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FILED

OCT - 8 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of
FERNANDO HERNANDEZ,
Respondent.

No. H-30666 LA

ORDER DENYING REINSTATEMENT OF LICENSE

On August 18, 2004, in Case No. H-30666 LA, a Decision was rendered revoking Respondent's real estate broker license effective September 14, 2004, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on September 14, 2004, and Respondent has operated as a restricted licensee since that time.

On April 7, 2008, Respondent petitioned for reinstatement of said real estate broker license, and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has failed to demonstrate to my satisfaction that Respondent has undergone sufficient rehabilitation to warrant the reinstatement of Respondent's unrestricted real estate broker license.

1 The burden of proving rehabilitation rests with the petitioner (*Feinstein v. State*
2 *Bar* (1952) 39 Cal. 2d 541). A petitioner is required to show greater proof of honesty and
3 integrity than an applicant for first time licensure. The proof must be sufficient to overcome the
4 prior adverse judgment on the applicant's character (*Tardiff v. State Bar* (1980) 27 Cal. 3d 395).

5 The Department has developed criteria in Section 2911 of Title 10, California
6 Code of Regulations (Regulations) to assist in evaluating the rehabilitation of an applicant for
7 reinstatement of a license. Among the criteria relevant in this proceeding are:

8 Regulation 2911(c) Expungement of criminal convictions resulting from immoral
9 or antisocial acts.

10 On February 5, 2001, in Los Angeles County Municipal Court, Respondent was
11 convicted of Battery in violation of Penal Code Section 242, a misdemeanor. Respondent has not
12 provided evidence demonstrating that this conviction has been expunged.

13 Regulation 2911(i) Completion of, or sustained enrollment in, formal educational
14 or vocational training courses for economic self-improvement.

15 Respondent has not provided evidence demonstrating qualifying educational
16 activities.

17 Regulation 2911(j) Discharge of, or bona fide efforts toward discharging,
18 adjudicated debts or monetary obligations to others.

19 On dissolution of Del Sol Financial Services, Respondent accepted responsibility
20 for its tax obligations. On December 11, 2002, a \$4,171.00 state tax lien was recorded against
21 Del Sol Financial Services. On March 26, 2001 a \$186.00 county tax lien was recorded against
22 Del Sol Financial Services. On October 13, 1998 a \$209.00 county tax lien was recorded against
23 Del Sol Financial Services. On August 18, 1997 a \$209.00 county tax lien was recorded against
24 Del Sol Financial Services. On August 18, 1997 a \$55.00 County tax lien was recorded against
25 Del Sol Financial Services. Respondent has not provided evidence demonstrating satisfaction of
26 these obligations.

27 ///

1 Regulation 2911(k) Correction of business practices resulting in injury to others or
2 with the potential to cause such injury.

3 On April 4, 2009, the Deputy Commissioner assigned to review Respondent's
4 petition conducted a compliance review of Respondent's business practices. The review
5 disclosed a transaction in which a sales agreement contained a false representation that the
6 selling agent had received a \$3,000 deposit. In fact, the deposit was placed in escrow by the
7 buyer and not received by Respondent's office. Respondent did not maintain a log of earnest
8 money deposits in transit to escrow. The review therefore disclosed violations of Section
9 10176(a) of the Business and Professions Code and Section 2831 of the Commissioner's
10 Regulations.

11 Regulation 2911(l) Significant or conscientious involvement in community,
12 church or privately-sponsored programs designed to provide social benefits or to ameliorate
13 social problems.

14 Respondent has not submitted evidence demonstrating qualifying community
15 service activities.

16 Regulation 2911(n) Change in attitude from that which existed at the time of the
17 conduct in question as evidenced by any or all of the following:

18 (1) Testimony of applicant.

19 The information submitted by Respondent in support of the petition was
20 incomplete, inaccurate and unreliable. Respondent incorrectly denied responsibility for the tax
21 obligations of Del Sol Financial Services.

