the State of California, Respondent was served with notice
7 of my determination not to adopt the Proposed Decision of the
8 Administrative Law Judge along with a copy of said Proposed
9 Decision. On October 24, 2003, Respondent was notified that
10 the case would be decided by me upon the record, the transcript
11 of proceedings held on August 4, 2003, and upon written argument
12 offered by Respondent and Complainant.

13 On December 23, 2003, argument was received from
14 Respondent. On January 26, 2004, Complainant submitted argument.

15 I have given careful consideration to the record in
16 this case including the transcript of proceedings of August 4,
17 2003. I have also considered the argument submitted by
18 Respondent and the argument submitted on behalf of Complainant.

19
20 The Proposed Decision dated September 25, 2003, of the
21 Administrative Law Judge of the Office of Administrative
22 Hearings is hereby adopted as the Decision of the Real Estate
23 Commissioner in the above-entitled matter.

24 ///

25 ///

26 ///

1 The right to reinstatement of a revoked real estate
2 license is controlled by Section 11522 of the Government Code.
3 A copy of Section 11522 and a copy of the Commissioner's
4 Criteria of Rehabilitation are attached hereto for the
5 information of Respondent.

6 This Decision shall become effective at 12 o'clock noon
7 on March 30, 2004.

8 IT IS SO ORDERED March 9, 2004.

9 JOHN R. LIBERATOR
10 Acting Real Estate Commissioner

11 John R. Liberator
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT THOMAS CADEZ,

Respondent.

Case No. H-29788 LA

OAH No. L2003010525

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 4, 2003.

Elliot Mac Lennan, Real Estate Counsel I, represented the Department of Real Estate.

Steven Spierer, Esq., represented respondent Robert Thomas Cadez (hereinafter "Respondent") who was present at the hearing.

Oral and documentary evidence was taken and the matter was submitted on August 4, 2003.

FACTUAL FINDINGS

1. Maria Suarez ("Complainant") made this accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("Department or "DRE"), State of California.

2. On October 13, 1995, Respondent was issued a real estate salesperson's license, license number 01202265. Respondent is presently licensed and has license rights until August 21, 2004, unless revoked pursuant to these proceedings.

3. On May 24, 2001, in the Superior Court of California, Perris Judicial District, County of Riverside, Respondent was convicted on his guilty plea of battery on a non-cohabitant, in violation of Penal Code section 243, subdivision (e), and vandalism, in violation of Penal Code section 594, subdivision (a), both misdemeanors. Neither crime involved moral turpitude, however both are substantially related to the qualifications, functions, or duties of a real estate salesperson.

4. Respondent was granted summary probation for a period of three years, ordered to serve 90 days in county jail, to be served at the Banning Facility on weekends beginning June 22, 2001, and ordered to pay fines, fees and restitution in the amount of \$410.00. Respondent was ordered to attend a 16-week Anger Management Program at Southwest Family Counseling, which he completed on October 1, 2001. Respondent was also ordered not to have any negative contact with Lisa Reynaldo. Respondent's probation is scheduled to terminate in May 2004.

5. The facts and circumstances surrounding Respondent's convictions are that on February 7, 2001, Respondent and his girlfriend, Lisa Reynaldo, had been out drinking and returned to Respondent's house where they got into an argument. The argument began when Reynaldo attempted to leave Respondent's home and Respondent tried to prevent her from leaving. Respondent believed Reynaldo was too drunk to drive and physically tried to prevent her from leaving. As Reynaldo attempted to leave, Respondent grabbed her by the shoulder or the back of her neck. Respondent stated that Reynaldo fell and hit her head when he grabbed her by the shoulder. Reynaldo claimed that Respondent hit her in the back of the head and caused her head injury which required six stitches. As Reynaldo was driving off from Respondent's house, Respondent hit her car with his hand, leaving a dent in Reynaldo's car. Sometime shortly thereafter in or about March 2001, Reynaldo requested, and was granted, a temporary restraining order against Respondent because of this incident. However, within a few months Respondent and Reynaldo began dating again.

6. On April 24, 2002, Respondent and Reynaldo again got into an argument at Reynaldo's house. Reynaldo accused Respondent of threatening her verbally and physically before he angrily left her home, kicking her front door as he departed. On April 25, 2002, in the Superior Court of California, County of Riverside, a Domestic Violence Prevention Temporary Restraining Order was issued against Respondent pursuant to a request by Lisa Reynaldo.

7. Reynaldo is a title agent who, in or about 2000, met Respondent when she was referred to him by a real estate agent. Reynaldo and Respondent became involved in an intimate relationship and their relationship lasted on and off for a couple of years until October 2002. Reynaldo testified that although she believed Respondent should have been arrested for the February 2001 battery and vandalism incident, and that she would not enter into an intimate relationship with Respondent again, she thought it was "overkill" for him to lose his real estate license because of the incident. Reynaldo stated that Respondent was a very competent and honest real estate salesperson that she would recommend as an agent.

8. On May 1, 2000, in the Superior Court of California, Perris Judicial District, County of Riverside, Respondent was convicted on his guilty plea of driving a vehicle while having .08% and more, by weight, of alcohol in his blood, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was granted summary probation for a period of four years, ordered to serve 15 days in county jail, which was to be served at the Banning Facility on weekends, and ordered to pay \$1,394.00 in fines, fees, and restitution. Respondent was also ordered to complete a drunk driver program and his

driver's license was placed on restriction for 24 months. Respondent was on probation for this offense when he was convicted in May 2001 for the battery and vandalism offenses.

