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FEB - 3 2004
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By H. Waderholt

* * * * *

In the Matter of the Accusation of) No. H-29880 LA
)
) L-2003030320
)
GARY FIGUEROA,)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated January 9, 2004, 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 FEB 23 2004.

IT IS SO ORDERED January 28, 2004

JOHN R. LIBERATOR
Chief Deputy Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

GARY FIGUEROA,

Respondent.

Case No. H-29880 LA

OAH No. L-2003030320

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on November 17, 2003, in Los Angeles. Complainant Department of Real Estate was represented by Elliott Mac Lennan, Staff Counsel. Respondent Gary Figueroa was present and represented by James E. Dunger, Attorney at Law.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on January 10, 2003, the Accusation, Case No. H-29880 LA, was made and filed by Maria Suarez in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. (A) On or about January 5, 1988, Gary Figueroa (hereinafter respondent) was issued a salesperson's license in the employ of a broker in Pasadena. On September 18, 1990, respondent's salesperson's license was terminated and he was issued real estate broker's license no. 00978534. On September 18, 2002, said broker's license was last renewed and currently is in full force and effect. Said license will expire on September 17, 2006, unless renewed. At all times relevant herein, respondent has held a real estate license and licensing rights under the Real Estate Law.

3. (A) On or about August 4, 2000, before the Municipal Court of Los Angeles, San Fernando Judicial District, County of Los Angeles, State of California, in People of the State of California v. Gary Figueroa, Case No. 0SF01068, respondent was convicted on his plea of nolo contendere of violating Penal Code Section 273.5(a) (inflicting corporal injury upon a spouse), a misdemeanor and crime involving moral turpitude.

(B) As a result of his plea, imposition of sentence was suspended and respondent was placed on summary probation for three years on condition, in part, that he either serve 45 days in the county jail or, in lieu of jail, perform 30 days of work with CalTrans; pay \$200 to the domestic violence fund and a \$100 restitution fine; not communicate with, annoy, harass, or molest his wife or any witness; not use force or violence on any person; stay away from the location of his arrest; enroll in a 12-month batterer's counseling program; complete an anger management program; and obey all laws and orders of the court.

(C) The facts and circumstances of respondent's offense and conviction are that, on or about September 16, 1999, respondent learned that his estranged wife was visiting her boyfriend who was her attorney. Respondent had been separated from his wife for two months. Respondent went to the boyfriend's home and waited for his wife outside by sitting in her car. When his wife came out to her car, respondent confronted her. An argument ensued between respondent and his wife and her boyfriend in the front yard and street area. Respondent and the boyfriend became engaged in a physical altercation during which the wife was struck when she tried to break up the fight. The wife suffered a bloodied lower lip and pain in both arms. The boyfriend sustained a bloodied nose. And respondent suffered a three inch laceration to his chest, a scrap on his left forearm, and pain in his small finger of his right hand. Respondent received medical treatment for his injuries at the police station. As result of this first conviction, respondent's wife obtained a protective or restraining order against him.

4. (A) On or about September 26, 2001, before the Municipal Court of Los Angeles, San Fernando Judicial District, County of Los Angeles, State of California, in People of the State of California v. Gary Figueroa, Case No. 1SF02028, respondent was convicted on his plea of nolo contendere of violating Penal Code Section 273.5(a) (inflicting corporal injury upon a spouse) and Section 166(c)(1) (contempt of court for violation of a protective order), misdemeanors and crimes involving moral turpitude.

(B) Following the plea, imposition of sentence was suspended and respondent was placed on summary probation for 36 months on condition, in part, that he serve 60 days in the Los Angeles County Jail with credit for three days served; pay \$200 to the domestic violence fund and a \$100 restitution fine; not own, use, or possess any dangerous weapons; not annoy, harass, molest, or use force against any person involved in the case; enroll in a 12-month batterer's counseling

program which was to be concurrent with program ordered under his conviction; and obey all laws.