22 In view of Respondent's failure to demonstrate compliance with Regulations 2911
23 (c), 2911(i), 2911(j), 2911 (k), 2911(l) and 2911(n)(1) of the Criteria of Rehabilitation, I am not
24 satisfied that Respondent's rehabilitation adequately supports issuance of an unrestricted license
25 to Respondent.

26 ///

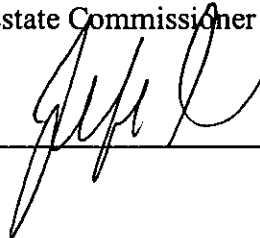
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1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for
2 reinstatement of his real estate broker license is denied.

3 This Order shall become effective at 12 o'clock noon on OCT 29 2009

4 DATED: 9-29-09

5 JEFF DAVI
6 Real Estate Commissioner

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FILED
AUG 24 2004
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

By K. McLaughlin

In the Matter of the Accusation of)
)
)
 FERNANDO HERNANDEZ,)
)
)
 Respondent.)
 _____)

No. H-30666 LA
L-2004020588

DECISION

The Proposed Decision dated August 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 conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

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 SEP 14 2004.

IT IS SO ORDERED August 18, 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:

FERNANDO HERNANDEZ,

Respondent.

Board No. H- 30666 LA

OAH No. L2004020588

PROPOSED DECISION

This matter came on regularly for hearing on July 27, 2004, at Los Angeles, California, before Christopher J. Ruiz, Administrative Law Judge, Office of Administrative Hearings, State of California. Respondent Fernando Hernandez (Respondent) was present and was represented by Timothy Nilan, Esq. Complainant Maria Suarez, Deputy Real Estate Commissioner, was represented by Elliot MacLennan, Counsel for Department of Real Estate (Department).

During the hearing, Complainant brought a motion, which was granted, to amend the Accusation by interlineation. The Accusation was amended at page 1, line 21, by deleting the word "conditional."

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

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Complainant Maria Suarez, Deputy Real Estate Commissioner, brought the Statement of Issues in her official capacity.
2. Respondent is presently licensed and has licensing rights as a real estate broker.
3. Respondent was originally licensed by the Department as a real estate broker on December 22, 1993. Prior to December 22, 1993, Respondent was licensed, as of July 5, 1985, by the Department as a salesperson. Respondent has been a licensed professional working in real estate for approximately 19 years.

4. On February 5, 2001, in the Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, Respondent was convicted, by jury, of violating California Penal Code section 242 (battery), a misdemeanor. In mitigation, after his conviction, he was released on his own recognizance. Respondent was sentenced to one year summary probation with terms and conditions that he take fifty-two (52) anger management classes, pay a \$135 fine, and pay \$412 in restitution. Imposition of sentence was suspended.

5. Respondent did not complete probation as he only completed 17 of the 52 required anger management classes. Respondent testified that he missed a number of anger management classes because he was busy at work. After Respondent failed to attend a number of the anger management classes, the instructor told him he could not come back without court approval. Respondent returned to court to obtain approval, was taken into custody, and was ordered to serve two months and 10 days in jail. Respondent also had previously failed to appear at a status conference in criminal court. Respondent testified that he did not appear at the status conference because he forgot the date.

6. The underlying events leading to Respondent's conviction were that Respondent went to American Securities real estate office, which he did not own, and encountered a former employee, Irvin Johnson. Respondent works for Del Sol Realty where Mr. Johnson had worked for approximately six months. Respondent testified that Mr. Johnson accused him of being a racist and a fight took place. Punches were thrown by both parties. At the end of the dispute, handshakes were exchanged, and Respondent believed that the matter was resolved. Respondent was later contacted by the police after Mr. Johnson filed charges.

7. In response to Question 3 of the Broker Renewal Application of December 17, 2001, to wit: "Within the past four year period have you been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed. However you may only omit minor traffic citations which do not constitute a misdemeanor or felony offense", Respondent marked the box denoting "No." Respondent failed to disclose his 2001 conviction.