9. On July 15, 1999, in the Superior Court of California, County of Riverside, a Civil Harassment Temporary Restraining Order was issued against Respondent. Terri Elizabeth Kemp, Respondent's former business partner, applied to the court for the restraining order alleging that Respondent subjected her to "verbal, emotional, physical and financial abuse." She asserted that Respondent threatened her with physical violence and to ruin her financially in the real estate business. Kemp testified that Respondent became increasingly hostile towards her after she informed him that she intended to dissolve their business partnership in June 1999, and she demanded payment of her interests in the business.

10. Respondent and Kemp were partners in a Remax residential real estate business and were intimately involved in a relationship on occasion during their partnership. Terri Kemp testified that she did not believe Respondent should lose his real estate license. She testified that Respondent has never had any problems with real estate clients and that she has never seen Respondent drink on the job or lose his temper with clients, other realtors, or office personnel. She believed that Respondent was fit to be a real estate salesperson.

11. On April 27, 1998, in the Superior Court of California, County of Riverside, a Domestic Violence Temporary Restraining Order was issued against Respondent. Kimberly Faye Ellison applied for the restraining order. Ellison accused Respondent of threatening her, repeatedly calling her home, chasing her in his car and tailgating, and stalking her. Ellison and Respondent were engaged to be married and had been living together for over three years. Their relationship ended in January 1998, when Ellison claimed that Respondent had been "cheating" on her. Kimberly Ellison was a real estate loan processor who Respondent help get started in the real estate business.

12. Respondent's conduct towards Lisa Reynaldo, Terri Elizabeth Kemp, and Kimberly Faye Ellison that resulted in four court restraining orders being issued against him within four years shows a propensity for violence and aggression by Respondent towards women with whom he has had intimate relations.

13. Respondent is 33 years old, single, and has no children. He graduated from high school but has not attended college. Respondent currently works as a real estate salesperson at "Remax Experience" in Temecula, California. He works over 70 hours per week and enjoys his work as a real estate salesperson. Respondent handled 65 real estate transactions in 2002 and expects to handle almost 100 transactions in 2003. Respondent's real estate license has never been subject to discipline and there is no evidence of any complaints regarding Respondent's performance as a real estate salesperson.

14. Respondent admits he has problems in his relationships with women and anger management. He regrets his conduct towards Lisa Reynaldo and Terri Kemp. Respondent has attempted to address his problems with women and anger through counseling. In

addition to the court ordered 16-week anger management program that Respondent completed in October 2001, he attended private counseling sessions in 2001 and 2002 to help him deal with his anger problem. Respondent and Lisa Reynaldo also attended counseling sessions for couples to try and improve their personal relationship. Respondent denies having a drinking problem although he admits that he was intoxicated the night that he and Lisa Reynaldo had the altercation which resulted in his May 2001 conviction. However, he testified he has attended over 50 Alcoholic Anonymous classes but is not currently attending any classes as of the date of the hearing.

15. Robert McNall, a real estate broker with the "Remax Elite Team," has known Respondent since 1997. Respondent works as an independent sales agent for McNall. McNall credibly testified that Respondent is a very competent real estate agent. He stated that, as a mortgage broker, he has always wanted to work with Respondent because Respondent was a very successful salesperson. In McNall's opinion, Respondent has always treated his clients the way he, McNall, would want to be treated by a sales agent. McNall is aware of the problems Respondent has had with women, but does not believe it has affected Respondent's performance as a real estate salesperson.

16. Robin Duffey, a real estate agent for Remax for four years, has known Respondent for two years. She regards Respondent as the top real estate salesperson at Remax. Duffey credibly testified that Respondent is a very good salesperson and that he is trustworthy and never lied to her about any real estate transaction. Duffey's relationship with Respondent was exclusively business, not social. She has never seen Respondent drunk, violent, or lose his temper at work.

17. Under the Department of Real Estate regulations, California Code of Regulations, Title 10, Chapter 6, Article 18.5, section 2912, when considering whether to revoke or suspend a licensee, the following criteria for rehabilitation, in pertinent part, should be considered:

(a) Whether there has been a passage of not less than two years from the most recent criminal conviction that is substantially related to the qualifications, functions or duties of a licensee.

It has been over two years since Respondent's battery and vandalism conviction. However, as stated above, there is a history of a criminal conviction and other conduct that is substantially related to the license activity that requires the extension of the two-year period in order to determine whether Respondent has adequately rehabilitated himself.

(b) Payment of restitution to any person who has suffered monetary losses through acts or omissions of the licensee.

Respondent has paid all the restitution ordered in the May 2001 battery and vandalism convictions and the May 2000 DUI conviction.

(c) Expungement of the conviction which culminated in the administrative proceeding to take disciplinary action.

Respondent has not had his convictions expunged.

(e) Successful completion or early discharge from probation or parole.

Respondent is currently on probation for his May 2001 convictions. Respondent's probation is scheduled to terminate in May 2004. Respondent also incurred the May 2001 conviction while on probation for the May 2000 DUI conviction

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the licensee.

