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DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)
)
)
 DAVID YU-CHENG KUAN,)
)
)
 Respondent.)
 _____)

No. H-30491 LA

L-2003120505

DECISION

The Proposed Decision dated August 2, 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 October 4, 2004.

IT IS SO ORDERED Sept. 7, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

DAVID YU-CHENG KUAN,

Respondent.

Case No. H-30491 LA

OAH Case No. L2003120505

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on July 9, 2004.

Elliott Mac Lennan, Real Estate Counsel, represented Complainant Maria Suarez ("Complainant").

Lloyd J. Michaelson, Attorney at Law, represented Respondent David Yu-Cheng Kuan ("Respondent"), who was present throughout the hearing.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Maria Suarez, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in this proceeding in her official capacity and not otherwise.

2. Respondent David Yu-Cheng Kuan is licensed by the Department as a real estate broker, license ID# 00990851. Prior to this, he was licensed as a real estate salesperson. Respondent's broker license is current, with an expiration date of November 19, 2004. Respondent is also licensed as Officer of Celebrity Investment, Inc. This license is also current, with an expiration date of May 7, 2007.

3. The Accusation in this matter was filed on November 20, 2003, and was served on Respondent. Respondent timely filed a Notice of Defense contesting the charges set forth therein, and this hearing followed.

4. On October 3, 2000, Respondent was convicted in Los Angeles County Superior Court, East Judicial District, in case number KA047473, on his plea of nolo contendere to one count of violating Penal Code section 273A, subdivision (a) (inflicting great bodily injury upon a child), including an enhancement pursuant to Penal Code section 12022.7, subdivision (a), making the above crime a serious felony within the meaning of Penal Code section 1192.7, subdivision (c)(8). The crime for which Respondent was convicted is one that involves moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate broker. Respondent had also been charged with three counts of violating other Penal Code sections related to the same act, but these counts were dismissed as part of the plea agreement. As the result of the conviction, Respondent was placed on formal probation for four (4) years under terms and conditions including but not limited to: thirty (30) days either in the county jail or performing Cal Trans work; pay a restitution fine of \$200; pay a \$10,000 domestic violence fund fine; and enroll in and complete a 52 week parenting class that includes anger management.

5. The facts and circumstances underlying the conviction are as follows: on or about January 16, 2000, Respondent had given his 11-year old son permission to go play at a friend's house, but on the condition that he stay outside the house and not go inside to play video games. When Respondent's son returned home late, Respondent discovered that his son had in fact spent most of the visit inside the house playing games. Respondent ordered his son inside the garage where he struck him several times on the thighs with a squeegee Respondent had been using to wash his car. The incident was discovered and reported to police on January 20, 2000, when Respondent's son presented to his school health assistant with pain in his legs. The health assistant observed severe bruising on both of his thighs and filed a child abuse report with local law enforcement. Respondent's son also reported other incidents of Respondent either hitting him or threatening him with violence.

6. Respondent does not deny that he struck his son multiple times with the squeegee on the day in question. Respondent explains his actions as being partly a product of his strict traditional upbringing in Taiwan, where physical punishment was considered acceptable for purposes of discipline, and partly because of his frustration with his son's misbehavior during that period of time, which included several episodes of theft and disobedience. Respondent believed at the time he was simply "putting his son back on track" by physically punishing him. It should be noted that Respondent and his son's mother had divorced several years earlier, with Respondent retaining physical custody of their son and Respondent's ex-wife retaining physical custody of their daughter, and although visitation was very open and frequent in all respects, Respondent had primary responsibility for raising his son. As a result of this incident, Respondent no longer has physical custody of his son.

7. Respondent satisfied all specific terms of his probation, including the 52 week parenting class, the Cal Trans requirement, and the payment of the fines, within two (2) years. As a result, Respondent's probation in December 2003 was modified from formal to informal probation, the allegations pursuant to Penal Code sections 12022.7, subdivision (a) and 1192.7 were stricken, his admissions to those allegations set aside, and the offense reduced to a misdemeanor. (Exhibit E.) Respondent has committed no violations of probation, but remains on informal probation at this time.