8. Respondent originally came to the United States from Mexico at age 13. He spoke no English upon his arrival. He believes that he has been the victim of racism during his life and, therefore, he became very upset when Mr. Johnson called him a racist. He has not been involved in other fights. He admits he should have disclosed his conviction. Respondent testified that the criminal court judge told him that his conviction would not have any impact on his real estate license. Respondent admitted that the judge did not tell him to not disclose the conviction on his renewal application.

9. Respondent paid a Restitution fine of approximately \$400.

10. Respondent found the anger management classes very helpful and informative. The classes taught him how to take a "timeout" to control his anger.

11. Respondent has never had any complaints against his real estate licenses. He has put two children through college while working in real estate.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 490 because respondent has been convicted of a crime which is substantially related to the qualifications, functions, or duties of a real estate salesperson.

Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subsection (a)(8), doing an unlawful act with the intent or threat of doing substantial injury to another person is substantially related to the qualifications, functions, or duties of a licensee. Therefore, Respondent's conviction for battery is substantially related to the qualifications, functions, or duties of a real estate salesperson. Factual Finding 4.

2. Cause does not exist to suspend or revoke Respondent's real estate broker license pursuant to Business and Professions Code section 10177(b) based on Respondent's two convictions. Respondent's conviction for battery does not rise to the level of a crime involving moral turpitude.

Moral Turpitude

a. A criminal conviction can form the basis for denial of an application for a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. Business and Professions Code section 10177(b). Respondent's did not suffer a felony conviction.

b. Although not amenable to a precise definition, "moral turpitude" connotes a readiness to do evil, 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, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.

c. Conviction of some crimes, by their very nature, establishes moral turpitude per se, such as murder and fraud. Other crimes do not necessarily establish moral turpitude per se; however, the particular circumstances of the underlying offense must be reviewed to determine if the conviction involved moral turpitude. See, *In re Kelley* (1990) 52 Cal.3d 487 and *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630.

d. In this case, Respondent had a fistfight with another person. Respondent simply did not control his anger. His crime does not show a "readiness to do evil" and does not rise to the level of moral turpitude. Factual Findings 4-6.

3. Cause does exist to suspend or revoke Respondent's real estate broker license under Business and Professions Code Sections 498 and 10177(a). Respondent's failure to reveal the criminal conviction in his Broker Renewal Application of December 17, 2001, constitutes the procurement, by renewal, of a real estate license by fraud, misrepresentation, deceit, and by making a material misstatement of fact in said application, which is cause for suspension or revocation of respondent's real estate broker license. Factual Findings 4-7.

4. Criteria have been developed by the Department pursuant to section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated on account of a crime committed by the licensee. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection(a) passage of at least two years since the conviction;
- Subsection(b) restitution;
- Subsection(c) expungement of the conviction;
- Subsection(d) expungement of the requirement to register as an offender;
- Subsection(e) completion of the criminal probation;
- Subsection(f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection(g) payment of any criminal fines or penalties;
- Subsection(h) stability of family life;
- Subsection(i) enrollment in or completion of educational or training courses;
- Subsection(j) discharge of debts to others;
- Subsection(k) correction of business practices causing injury;
- Subsection(l) significant involvement in community, church or private programs for social betterment
- Subsection(m) new and different social and business relationships; and
- Subsection(n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

5. Respondent has addressed, and satisfied, some of these criteria of rehabilitation. The conviction is more than two years old. Respondent paid the restitution fine. Respondent is not on criminal probation. Respondent has changed his attitude and realizes that he has a problem controlling his temper. He also understands that he made a serious mistake by not disclosing his conviction. In mitigation, Respondent has been a long-time licensee of the Department. He has never had any prior disciplinary issues. Allowing Respondent a restricted license would not endanger the health, safety, and welfare of the public. Factual Findings 2-11.