Respondent has paid all fines imposed as a result of the May 2001 conviction.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

Respondent is single and testified that he works more than 70 hours per week and his work consumes most of his time. Thus, there was no evidence to support the stability of Respondent's family life.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

It was not established that Respondent completed or had sustained enrollment in formal education or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

It was not established that Respondent had significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in questions.

Respondent testified that he regretted his conduct towards both Lisa Reynaldo and Terri Kemp. Respondent admitted that he has an anger problem that he is working hard trying to overcome. The evidence showed he completed the court-ordered 16-week anger management program, and attended private counseling to improve his ability to have

successful intimate relationships with women. Respondent also attended joint counseling sessions with Lisa Reynaldo after the May 2001 conviction to improve their personal relationship. Respondent testified that he has completed over 50 Alcoholic Anonymous classes, although he was not attending any AA classes at the time of hearing.

However, there have been four temporary restraining orders issued against Respondent in the last four years by women with whom he's had intimate relationships. Two of the restraining orders occurred within the last two years. Respondent still has a problem controlling his anger and the evidence suggests that this problem is exacerbated when Respondent drinks. Although Respondent admits his anger management problem, he continues to deny he has a drinking problem.

On balance, Respondent has not satisfied enough of the rehabilitation criteria to warrant a determination that he has successfully rehabilitated himself from his May 2001 convictions, given the stated factors in aggravation of that conviction.

LEGAL CONCLUSIONS

The Department alleged grounds for discipline of Respondent's license pursuant to Business and Professions Code section 490 and section 10177, subdivision (b) due to his criminal conviction for battery on a non cohabitant.

1. Cause does not exist to revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 10177, subdivision (b), in that he was not convicted of a crime that involved moral turpitude, as set forth in Factual Findings 3, 4, and 5.

Business and Professions Code section 10177, subdivision (b) provides, in pertinent part, that the Department may suspend or revoke the license of a real estate licensee who has entered a plea of guilty or nolo contendere, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed.

As a conviction for a misdemeanor, section 10177, subdivision (b) requires the crime has to have been one of moral turpitude. Battery per se does not constitute a crime of moral turpitude. "Moral turpitude" means a general "readiness to do evil," i.e., "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756.) Moral turpitude does not depend on dishonesty being an element of the offense. In deciding whether a conviction necessarily involved moral turpitude, a court must look to the statutory definition of the particular crime and only if the least adjudicated elements of the crime necessarily involved moral turpitude does the conviction involve moral turpitude as a matter of law. (See, *People v. Forster*, *supra* 29 Cal.App.4th at 1757.)

Battery on a non-cohabitant could be considered a crime that involves moral turpitude if sufficient aggravating factors are present. The underlying facts supporting Respondent's conviction for battery did not evidence a "readiness to do evil." Respondent and Lisa Reynaldo were involved in an intimate relationship off and on for a couple of years and both had been drinking when the battery occurred. Respondent testified that the altercation occurred when he attempted to prevent Respondent from driving her car because he felt she was too intoxicated to drive. Respondent stated that he grabbed Reynaldo and caused her to lose her balance and hit her head. Reynaldo also testified that it was possible Respondent thought she was drunk and wanted to prevent her from driving when he grabbed her. Although Reynaldo believed Respondent should have been arrested for the battery, she testified that she thought it was overkill for Respondent to lose his real estate license because of the incident.

Thus, there is insufficient evidence to conclude Respondent's convictions for battery on a non-cohabitant and vandalism involved moral turpitude.

2. Cause does exist to revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code section 490, in that he was convicted of crimes that are substantially related to the qualifications, functions or duties of a licensee, with the factors in aggravation as set forth in Factual Findings 3, 4, 5, 6, 8, 9, 11, and 17.

Section 490 of the Business and Professions Code provides, in pertinent part, that the Department 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. Under the Department of Real Estate regulations, California Code of Regulations, Title 10, Chapter 6, Article 18.5, section 2910, a crime is deemed substantially related to the qualifications, functions, or duties of a licensee if it involves doing any unlawful act with the "intent or threat of doing substantial injury to the person or property of another." (Cal. Code of Regs., tit. 10, Ch. 6, § 2910, subdivision (a)(8).) A substantial relationship may also be shown where the unlawful conduct involves "contempt of court or willful failure to comply with a court order," or where the conduct demonstrates a "pattern of repeated and willful disregard of law." (Cal. Code of Regs., tit. 10, Ch. 6, § 2910, subs. (a)(9) and (a)(10).)

Respondent was convicted of battery on a non-cohabitant, Lisa Reynaldo, and vandalism for damaging Reynaldo's car. His unlawful conduct in committing these violations represented an intent or threat of doing substantial injury to the person and property of Lisa Reynaldo. Reynaldo's head injuries required six stitches and Respondent admitted hitting and denting her car. Respondent's conviction for battery and vandalism in 2001 also occurred while Respondent was on probation for his 2000 conviction for driving under the influence of alcohol. Respondent's battery conviction represented a willful failure to comply with the conditions of his probation for the DUI conviction. It also evidenced a pattern of willful disregard for the law in that he suffered his second conviction within one year period of time.