8. Respondent expresses remorse for his conduct. Although at the time of his arrest, Respondent did not accept responsibility for what he had done, for example telling the investigating officer that his son had injured himself during a bicycle mishap, by the time of his conviction he was cooperative with authorities and had in fact accepted responsibility for what he had done, and was also willing to accept the consequences. (Exhibit 3.) He has learned from the parenting class and other counseling the need to control his temper, and that his response to his son's disobedience was a violent overreaction to the situation. He is now aware of better ways to handle things if and when his son makes him angry. (Exhibit 6.) At this time, Respondent's son resides with his mother, but Respondent has open visitation privileges; recently, Respondent's daughter, who is now an adult, has chosen to live with him while she continues her education.

9. Respondent has no other convictions, and no record of prior discipline against any of his real estate licenses. Respondent owns his own business, and has since 1990. He has remarried, and his real estate business is the sole source of income for his family. He has a good relationship with his ex-wife and her husband.

LEGAL CONCLUSIONS

Cause exists to suspend or revoke Respondent's real estate broker's license pursuant to the provisions of Business and Professions Code sections 490 and 10177, subdivision (b) for conviction of a crime substantially related to the qualifications, functions or duties of a real estate license, as set forth in Factual Findings 4 and 5.

Respondent does not deny the fact of his conviction, or the majority of the facts underlying it, but maintains that the conviction does not involve "moral turpitude" and hence is not substantially related to the qualifications, functions, or duties of a real estate license. In support of this, Respondent cites the criteria for substantial relationship that are found in the California Code of Regulations, Title 10, section 2910, and specifically asserts that "[m]ost of the enumerated crimes found in Section 2910 concern crimes of dishonesty and theft which result in economic hardship to third parties. Specifically, there is no reference to crimes involving corporal punishment, or other crimes involving violence." (Respondent's Trial Brief, p. 10.)

Respondent is incorrect in his assertion. Subdivision (a)(8) of section 2910 clearly provides that a crime or act is substantially related to a real estate license if it is

done "with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another." (Emphasis added.) There is no doubt that Respondent's action in inflicting punishment on his son through beating him with a metal object normally used for washing cars constitutes the threat of doing substantial injury to the person of another, even if the alleged purpose was to teach him a lesson in discipline and authority. Accordingly, Respondent's conviction is found to be substantially related to the qualifications, functions, and duties of a real estate licenses.

Complainant argues that to intentionally injure a member of one's family, especially one's child, is the basest thing a human can do, and that such a violent act requires substantial discipline. While this may be true as a general matter, and while Respondent's actions in striking his son in the manner described above may be reprehensible, the purpose of this proceeding is to determine whether the public now needs to be protected from Respondent in his capacity as a real estate licensee. As part of the regulations governing the practice of real estate in the State of California, the Department of Real Estate ("Department") has developed certain criteria, set forth in the California Code of Regulations, Title 10, section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a conviction.

A review of those criteria applicable to the facts of this case reveals the following:

A. The Guidelines recommend the passage of not less than two (2) years since the most recent criminal conviction. Respondent's conviction occurred in October 2000, almost 4 years ago. Further, this is Respondent's first and only conviction.

B. The Guidelines recommend considering payment of restitution. Respondent has paid all restitution required by his criminal sentence.

C. The Guidelines recommend considering expungement of Respondent's conviction. As Respondent is still on probation, he is not yet eligible to file a petition pursuant to Penal Code section 1203.4 for expungement. However, he has been successful in reducing his conviction from a felony to a misdemeanor.

D. The Guidelines recommend considering successful completion or early discharge from probation. As noted, Respondent remains on probation until at least December 2004. However, he has committed no probation violations thus far, and was successful in modifying his probation from formal to informal.

E. The Guidelines recommend considering stability of family life. While Respondent has not regained custody of his son, he has open visitation rights with him, has a good relationship with his ex-wife, and now has his daughter living with him by her own choice. Respondent has also remarried. His family life at this time appears stable.

