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AUG 11 2004
DEPARTMENT OF REAL ESTATE
[Signature]

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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In the Matter of the Accusation of) No. H-30710 LA
)
) L-2004030760
)
TONY SALAZAR,)
)
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated July 7, 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 August 31, 2004.

IT IS SO ORDERED August 6, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

[Signature]

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

In the Matter of the Accusation of

TONY SALAZAR,

Respondent.

Case No. H-30710 LA

OAH No. L2004030760

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on June 10, 2004, in Los Angeles, California. Complainant was represented by James Peel, Staff Counsel for the Department of Real Estate. Respondent Tony Salazar appeared and was represented by Alexis Galindo, Esq., with Curd, Galindo & Smith, L.L.P.

Oral and documentary evidence was received, the record was closed and the matter was submitted for decision on June 10, 2004. The Administrative Law Judge hereby makes her findings of fact, conclusions of law, and orders, as follows:

FACTUAL FINDINGS

1. On January 23, 2004, Complainant Maria Suarez filed the Accusation in the above-captioned proceeding while acting in her official capacity as Deputy Real Estate Commissioner of the Department of Real Estate (hereinafter "the Department"), State of California.

2. Respondent was issued a license as a real estate salesperson by the Department of Real Estate ("the Department") prior to January 1, 2001. At all times mentioned herein, the license was in full force and effect. The license will expire on May 17, 2006 unless renewed.

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3. On June 26, 2001, in the Municipal Court for the County of Los Angeles, Downey Judicial District, Case Number 1DW02926, entitled *The People of the State of California v. Tony Salazar*, Respondent was convicted of one count of violating Penal Code section 273.5, subdivision (a) (inflicting corporal injury upon spouse/cohabitant), a misdemeanor involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8).

4. Respondent was placed on summary probation for a period of 36 months and was ordered to serve 30 days in County Jail. Respondent paid a fine of \$300 and performed 30 days of Cal Trans work. He also completed a Court-ordered domestic violence counseling program.

5. The facts and circumstances underlying the conviction were as follows: On June 7, 2001, an altercation occurred between Respondent and his girlfriend, Lorena Garcia, in an interior office of the real estate agency where Ms. Garcia was employed as Respondent's assistant. During the altercation Respondent struck Ms. Garcia on her face and hit and grabbed her arms. The quarrel escalated to a point where the police were called. The police officer who responded to the scene observed that Ms. Garcia had a red, swollen cheek, a swollen red hand print on her upper left arm and redness and scratches on her inner left arm. The existence of these injuries was undisputed.

6. At the time of his arrest and at the hearing, Respondent denied striking Ms. Garcia. Respondent testified that Ms. Garcia had initiated the argument after she ascertained that he had talked to his wife on the phone. According to Respondent, Ms. Garcia became upset and started throwing things around the interior office of their workplace. He admitted that their voices were raised and acknowledged that he "held" her to prevent her from throwing objects. Respondent maintained that, because the interior office had no windows, no one observed the altercation except Respondent and Ms. Garcia.¹ Respondent's testimony that he did not strike Ms. Garcia was belied by the arresting officer's direct observation of Ms. Garcia's red, swollen cheek. Respondent failed to explain how Ms. Garcia's cheek became red and swollen without his striking her, and his testimony regarding his actions during the altercation is therefore deemed not credible.

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¹ The arrest report contained Ms. Garcia's contrary statement that her daughter witnessed the altercation. However, no evidence was presented to confirm or deny the daughter's presence during the fight.

7. At hearing, Ms. Garcia corroborated Respondent's version of the incident. Ms. Garcia testified that she instigated the fight because she was angry that Respondent's wife had called him. According to Ms. Garcia, Respondent did not hit her. She conceded that Respondent yelled when she threw a calendar and a glass of water during the altercation. She also testified that Respondent grabbed her by the arms and told her to calm down. She denied making the statement contained in the police report, wherein she reported Respondent hitting her face and arms. Ms. Garcia explained that her statement in the arrest report was inaccurate, because the police officer did not speak Spanish and could not understand what she told him.² Ms. Garcia's testimony was not credible in the following respects:

a. Ms. Garcia's testimony that Respondent did not hit her was negated by the arresting officer's direct observation of her red, swollen cheek. Ms. Garcia did not explain the existence of that injury.