Respondent's May 2000 conviction and the four temporary restraining orders issued against Respondent after requests by Lisa Reynaldo, Terri Kemp, and Kimberly Ellison are factors in aggravation of Respondent's battery and vandalism convictions. As discussed above, Respondent was on probation for his May 2000 driving under the influence of alcohol conviction when he was convicted for the battery offense. Thus, the May 2000 conviction may constitute an aggravating factor for the May 2001 convictions. The four restraining orders evidences Respondent's propensity for violence and lack of his ability to control his temper. Three of the restraining orders occurred while respondent was on probation for his May 2000 and May 2001 convictions. Thus, this conduct may also be considered in aggravation of Respondent's May 2001 convictions. The July 1999 restraining order relating to Terri Kemp is particularly troubling since it related to Respondent's license activity in that the threats of violence were against a former real estate business partner and fellow licensee during a volatile real estate business dissolution.

However, Respondent's anger and drinking problems did not manifest themselves in his real estate transactions with his clients. Several witnesses, including Lisa Reynaldo and Terri Kemp, testified that Respondent is a very competent real estate salesperson and that Respondent has never had any problems or complaints, including drinking problems, while working as a real estate salesperson. Both Reynaldo and Kemp stated that although Respondent would not make a good "boyfriend," he is extremely professional and does not lose his temper with clients or colleagues when performing real estate transactions. The evidence suggested that Respondent was one of the top real estate salespersons in his company and that he consistently provided excellent services to his real estate clients.

There is sufficient evidence to conclude that Respondent's May 2001 convictions are substantially related to his licensed activity as a real estate salesperson, thus, providing grounds for the suspension or revocation of Respondent salesperson's license. Although there is significant evidence suggesting that Respondent conducts himself in an honest, forthright, and non-volatile manner when conducting his real estate salesperson transactions, in light of Respondent's convictions for battery on a non-cohabitant and vandalism, his probation violations, and his aggressive and violent conduct towards women, the public's interest would not be protected if Respondent is allowed to retain an unrestricted real estate salesperson's license at this time.

Therefore, although cause does exist to suspend or revoke Respondent's license, this is an appropriate case in which to stay the disciplinary action and allow the Respondent to have a restricted license, in accordance with certain specified terms, conditions and restrictions, as set forth hereinafter.

ORDER

All licenses and licensing rights of Respondent, Robert Thomas Cadez, under the Real Estate Law, are revoked, provided, however, that 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 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 said 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 or plea of nolo contendere to a crime which is substantially related to the 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 attaching to the restricted license, until the period of two (2) years has elapsed from the effective date of this Decision.

5. 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

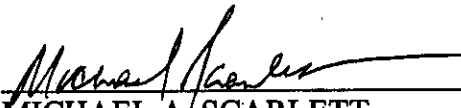
(b) That the employing broker, will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

6. Respondent shall, within nine (9) 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. During the term of the restricted license, Respondent shall submit to the Real Estate Commissioner as of the last day of each March, June, September and December, proof

satisfactory to the Real Estate Commissioner of Respondent's ongoing participation in a recognized drug and alcohol diversion program. Said proof shall be submitted to the Manager of the Crisis Response Team at the Los Angeles Office of the Department of Real Estate and shall be verified as true and accurate by Respondent under penalty of perjury. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the 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: September 25, 2003



MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

FILED
OCT 24 2003

DEPARTMENT OF REAL ESTATE

by K. Mederholt

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

ROBERT THOMAS CADEZ,)

Respondent.)

No. H-29788 LA

L-2003010525

NOTICE

TO: ROBERT THOMAS CADEZ, Respondent, and STEVEN SPIERER, his
Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision
herein dated September 25, 2003, of the Administrative Law Judge
is not adopted as the Decision of the Real Estate Commissioner.
A copy of the Proposed Decision dated September 25, 2003, is
attached for your information.

In accordance with Section 11517(c) of the Government
Code of the State of California, the disposition of this case
will be determined by me after consideration of the record herein
including the transcript of the proceedings held on August 4,

///


1 2003, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of August 4, 2003, at the Los Angeles office
6 of the Department of Real Estate unless an extension of the time
7 is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: October 20, 2003, 2003

14
15 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

16
17 
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT THOMAS CADEZ,

Respondent.

Case No. H-29788 LA

OAH No. L2003010525

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 4, 2003.

Elliot Mac Lennan, Real Estate Counsel I, represented the Department of Real Estate.

Steven Spierer, Esq., represented respondent Robert Thomas Cadez (hereinafter "Respondent") who was present at the hearing.

Oral and documentary evidence was taken and the matter was submitted on August 4, 2003.

FACTUAL FINDINGS

1. Maria Suarez ("Complainant") made this accusation in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate ("Department or "DRE"), State of California.

2. On October 13, 1995, Respondent was issued a real estate salesperson's license, license number 01202265. Respondent is presently licensed and has license rights until August 21, 2004, unless revoked pursuant to these proceedings.

3. On May 24, 2001, in the Superior Court of California, Perris Judicial District, County of Riverside, Respondent was convicted on his guilty plea of battery on a non-cohabitant, in violation of Penal Code section 243, subdivision (e), and vandalism, in violation of Penal Code section 594, subdivision (a), both misdemeanors. Neither crime involved moral turpitude, however both are substantially related to the qualifications, functions, or duties of a real estate salesperson.

4. Respondent was granted summary probation for a period of three years, ordered to serve 90 days in county jail, to be served at the Banning Facility on weekends beginning June 22, 2001, and ordered to pay fines, fees and restitution in the amount of \$410.00. Respondent was ordered to attend a 16-week Anger Management Program at Southwest Family Counseling, which he completed on October 1, 2001. Respondent was also ordered not to have any negative contact with Lisa Reynaldo. Respondent's probation is scheduled to terminate in May 2004.

