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MAY 05 2009

DEPARTMENT OF REAL ESTATE

By L. Frost

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

PHILLIP JOHNSON,

Respondent.

No. H-30171 LA

ORDER GRANTING REINSTATEMENT OF LICENSE

On January 28, 2004, a Decision was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on February 23, 2004, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On January 23, 2008, Respondent petitioned for reinstatement of said real estate salesperson license and the Attorney General of the State of California has been given notice of the filing of the petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

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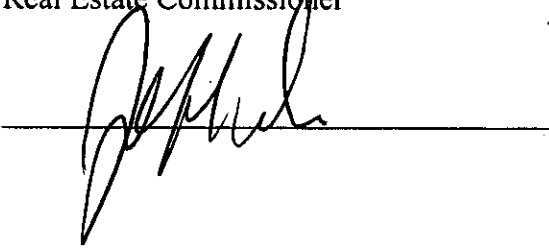
NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
reinstatement be and hereby is granted and that a real estate salesperson license be issued to
Respondent if Respondent satisfies the following conditions within nine (9) months from the date
of this order:

1. Submittal of a completed application and payment of the fee for a real
estate salesperson license.
2. Submittal of evidence of having, 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.

This Order shall become effective immediately.

IT IS SO ORDERED 4-21-09

JEFF DAVI
Real Estate Commissioner



FILED
FEB 3 2004
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By *Jana B. Brown*

* * * * *

In the Matter of the Accusation of)	No. H-30171 LA
PHILLIP JOHNSON,)	L-2003080136
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)	
Respondent.)	
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DECISION

The Proposed Decision dated January 5, 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 February 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 of
PHILLIP JOHNSON,

Respondent.**

**Case No. H-30171 LA

OAH No. L2003080136**

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, at Los Angeles, California on December 8, 2003.

Complainant, Maria Suarez, was represented by Chris Leong, Real Estate Counsel.

Respondent, Phillip Johnson ("Respondent"), was present and was represented by Charles Benninghoff.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. The Accusation was made by Maria Suarez, Complainant, who is a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.
2. Respondent was issued a license as a real estate salesperson by the Department of Real Estate ("the Department") on November 23, 1992 and was fully licensed at all relevant times. The license will expire on May 24, 2005 unless renewed.

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3. On June 28, 2000, in Superior Court of California, County of San Bernardino, in Case No. MCH011002, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 242 (Battery), a crime which, by its facts and circumstances involves moral turpitude, and one substantially related to the qualifications, functions and duties of a real estate salesperson.

4. Respondent was placed on Revocable Release for a period of 36 months under various terms and conditions including payment of fines and restitution totaling \$310.00 and participation in the Anger Management Diversion Program. He has completed all of the terms and conditions of probation except for the anger management program in which he is still participating. His probation will terminate upon his completion of that program.

5. The facts and circumstances underlying the conviction are that Respondent and his estranged wife became involved in a heated argument over a child custody issue. Respondent's estranged wife threw an object at Respondent, striking him, and Respondent physically retaliated against her. The incident occurred during a particularly volatile period of the marital relationship. Neither alcohol nor drugs were involved in the altercation.

6. To show a lack of rehabilitation, Complainant alleged in the Accusation that, in March of 2003, Respondent was convicted of violating Penal Code section 647(b) (Disorderly Conduct-Prostitution). Complainant failed to sustain her burden of proof that a violation of Penal Code section 647(b) establishes a lack of rehabilitation from a conviction for battery against one's spouse, especially when the two convictions occur almost three years apart.

7. Although he holds his wife partially responsible for the incident that resulted in his arrest and conviction, Respondent accepts responsibility for the battery on his wife because he considers himself responsible for his own thoughts and actions. Through counseling and the anger management course, he has learned how to better cope with stressful situations.

8. Respondent and his wife have been married approximately 14 years. They are presently separated and are in the process of a marriage dissolution. They share joint custody of their nine year old son. Both Respondent and his wife have undergone counseling and therapy and their relationship has become conciliatory. They also maintain a harmonious working relationship within the same company.

9. Respondent has voluntarily assumed full financial responsibility for his son and at least partial financial responsibility for his wife's expenses pending the outcome of the marriage dissolution. Among the expenses he has assumed are his son's private schooling, medical expenses, tutoring, karate lessons and basketball, and his wife's mortgage, landscaping and automobile maintenance. Respondent is a devoted father. He spends more time with his son than does his wife, and is actively involved in his son's activities.