b. Ms. Garcia's assertions regarding the language barrier and the inaccuracy of the arrest report were unconvincing. Her statement in the arrest report was consistent with the injuries the officer observed. Furthermore, the arrest report contained a 1½-page, detailed narrative, describing how Respondent had hit and kicked her during their altercation. In order for Ms. Garcia's assertion of flawed communication to be true, the police officer would have had to fabricate the narrative in his report. This is not plausible, especially since the report included information that only Ms. Garcia could have provided. The arrest report noted that Ms. Garcia's seven-year-old daughter was in the room at the time of the altercation. The officer's knowledge of the fact that Ms. Garcia had a seven-year-old daughter implies that Ms. Garcia informed him of this fact and that he understood her.³ In addition, it is unlikely that the officer would have fabricated the narrative report to justify Respondent's arrest, since he knew that the daughter, an independent witness, could reveal any fabrication by describing what she had seen.

c. Respondent is married, but is in the process of getting a divorce from his wife. He is engaged to be married to Ms. Garcia, whom he has known for about eight years. He lives with Ms. Garcia, her 10-year-old daughter and his 16-year-old son. Ms. Garcia worked as Respondent's assistant for six to seven years, but does not currently work with him. She is pregnant with Respondent's child and plans on returning to work with the Respondent after the baby is born. Ms. Garcia's personal relationship with Respondent and her present reliance on his income provide an additional incentive for her to present Respondent in the best possible light.

² At hearing, Ms. Garcia testified with the aid of a Spanish language interpreter.

³ Ms. Garcia testified that she has a daughter who is now 10 years old. At the time of the incident, the daughter would have been seven years old.

8. In addition to the two children residing with him, Respondent has two children (ages 11 and 8) who do not live with him.

9. Respondent believes he benefited from the anger management course he completed, because he learned "how to calm down during arguments."

10. Respondent has been employed with New Century Real Estate for 1½ years and has worked in the real estate industry since 1995. Respondent has never had a complaint lodged against him in connection with any of his real estate activities.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate salesperson license pursuant to Business and Professions Code section 490 and section 10177, subsection (b), for conviction of a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee, as set forth in Factual Findings 3, 4 and 5. Respondent argued that the conviction was not "substantially related" to the qualifications, functions and duties of a real estate license pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8). He noted that Ms. Garcia did not seek medical attention and that she only incurred "minor" injuries. However, California Code of Regulations, title 10, section 2910, subdivision (a) (8) does not require that the victim seek medical attention or that actual injury occur in order for a crime to be substantially related. Respondent was convicted of inflicting corporal injury upon another person. This act is an "unlawful act with the intent or threat of doing substantial injury to the person," as envisioned by California Code of Regulations, title 10, section 2910, subdivision (a) (8).

2. Respondent has satisfied some of the Department's rehabilitation criteria set forth in California Code of Regulations, title 10, section 2912. Specifically: Two years have passed since the most recent criminal conviction [Criterion (a)]; Respondent's 36-month probationary period has most likely recently expired [Criterion (e)];⁴ and Respondent has paid the Court-ordered fine imposed in connection with his criminal conviction [Criterion (g)]. Additionally, Respondent completed a Court-ordered anger management course, which he contends has altered his attitude when handling arguments [Criterion (m)]. However, Respondent's criminal probation has served as a strong incentive to avoid additional violent acts, and he has had insufficient time, absent that incentive, to illustrate that the skills he learned in the anger management course have altered the way he responds to provocative situations. Furthermore, Respondent's lack of candor in his testimony

⁴ Since the hearing took place just prior to the expiration of 36 months, there was no evidence regarding Respondent's completion of probation. However, it was undisputed that Respondent's 36-month probation was due to expire by the end of June 2004.

and his unwillingness to admit guilt for injuring Ms. Garcia evidence a lack of rehabilitation. Artificial acts of contrition are not required in a disciplinary proceeding when the respondent truly believes he is not guilty of the crime charged. (*Calaway v. State Bar* (1986) 41 Cal.3d 743, 747-748.) However, in this case, despite strong evidence belying his position, Respondent accepts no responsibility for the incident, choosing to characterize it as "holding" Ms. Garcia, without acknowledging the injuries she suffered. Consequently, while Respondent has shown some rehabilitation, he has not adequately demonstrated his complete rehabilitation.