5. The facts and circumstances surrounding Respondent's convictions are that on February 7, 2001, Respondent and his girlfriend, Lisa Reynaldo, had been out drinking and returned to Respondent's house where they got into an argument. The argument began when Reynaldo attempted to leave Respondent's home and Respondent tried to prevent her from leaving. Respondent believed Reynaldo was too drunk to drive and physically tried to prevent her from leaving. As Reynaldo attempted to leave, Respondent grabbed her by the shoulder or the back of her neck. Respondent stated that Reynaldo fell and hit her head when he grabbed her by the shoulder. Reynaldo claimed that Respondent hit her in the back of the head and caused her head injury which required six stitches. As Reynaldo was driving off from Respondent's house, Respondent hit her car with his hand, leaving a dent in Reynaldo's car. Sometime shortly thereafter in or about March 2001, Reynaldo requested, and was granted, a temporary restraining order against Respondent because of this incident. However, within a few months Respondent and Reynaldo began dating again.

6. On April 24, 2002, Respondent and Reynaldo again got into an argument at Reynaldo's house. Reynaldo accused Respondent of threatening her verbally and physically before he angrily left her home, kicking her front door as he departed. On April 25, 2002, in the Superior Court of California, County of Riverside, a Domestic Violence Prevention Temporary Restraining Order was issued against Respondent pursuant to a request by Lisa Reynaldo.

7. Reynaldo is a title agent who, in or about 2000, met Respondent when she was referred to him by a real estate agent. Reynaldo and Respondent became involved in an intimate relationship and their relationship lasted on and off for a couple of years until October 2002. Reynaldo testified that although she believed Respondent should have been arrested for the February 2001 battery and vandalism incident, and that she would not enter into an intimate relationship with Respondent again, she thought it was "overkill" for him to lose his real estate license because of the incident. Reynaldo stated that Respondent was a very competent and honest real estate salesperson that she would recommend as an agent.

8. On May 1, 2000, in the Superior Court of California, Perris Judicial District, County of Riverside, Respondent was convicted on his guilty plea of driving a vehicle while having .08% and more, by weight, of alcohol in his blood, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent was granted summary probation for a period of four years, ordered to serve 15 days in county jail, which was to be served at the Banning Facility on weekends, and ordered to pay \$1,394.00 in fines, fees, and restitution. Respondent was also ordered to complete a drunk driver program and his

driver's license was placed on restriction for 24 months. Respondent was on probation for this offense when he was convicted in May 2001 for the battery and vandalism offenses.

9. On July 15, 1999, in the Superior Court of California, County of Riverside, a Civil Harassment Temporary Restraining Order was issued against Respondent. Terri Elizabeth Kemp, Respondent's former business partner, applied to the court for the restraining order alleging that Respondent subjected her to "verbal, emotional, physical and financial abuse." She asserted that Respondent threatened her with physical violence and to ruin her financially in the real estate business. Kemp testified that Respondent became increasingly hostile towards her after she informed him that she intended to dissolve their business partnership in June 1999, and she demanded payment of her interests in the business.

10. Respondent and Kemp were partners in a Remax residential real estate business and were intimately involved in a relationship on occasion during their partnership. Terri Kemp testified that she did not believe Respondent should lose his real estate license. She testified that Respondent has never had any problems with real estate clients and that she has never seen Respondent drink on the job or lose his temper with clients, other realtors, or office personnel. She believed that Respondent was fit to be a real estate salesperson.

11. On April 27, 1998, in the Superior Court of California, County of Riverside, a Domestic Violence Temporary Restraining Order was issued against Respondent. Kimberly Faye Ellison applied for the restraining order. Ellison accused Respondent of threatening her, repeatedly calling her home, chasing her in his car and tailgating, and stalking her. Ellison and Respondent were engaged to be married and had been living together for over three years. Their relationship ended in January 1998, when Ellison claimed that Respondent had been "cheating" on her. Kimberly Ellison was a real estate loan processor who Respondent help get started in the real estate business.

12. Respondent's conduct towards Lisa Reynaldo, Terri Elizabeth Kemp, and Kimberly Faye Ellison that resulted in four court restraining orders being issued against him within four years shows a propensity for violence and aggression by Respondent towards women with whom he has had intimate relations.

13. Respondent is 33 years old, single, and has no children. He graduated from high school but has not attended college. Respondent currently works as a real estate salesperson at "Remax Experience" in Temecula, California. He works over 70 hours per week and enjoys his work as a real estate salesperson. Respondent handled 65 real estate transactions in 2002 and expects to handle almost 100 transactions in 2003. Respondent's real estate license has never been subject to discipline and there is no evidence of any complaints regarding Respondent's performance as a real estate salesperson.

14. Respondent admits he has problems in his relationships with women and anger management. He regrets his conduct towards Lisa Reynaldo and Terri Kemp. Respondent has attempted to address his problems with women and anger through counseling. In

addition to the court ordered 16-week anger management program that Respondent completed in October 2001, he attended private counseling sessions in 2001 and 2002 to help him deal with his anger problem. Respondent and Lisa Reynaldo also attended counseling sessions for couples to try and improve their personal relationship. Respondent denies having a drinking problem although he admits that he was intoxicated the night that he and Lisa Reynaldo had the altercation which resulted in his May 2001 conviction. However, he testified he has attended over 50 Alcoholic Anonymous classes but is not currently attending any classes as of the date of the hearing.