(C) The fact and circumstances of respondent's second conviction are that, on or about April 6, 2001, respondent's estranged wife came to his home office to discuss their children and the possible disposition of a jointly owned income property. When his wife indicated that she did not want to sell the property and the topic of her boyfriend came up, respondent became upset and threw water from a cup upon his wife's face. She was not hurt or injured but became upset at him.

5. As result of his second arrest and conviction, respondent was charged with a violation of his probation under his first conviction. He admitted the probation violation and was ordered to perform 212 hours of graffiti removal and undergo domestic violence counseling. On December 11, 2001, respondent completed the 212 hours of graffiti removal work as well as the domestic violence counseling.

6. Respondent's convictions for corporal injury upon his former spouse and violation of a protective order are substantially related to the qualifications, functions, or duties of a licensed real estate broker under criteria of Title 22, California Code of Regulations, Section 2910(a). His convictions are based on conduct that demonstrates a pattern of repeated and willful disregard of the law under Section 2910(a)(10).

7. Respondent remains on probation for his second conviction. He completed the jail sentence and domestic violence counseling program under the terms and conditions for that conviction. He has also made progress in paying the fines due under said probation. He also completed the court-ordered community service in lieu of any jail time under the first conviction.

8. Respondent admits his convictions and admits violating the protective order issued by the court. He admits throwing water at his ex-wife's face but denies that he struck his wife in the mouth as was related in the police report. He states that his ex-wife's boyfriend attacked him and cut him on the chest. Respondent's ex-wife corroborated, in part, respondent's version of the September 1999 fracas. She testified, that while she told the police that respondent struck her, she was confused and can not recall who started the altercation. She indicated that she may have gotten hurt when she tried to break up the fight between respondent and her boyfriend. The ex-wife also testified that respondent did, in fact, throw water in her face in the April 2001 incident.

9. Respondent and his ex-wife were married for over 20 years. They married in their home country of Honduras and immigrated to this country in 1981. They have two sons. After moving here, respondent and his wife became financially successful working in the real estate field. He started his own real estate sales business in the San Fernando Valley and she used to work as a real estate salesperson

in the business. Respondent and his ex-wife eventually divorced. Their separation and divorce were particularly contentious and emotional.

10. Currently, respondent works as a real estate broker in the San Fernando area. He remarried last year and lives with his second wife in Mission Hills. Respondent provides financial support for his minor son and now has a peaceful relationship with his ex-wife. She testified for him at the hearing in this matter and harbors no ill will toward him. She now lives in Lancaster with the sons and works as a real estate salesperson in Palmdale.

11. Respondent has no prior disciplinary history on his real estate salesperson's or broker's license. He has no other arrests or convictions. He demonstrated remorse and shame for his physical conduct toward his ex-wife. In both incidents that led to his arrests and convictions for domestic violence, respondent did not plan on acting in a physical or violent manner towards his ex-wife but placed himself in untenable positions and did not control his emotions and anger towards her.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's real estate broker's license under Business and Professions Code Section 490 and 10177(b) for convictions of crimes substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings 3 – 6 above.

2. Rehabilitation--Based on Findings 7 – 11 above, it was not established that respondent is fully rehabilitated from his convictions under the criteria set forth in Title 10, California Code of Regulations, Section 2911. His convictions are recent and he is on probation for his second offense through September 2004. Respondent has made significant progress towards rehabilitation by completing his court-ordered community service, domestic violence counseling, and anger management counseling. He has also changed his personal lifestyle and relationships by remarrying and making amends with his ex-wife. He provides support for their son and she testified in support of his request to be allowed to continue practicing real estate. They now have a peaceful relationship. Respondent's altercations with his ex-wife were not due to alcohol or substance abuse but his failure to manage his stresses and strains from a difficult separation and divorce after 20 years of marriage

and financial success together. Respondent lost control of his emotions and temper. He has taken domestic violence and anger management counseling to learn to control himself. As such, respondent's episodes of domestic violence were isolated in time when he was undergoing a painful divorce and limited to his relationship with his ex-wife and did not spill over to his professional conduct or activities as a real estate broker. Respondent does not represent an ongoing threat to the public welfare and safety.