3. Respondent argued that imposition of discipline is not warranted, because he has never been the subject of a complaint filed with the Department. This argument is erroneous. The Department is required to protect the public, and that public is not limited to Respondent's past clients. The public includes his future clients, coworkers and members the general public who could be directly or indirectly affected by Respondent's aggressive behavior. Respondent's willingness to engage in an altercation at the real estate office where he worked illustrated his capacity to become violent in his workplace. This poses a risk that future clients or coworkers could be harmed. Furthermore, Respondents untruthfulness at trial demonstrated a willingness to engage in dishonesty when his interests are threatened. These propensities for violence and deceit are characteristics the Department seeks to avoid in its licensees, in order to protect the public from harm. Given the foregoing, some form of discipline is warranted to protect the public. However, in this particular case, since the crime was Respondent's first offense and Respondent has evidenced some rehabilitation, outright revocation would be overly-harsh discipline.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Tony Salazar, 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 2 years have elapsed from the effective date of this Decision.

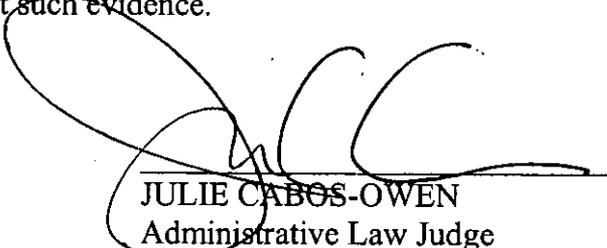
4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(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.

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.

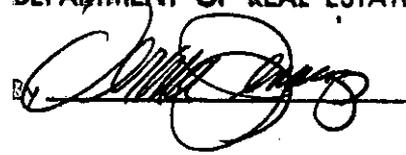
DATED: July 7, 2004


JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAY 21 2004
DEPARTMENT OF REAL ESTATE

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



In the Matter of the Accusation of

TONY SALAZAR

} Case No. H-30710 LA

} OAH No. L-20040303760

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 **Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California**, on **June 10, 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.

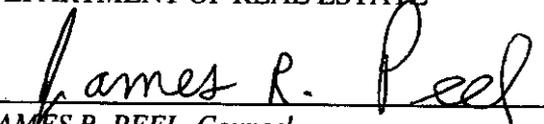
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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 21, 2004

By 
JAMES R. PEEL, Counsel

cc: Tony Salazar
Alexis Galindo, Esq.
New Century Lending/Sacto./OAH

FILED
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DEPARTMENT OF REAL ESTATE
By 

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

In the Matter of the Accusation of

TONY SALAZAR

Respondent

}

Case No. H-30710 LA

OAH No. L-20040303760

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 April 26, 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.

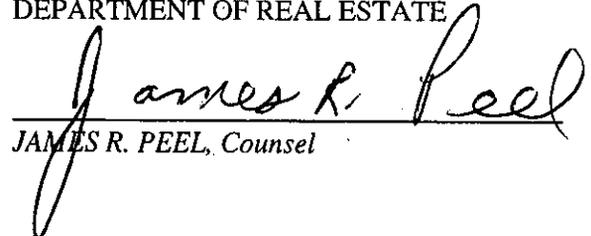
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The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: April 8, 2004.

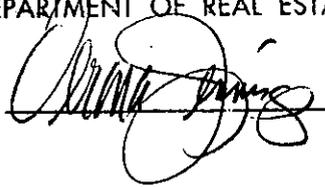
By


JAMES R. PEEL, Counsel

cc: Tony Salazar
Alexis Galindo, Esq.
New Century Lending/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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FEB -9 2004
DEPARTMENT OF REAL ESTATE
By 

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-30710 LA
12 TONY SALAZAR,) 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 TONY SALAZAR 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 TONY SALAZAR (hereinafter referred to as "Respondent")
24 is presently licensed and/or has license rights under the Real
25 Estate Law (Part 1 of Division 4 of the Business and Professions
26 Code, hereinafter referred to as the "Code").
27

SALAZAR
FILED

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 TONY
5 SALAZAR under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.

8 Dated at Los Angeles, California,
9 this 23rd day of January, 2004.

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12 
13 MARIA SUAREZ
14 Deputy Real Estate Commissioner
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23 cc: Tony Salazar
24 Maria Salazar
25 New Century Lending, Inc.
26 Sacto.
27 LF