15. Robert McNall, a real estate broker with the "Remax Elite Team," has known Respondent since 1997. Respondent works as an independent sales agent for McNall. McNall credibly testified that Respondent is a very competent real estate agent. He stated that, as a mortgage broker, he has always wanted to work with Respondent because Respondent was a very successful salesperson. In McNall's opinion, Respondent has always treated his clients the way he, McNall, would want to be treated by a sales agent. McNall is aware of the problems Respondent has had with women, but does not believe it has affected Respondent's performance as a real estate salesperson.

16. Robin Duffey, a real estate agent for Remax for four years, has known Respondent for two years. She regards Respondent as the top real estate salesperson at Remax. Duffey credibly testified that Respondent is a very good salesperson and that he is trustworthy and never lied to her about any real estate transaction. Duffey's relationship with Respondent was exclusively business, not social. She has never seen Respondent drunk, violent, or lose his temper at work.

17. Under the Department of Real Estate regulations, California Code of Regulations, Title 10, Chapter 6, Article 18.5, section 2912, when considering whether to revoke or suspend a licensee, the following criteria for rehabilitation, in pertinent part, should be considered:

(a) Whether there has been a passage of not less than two years from the most recent criminal conviction that is substantially related to the qualifications, functions or duties of a licensee.

It has been over two years since Respondent's battery and vandalism conviction. However, as stated above, there is a history of a criminal conviction and other conduct that is substantially related to the license activity that requires the extension of the two-year period in order to determine whether Respondent has adequately rehabilitated himself.

(b) Payment of restitution to any person who has suffered monetary losses through acts or omissions of the licensee:

Respondent has paid all the restitution ordered in the May 2001 battery and vandalism convictions and the May 2000 DUI conviction.

(c) Expungement of the conviction which culminated in the administrative proceeding to take disciplinary action.

Respondent has not had his convictions expunged.

(e) Successful completion or early discharge from probation or parole.

Respondent is currently on probation for his May 2001 convictions. Respondent's probation is scheduled to terminate in May 2004. Respondent also incurred the May 2001 conviction while on probation for the May 2000 DUI conviction

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the licensee.

Respondent has paid all fines imposed as a result of the May 2001 conviction.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

Respondent is single and testified that he works more than 70 hours per week and his work consumes most of his time. Thus, there was no evidence to support the stability of Respondent's family life.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

It was not established that Respondent completed or had sustained enrollment in formal education or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

It was not established that Respondent had significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in questions.

Respondent testified that he regretted his conduct towards both Lisa Reynaldo and Terri Kemp. Respondent admitted that he has an anger problem that he is working hard trying to overcome. The evidence showed he completed the court-ordered 16-week anger management program, and attended private counseling to improve his ability to have

successful intimate relationships with women. Respondent also attended joint counseling sessions with Lisa Reynaldo after the May 2001 conviction to improve their personal relationship. Respondent testified that he has completed over 50 Alcoholic Anonymous classes, although he was not attending any AA classes at the time of hearing.

However, there have been four temporary restraining orders issued against Respondent in the last four years by women with whom he's had intimate relationships. Two of the restraining orders occurred within the last two years. Respondent still has a problem controlling his anger and the evidence suggests that this problem is exacerbated when Respondent drinks. Although Respondent admits his anger management problem, he continues to deny he has a drinking problem.

On balance, Respondent has not satisfied enough of the rehabilitation criteria to warrant a determination that he has successfully rehabilitated himself from his May 2001 convictions, given the stated factors in aggravation of that conviction.

LEGAL CONCLUSIONS

The Department alleged grounds for discipline of Respondent's license pursuant to Business and Professions Code section 490 and section 10177, subdivision (b) due to his criminal conviction for battery on a non cohabitant.

1. Cause does not exist to revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 10177, subdivision (b), in that he was not convicted of a crime that involved moral turpitude, as set forth in Factual Findings 3, 4, and 5.

Business and Professions Code section 10177, subdivision (b) provides, in pertinent part, that the Department may suspend or revoke the license of a real estate licensee who has entered a plea of guilty or nolo contendere, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed.

As a conviction for a misdemeanor, section 10177, subdivision (b) requires the crime has to have been one of moral turpitude. Battery per se does not constitute a crime of moral turpitude. "Moral turpitude" means a general "readiness to do evil," i.e., "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1756.) Moral turpitude does not depend on dishonesty being an element of the offense. In deciding whether a conviction necessarily involved moral turpitude, a court must look to the statutory definition of the particular crime and only if the least adjudicated elements of the crime necessarily involved moral turpitude does the conviction involve moral turpitude as a matter of law. (See, *People v. Forster*, *supra* 29 Cal.App.4th at 1757.)

Battery on a non-cohabitant could be considered a crime that involves moral turpitude if sufficient aggravating factors are present. The underlying facts supporting Respondent's conviction for battery did not evidence a "readiness to do evil." Respondent and Lisa Reynaldo were involved in an intimate relationship off and on for a couple of years and both had been drinking when the battery occurred. Respondent testified that the altercation occurred when he attempted to prevent Respondent from driving her car because he felt she was too intoxicated to drive. Respondent stated that he grabbed Reynaldo and caused her to lose her balance and hit her head. Reynaldo also testified that it was possible Respondent thought she was drunk and wanted to prevent her from driving when he grabbed her. Although Reynaldo believed Respondent should have been arrested for the battery, she testified that she thought it was overkill for Respondent to lose his real estate license because of the incident.