The Guidelines also recommend evaluating several factors relating to changes in the licensee's attitude since the time of the conviction. Respondent does appear to have been affected by this experience. He seems sincere in his representations that he has learned much from the parenting and anger management classes, and now has a better understanding of more effective ways of disciplining his son. At the same time, Respondent was originally evasive and untruthful when confronted with his actions, and he has a tendency to assign too much of the blame for what he did to his cultural upbringing, despite the fact that he only recalls his own father physically punishing him on two occasions. Complainant maintains that Respondent is ashamed of his actions not because of the actions themselves, but because his actions became public. While there is little direct evidence of that in the record, some of the evidence does tend to support such a possibility.

As always, the primary concern in a case involving professional licensing is the protection of the public interest. Despite the seriousness of Respondent's actions, those actions did occur in the context of a family relationship. There is no evidence of Respondent having a violent nature outside of that relationship. Respondent has no other convictions apart from this, and no prior record of discipline with the Department. Based on the evidence presented in this matter, revocation or suspension of Respondent's real estate licenses to ensure protection of the public interest is not required. However, because of concerns regarding the degree of Respondent's insight and understanding into his actions, and because he still remains on probation, certain safeguards and restrictions should be placed on those licenses.

ORDER

The licenses and licensing rights of Respondent David Yu-Cheng Kuan under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days of 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

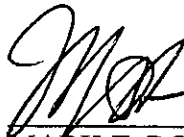
Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

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 two years has 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 renewed 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: _____

8/2/04



MARK T. ROOHK

Administrative Law Judge

Office of Administrative Hearings

FILED
FEB 17 2004

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

By 

In the Matter of the Accusation of

DAVID YU-CHENG KUAN

Respondent

} Case No. H-30491 LA

} OAH No. L-2003120505

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, Suite 630, Los Angeles, California, on July 9, 2004**, 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.

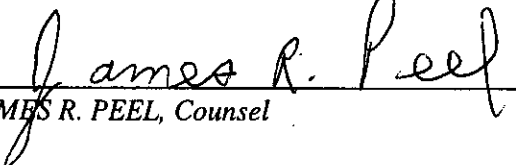
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real 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: February 17, 2004

By


JAMES R. PEEL, Counsel

cc: David Yu-Cheng Kuan
Paul M. Mahoney, Esq.
Sacto./OAH

1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

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9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of) No. H-30491 LA
12 DAVID YU-CHENG KUAN,) ACCUSATION
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 DAVID YU-CHENG KUAN alleges as follows:

18 I

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

22 II

23 KUAN DAVID YU-CHENG (hereinafter referred to as
24 "Respondent") is presently licensed and/or has license rights
25 under the Real Estate Law (Part 1 of Division 4 of the Business
26 and Professions Code, hereinafter referred to as the "Code").
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1 III

2 At all times herein mentioned, Respondent was licensed
3 by the Department of Real Estate of the State of California as a
4 real estate broker.

5 IV

6 On or about December 7, 2000, in the Superior Court of
7 California, County of Los Angeles, Respondent was convicted of
8 violating Penal Code Section 273A(A) (Great Bodily Injury to
9 Child), a crime involving moral turpitude.

10 V

11 The crime of which Respondent was convicted bears a
12 substantial relationship to the qualifications, functions or
13 duties of a real estate licensee.

14 VI

15 Respondent's criminal conviction is cause under Code
16 Sections 490 and 10177(b) for suspension or revocation of all
17 licenses and license rights of Respondent under the Real Estate
18 Law.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 DAVID YU-CHENG KUAN under the Real Estate Law (Part 1 of Division
6 4 of the Business and Professions Code) and for such other and
7 further relief as may be proper under other applicable provisions
8 of law.

9 Dated at Los Angeles, California,
10 this 20th day of November, 2003.

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14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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24 cc: David Yu-Cheng Kuan
25 Maria Suarez
26 Sacto.
27 EE