ORDER

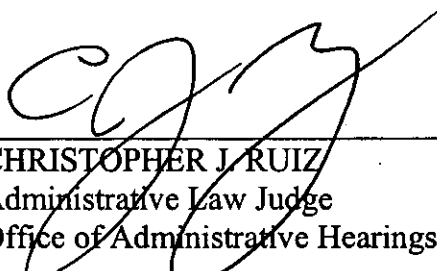
WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Fernando Hernandez 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 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 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 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.
5. Any restricted real estate license issued to Respondent pursuant to this Decision shall be suspended for 30 days from the date of issuance of said restricted license.

6. Respondent shall attend 52 one-hour classes in "Anger Management," at a facility to be approved by the Department, within 12 months of the effective date of this Decision.

DATED: August 5, 2004.



CHRISTOPHER J. RUIZ
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE - 6 2004
STATE OF CALIFORNIA

FILED
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

By *R. Melendez*

FERNANDO HERNANDEZ,

} Case No. H-30666 LA

} OAH No. L-2004020588

Respondent

CONTINUED
NOTICE OF CONTINUED 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 July 27, 2004, 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 - 6 2004

By *E. MacLennan*

ELLIOTT MAC LENNAN, Counsel

cc: Fernando Hernandez
Timothy E. Nilan, Esq..
Sacto/OAH/LF

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

FILED
APR - 8 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

FERNANDO HERNANDEZ,

By K. Mederholt

Case No. H-30666 LA

OAH No. L-2004020588

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 22, 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.

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DEPARTMENT OF REAL ESTATE

Dated: APR - 8 2004

By

Elliott Mac Lennan
ELLIOTT MAC LENNAN, Counsel

cc: Fernando Hernandez
Timothy E. Nilan, Esq.
Sacto/OAH/LF

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FILED
JAN 22 2004
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. M. DeSholt*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-30666 LA
	)	
FERNANDO HERNANDEZ,	)	
	)	
Respondent.	)	<u>ACCUSATION</u>

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against FERNANDO HERNANDEZ ("respondent") is informed and alleges in her official capacity as follows:

1.

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

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2.

Respondent was originally licensed by the Department of Real Estate of the State of California as a real estate broker on December 22, 1993.

3.

In response to Question 3 of the Broker Renewal Application of December 17, 2001, to wit: "Within the past four year period have you been convicted of any violation of law? Convictions expunged under Penal Code Section 1203.4 must be disclosed however you may only omit convictions minor traffic citations which do not constitute a misdemeanor or felony offense)", Respondent marked the box denoting "No." Respondent failed to disclose the conviction below.

4.

On February 5, 2001, in the Municipal Court of Long Beach Judicial District, County of Los Angeles, State of California, respondent was convicted by jury to one count of California Penal Code Section 242 (battery), a misdemeanor. This crime, by its facts and circumstances, is substantially related under Section 2910(a), Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

5.

Respondent's failure to reveal the criminal conviction in his Broker Renewal Application of December 17, 2001,

1 constitutes the procurement by renewal of a real estate license
2 by fraud, misrepresentation or deceit, or by making a material
3 misstatement of fact in said application, which is cause for
4 suspension or revocation of respondent's real estate broker
5 license under Code Sections 498 and 10177(a).

6 6.

7 The alleged conviction constitutes cause for the
8 suspension or revocation of the license and license rights of
9 respondent under Code Sections 490 and 10177(b).

10 7.

11 Pursuant to In Re Gossage (2000), 23 Cal. 4th1080; 99
12 Cal. Rptr. 2d 130; 5 P. 3d 186, respondent's failure to reveal
13 his complete criminal history demonstrates that respondent has
14 not rehabilitated himself and further demonstrates a lack of
15 respect for the legal system.

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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 the licenses and license rights of respondent
5 FERNANDO HERNANDEZ 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.
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10 Dated at Los Angeles, California

11 this *20th day of January 2004.*
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14 Deputy Real Estate Commissioner
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25 cc: Fernando Hernandez
26 Maria Suarez
27 Sacto.
LF