Thus, there is insufficient evidence to conclude Respondent's convictions for battery on a non-cohabitant and vandalism involved moral turpitude.

2. Cause does exist to revoke Respondent's real estate salesperson's license pursuant to Business and Professions Code section 490, in that he was convicted of crimes that are substantially related to the qualifications, functions or duties of a licensee, with the factors in aggravation as set forth in Factual Findings 3, 4, 5, 6, 8, 9, 11, and 17.

Section 490 of the Business and Professions Code provides, in pertinent part, that the Department 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. Under the Department of Real Estate regulations, California Code of Regulations, Title 10, Chapter 6, Article 18.5, section 2910, a crime is deemed substantially related to the qualifications, functions, or duties of a licensee if it involves doing any unlawful act with the "intent or threat of doing substantial injury to the person or property of another." (Cal. Code of Regs., tit. 10, Ch. 6, § 2910, subdivision (a)(8).) A substantial relationship may also be shown where the unlawful conduct involves "contempt of court or willful failure to comply with a court order," or where the conduct demonstrates a "pattern of repeated and willful disregard of law." (Cal. Code of Regs., tit. 10, Ch. 6, § 2910, subs. (a)(9) and (a)(10).)

Respondent was convicted of battery on a non-cohabitant, Lisa Reynaldo, and vandalism for damaging Reynaldo's car. His unlawful conduct in committing these violations represented an intent or threat of doing substantial injury to the person and property of Lisa Reynaldo. Reynaldo's head injuries required six stitches and Respondent admitted hitting and denting her car. Respondent's conviction for battery and vandalism in 2001 also occurred while Respondent was on probation for his 2000 conviction for driving under the influence of alcohol. Respondent's battery conviction represented a willful failure to comply with the conditions of his probation for the DUI conviction. It also evidenced a pattern of willful disregard for the law in that he suffered his second conviction within one year period of time.

Respondent's May 2000 conviction and the four temporary restraining orders issued against Respondent after requests by Lisa Reynaldo, Terri Kemp, and Kimberly Ellison are factors in aggravation of Respondent's battery and vandalism convictions. As discussed above, Respondent was on probation for his May 2000 driving under the influence of alcohol conviction when he was convicted for the battery offense. Thus, the May 2000 conviction may constitute an aggravating factor for the May 2001 convictions. The four restraining orders evidences Respondent's propensity for violence and lack of his ability to control his temper. Three of the restraining orders occurred while respondent was on probation for his May 2000 and May 2001 convictions. Thus, this conduct may also be considered in aggravation of Respondent's May 2001 convictions. The July 1999 restraining order relating to Terri Kemp is particularly troubling since it related to Respondent's license activity in that the threats of violence were against a former real estate business partner and fellow licensee during a volatile real estate business dissolution.

However, Respondent's anger and drinking problems did not manifest themselves in his real estate transactions with his clients. Several witnesses, including Lisa Reynaldo and Terri Kemp, testified that Respondent is a very competent real estate salesperson and that Respondent has never had any problems or complaints, including drinking problems, while working as a real estate salesperson. Both Reynaldo and Kemp stated that although Respondent would not make a good "boyfriend," he is extremely professional and does not lose his temper with clients or colleagues when performing real estate transactions. The evidence suggested that Respondent was one of the top real estate salespersons in his company and that he consistently provided excellent services to his real estate clients.

There is sufficient evidence to conclude that Respondent's May 2001 convictions are substantially related to his licensed activity as a real estate salesperson, thus, providing grounds for the suspension or revocation of Respondent salesperson's license. Although there is significant evidence suggesting that Respondent conducts himself in an honest, forthright, and non-volatile manner when conducting his real estate salesperson transactions, in light of Respondent's convictions for battery on a non-cohabitant and vandalism, his probation violations, and his aggressive and violent conduct towards women, the public's interest would not be protected if Respondent is allowed to retain an unrestricted real estate salesperson's license at this time.

Therefore, although cause does exist to suspend or revoke Respondent's license, this is an appropriate case in which to stay the disciplinary action and allow the Respondent to have a restricted license, in accordance with certain specified terms, conditions and restrictions, as set forth hereinafter.

ORDER

*Not
Adopted* { All licenses and licensing rights of Respondent, Robert Thomas Cadez, under the Real Estate Law, are revoked, provided, however, that 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 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 said 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 or plea of nolo contendere to a crime which is substantially related to the 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 attaching to the restricted license, until the period of two (2) years has elapsed from the effective date of this Decision.