* * * * *

Wherefore, the following Order is hereby made:

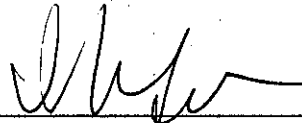
ORDER

All licenses and licensing rights previously issued to respondent Gary Figueroa under the Real Estate Law are revoked, based on Conclusions of Laws nos. 1 and 2, jointly and for all; provided, however, a restricted real estate broker's license will be issued to respondent pursuant to Business and Professions Code Section 10156.5 if respondent makes application therefore 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 and Order. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code Section 10156.7 and to the following limitations, conditions, and restrictions imposed under the authority of Business and Professions Code Section 10156.6:

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 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 of a restricted license until two years have elapsed from the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that Respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: 1-9-2004



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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

FILED
SEP 29 2003
DEPARTMENT OF REAL ESTATE

By *[Signature]*

In the Matter of the Accusation of

GARY FIGUEROA,

} Case No. H-29880 LA

} OAH No. L-2003030320

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 320 W. Fourth Street, Ste. 630, Los Angeles, CA on November 17, 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: SEP 29 2003

By *[Signature]*
ELLIOTT MAC LENNAN, Counsel

cc: Gary Figueroa
James Dungar, Esq.,
Sacto/OAH/LF

File

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

FILED
MAR 25 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

GARY FIGUEROA,

By *R. Mederholt*

Case No. H-29880 LA

OAH No. L-2003030320

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 **320 W. Fourth Street, Ste. 630, Los Angeles, CA** on **June 10, 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.

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DEPARTMENT OF REAL ESTATE

Dated: March 25, 2003

By *Elliott Mac Lennan*
ELLIOTT MAC LENNAN, Counsel

cc: Gary Figueroa
Sacto/OAH/LF

facto

FILED
JAN 15 2003
DEPARTMENT OF REAL ESTATE

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

By K. Griderhoff

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-29880LA

GARY FIGUEROA,

ACCUSATION

Respondent.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against GARY FIGUEROA, is informed and alleges in her official capacity as follows:

1.

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

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2.

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate broker on September 8, 1990.

3.

On April 10, 2001, in the Municipal Court of Los Angeles, San Fernando Judicial District, County of Los Angeles, State of California, respondent was convicted on a plea of nolo contendere to one count of violating California Penal Code Section 273.5(a) (corporal injury on spouse), and to one count of violating California Penal Code Section 166(c)(1) (violation of domestic violence protective or stay-away order in prior proceeding), misdemeanors.

4.

On August 4, 2000, in the Municipal Court of Los Angeles, San Fernando Judicial District, County of Los Angeles, State of California, respondent was convicted on a plea of nolo contendere to one count of violating California Penal Code Section 273.5(a) (inflict corporal injury on spouse), a misdemeanor.

5.

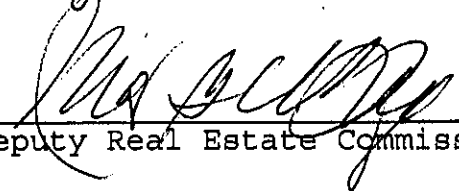
These crimes by their facts and circumstances involve moral turpitude and are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

The facts as alleged in Paragraphs 3 and 4, above, constitute cause for the suspension or revocation of the license and license rights of respondent under Sections 490 and 10177(b) 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 the license and license rights of respondent GARY FIGUEROA under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provision of law.

Dated at Los Angeles, California

This 10th day of January 2003.


Deputy Real Estate Commissioner

cc: Gary Figueroa
Sacto
CW
MS