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10. In addition, Respondent has assumed the full responsibility for his mother who suffered a myocardial infarction in February of 2003 and a severe stroke in April of 2003. He has hired two private caretakers (one of whom is a live-in), a physical therapist and an occupational therapist, and has had a home built with a suite designed to meet his mother's needs. In addition, he pays for all of his mother's medications and her special diet.

11. Respondent is a highly successful Sales Manager for Southern California J.P. Morgan Chase. Last year, he was responsible for approximately \$68,000,000 in business. He works approximately 50 hours per week and supervises 12 employees.

12. Respondent recently worked with children at the Los Angeles County Children's Institute and Hollygrove, a facility for disabled children. He also works with the Inland Empire Junior Olympics team.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions.

1. Cause exists to revoke or suspend Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 490 and 10177(b) (conviction of a crime), as set forth in Findings 3, 4 and 5.

Respondent has satisfied most of the Department's criteria for rehabilitation¹ applicable to this case. Specifically, more than two years have passed since the conviction [Criterion (a)]. He has paid all fines and restitution [Criteria (b) and (g)]. He has significantly changed the nature of the relationship with his estranged wife [Criterion (i)]. He has extraordinary commitment and devotion to his familial relationships [Criterion (j)]. He is active in community activities designed to provide social benefits and/or to ameliorate social problems [Criterion (l)]. He has dramatically changed his attitude from that which existed at the time of the commission of his criminal act [Criterion (m)].

The incident which resulted in Respondent's conviction was one borne of high emotion during a troubled period in his marriage. Respondent has accepted responsibility for his actions and has taken steps to ensure against their recurrence. He has proven not only that the risk of recurrence is low because of skills and strategies he has learned in counseling and the anger management course, he has proven it in peacefully dealing with the same individual with whom he had the original altercation. The public should be adequately protected by the issuance of a properly-conditioned restricted license.

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¹ The Department's criteria for rehabilitation are set forth in Title 10, California Code of Regulations, section 2912.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Phillip Johnson, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department 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 that 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 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 three years have elapsed from the effective date of this Decision.

4. 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.

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5. 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 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: January 5, 2004



H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 23 2003
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation)

Case No. H-30171 LA)

PHILLIP JOHNSON,)

OAH No. L-2003080136)

Respondent(s).)

Laura B. Clow

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on DECEMBER 8, 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 upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of 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.

Dated: September 23, 2003

DEPARTMENT OF REAL ESTATE

By:

CHRIS LEONG

CHRIS LEONG, Counsel

cc: Phillip Johnson
Charles Benninghoff, Esq.
Sacto., OAH

Sachs Day

1 CHRIS LEONG, Counsel (SBN 141079)
Department of Real Estate
2 320 West Fourth Street, Suite 350
Los Angeles, CA 90013-1105
3
4 Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)

FILED
JUN 26 2003
DEPARTMENT OF REAL ESTATE

Laura B. Stone

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H- 30171 LA
12 PHILLIP JOHNSON,) A C C U S A T I O N
13 Respondent.)
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15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against PHILLIP JOHNSON (hereinafter "Respondent"), is informed
18 and alleges as follows:

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

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II

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in her official capacity.

III

On or about June 28, 2000, in the Superior Court of California, County of San Bernardino, State of California, Case No. MCH011002, Respondent was charged with violation one count of Section 243(E)(1) of the California Penal Code (PC) (Unlawful use of force upon a person being defendant's spouse). As a result of a plea bargain, Respondent was convicted of violating one count of Section 242 PC (Battery). The crime and/or underlying conduct involves moral turpitude, which is substantially related to the qualifications, functions and duties of a real estate licensee.

IV

The conviction set forth above constitutes cause under Code Sections 490 and 10177(b) for the suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

LACK OF REHABILITATION

V

On or about March 13, 2003, in the Superior Court of California, County of San Bernardino, State of California, Case No. MWV074892, Respondent was convicted of violating one count of Section 647(B) PC (Disorderly conduct prostitution).

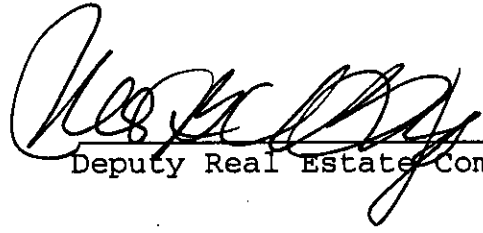
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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondent, PHILLIP JOHNSON, 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 provisions of law.

Dated at Los Angeles, California
this 26th day of June, 2003.


Deputy Real Estate Commissioner

cc: Phillip Johnson
Maria Suarez
Sacto.
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