5. 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

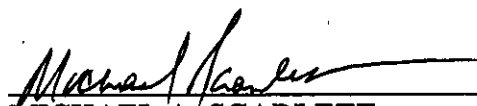
(b) That the employing broker, will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

6. Respondent shall, within nine (9) 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 the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

7. During the term of the restricted license, Respondent shall submit to the Real Estate Commissioner as of the last day of each March, June, September and December, proof

satisfactory to the Real Estate Commissioner of Respondent's ongoing participation in a recognized drug and alcohol diversion program. Said proof shall be submitted to the Manager of the Crisis Response Team at the Los Angeles Office of the Department of Real Estate and shall be verified as true and accurate by Respondent under penalty of perjury. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the 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: September 25, 2003



MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

Sacto

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

FILED
MAY 16 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By *K. Medalla*

ROBERT THOMAS CADEZ,

} Case No. H-29788 LA

} OAH No. L-2003010525

Respondent

**CORRECTED 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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on August 4, 2003, at the hour of 1:30 P.M., 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: May 16, 2003

By *EL*
ELLIOTT MAC LENNAN, Counsel

cc: Robert Thomas Cadez
Charles I. Karlin, Esq.
Sacto/OAH/RJ

from gas

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

FILED
MAY - 7 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By *K. Medalla*

ROBERT THOMAS CADEZ,

} Case No. H-29788 LA

} OAH No. L-2003010525

Respondent

**CORRECTED 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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on August 29, 2003, at the hour of 1:30 P.M., 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: May 7, 2003

By *ELL*
ELLIOTT MAC LENNAN, Counsel

cc: Robert Thomas Cadez
Charles I. Karlin, Esq.
Sacto/OAH/RJ

Sacto Aug

FILED
APR - 9 2003
DEPARTMENT OF REAL ESTATE

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

By *K. M. Lennan*

In the Matter of the Accusation of

ROBERT THOMAS CADEZ,

Case No. H-29788 LA

OAH No. L-2003010525

Respondent

**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 **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **August 4, 2003**, at the hour of **9:00 a.m.**, 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: APR - 9 2003

By

E. J. Lennan
ELLIOTT MAC LENNAN, Counsel

cc: Robert Thomas Cadez
Charles I. Karlin, Esq.
Sacto/OAH/RJ

Sacto

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

FILED
FEB 14 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ROBERT THOMAS CADEZ,

By *K. Mederholt*

Case No. H-29788 LA

OAH No. L-2003010525

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 **Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, CA** on **March 25, 2003**, at the hour of **11:00 a.m.**, 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: February 11, 2003

By *E. MacLennan*
ELLIOTT MAC LENNAN, Counsel

cc: Robert Thomas Cadez
Fudosan Inc.
Sacto/OAH/RJ

Handwritten initials

FILED
NOV 20 2002
DEPARTMENT OF REAL ESTATE

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105
5
6
7
8 Telephone: (213) 576-6911 (direct)
9 -or- (213) 576-6982 (office)

By K. Kresch

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of)	No. H-29788 LA
12 ROBERT THOMAS CADEZ,)	<u>ACCUSATION</u>
13 Respondent.)	
14)	

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against ROBERT THOMAS CADEZ, is informed and alleges in her
18 official capacity as follows:

1. .

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

/

/

/

2.

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate salesperson on October 13, 1995.

3.

On May 24, 2001, in the Superior Court of California, County of Riverside, respondent was convicted on a guilty plea to one count of violating California Penal Code Section 243(e) (battery on non-cohabitant - Lisa Reynaldo) and to one count of violating California Penal Code Section 594(a) (vandalism), misdemeanors, which by their facts and circumstances involve moral turpitude and are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4.

The convictions alleged in Paragraph 3, constitute cause for the suspension or revocation of the license and license rights of respondent under Code Sections 490 and 10177(b).

IN AGGRAVATION

5.

On May 1, 2000, in the Superior Court of California, County of Riverside, respondent was convicted upon a guilty plea to one count of violating Vehicle Code Section 23152(b) (DUI), a misdemeanor. Respondent was on probation for this crime when he committed the crime set forth in Paragraph 3.

IN AGGRAVATION

6.

On March 12, 2001, a Domestic Violence Temporary Restraining Order was issued against respondent. The applicant for the Restraining Order was Lisa Reynaldo, the victim of the crime in Paragraph 3. On April 3, 2001, that order was vacated and was subsequently dismissed on May 23, 2002.

IN AGGRAVATION

7.

On June 25, 1999, a Civil Harassment Temporary Restraining Order was issued against respondent. The application for the Restraining Order was respondent's former business partner and fellow real estate agent, Terri Elizabeth Kemp ("Kemp"). Respondent and Kemp worked together at their previous real estate office, Re/Max Select located in Canyon Lake, California. On August 2, 1999, the Temporary Restraining Order was dismissed.

IN AGGRAVATION

8.

On April 27, 1998, a Domestic Violence Temporary Restraining Order was issued against respondent. The applicant for the Restraining Order was Terri Faye Ellison. On May 19, 1998, that Restraining Order was made permanent.

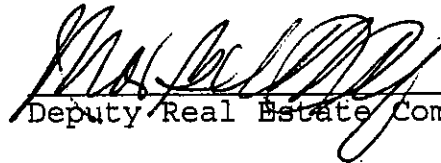
///

///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof therof, a decision be rendered imposing disciplinary action
4 against the license and license rights of respondent ROBERT
5 THOMAS CADEZ under the Real Estate Law (Part 1 of Division 4 of
6 the Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provision of law.
8

9 Dated at Los Angeles, California

10 This *15th* day of November 2002.
11

12 
13 Deputy Real Estate Commissioner
14

15
16
17
18
19
20
21
22
23 cc: Robert Thomas Cadez
24 Fudosan Inc.
25 Sacto
26 Maria Suarez
27 RLJ