

File

FILED
APR - 8 2009
DEPARTMENT OF REAL ESTATE
K. Hebert

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-30851 LA
ALAN ROGER VAN DE VORT,)
Respondent.)

ORDER DENYING REINSTATEMENT OF LICENSE

On August 29, 2005, a Decision was rendered herein
revoking Respondent's real estate broker license, but granting
Respondent the right to apply for and be issued a restricted
real estate broker license. A restricted real estate broker
license was issued to Respondent on September 19, 2005.

On or about October 18, 2007, Respondent petitioned
for reinstatement of said license and the Attorney General of
the State of California has been given notice of the filing of
the petition.

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1 I have considered Respondent's petition and
2 the evidence and arguments in support thereof. Respondent
3 has failed to demonstrate to my satisfaction that Respondent
4 has undergone sufficient rehabilitation to warrant the
5 reinstatement of Respondent's real estate broker license,
6
7 in that:

8 I

9 In the Decision which revoked Respondent's real
10 estate license there were Determination of Issues made that
11 there was cause to revoke Respondent's real estate license
12 pursuant to Business and Professions Code ("Code") Sections
13 490 and 10177(b).
14

15 On or about September 17, 2003, Respondent was
16 convicted of three (3) counts of violating Penal Code Section
17 243(e)(1) (spousal battery).

18 On or about October 25, 2002, Respondent was convicted
19 of three (3) counts of violating Penal Code Section 550(b)(1)
20 (present false or misleading information on insurance claim).

21 Said crimes involve moral turpitude and are
22 substantially related to the qualifications, functions and
23 duties of a real estate licensee pursuant to Section 2910, Title
24 10, Chapter 6, California Code of Regulations ("Regulation").

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III

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).

A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

The Department has developed criteria in Regulation 2911 to assist in evaluating the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in this proceeding are:

2911 (1) - Respondent has not provided proof of significant or conscientious involvement in community, church or social problems.

2911 (n)(1) - Respondent has not evidenced a change in attitude from that which existed at the time of the conduct in question as evidenced by the following:

1. In response to question number 3A. of his Petition Application, to wit: "Are there any criminal charges pending against you at this time?" Respondent marked the box denoting "no" and failed to disclose a pending criminal charge.

2. In response to question number 4. of his Petition Application, to wit: "Have you ever been convicted of any violation of law?", Respondent failed to disclose that he was a defendant in two (2) civil court actions.

1 These were material misstatements. The failure
2 to disclose relevant information in the Petition Application
3 prevents or hinders a full investigation into the extent of
4 rehabilitation. Information regarding criminal cases and
5 civil actions, may reflect on Respondent's business practices
6 and qualifications for a real estate license. A failure to
7 disclose material facts shows a lack of candor and diligence
8 expected of a licensee, is a dishonest act and is additional
9 cause pursuant to Code Section 10177(a) to deny Respondent's
10 petition application.
11

12 2911 (n) (2) - Respondent has not presented evidence
13 from others of a change in attitude from that which existed at
14 the time of the conduct in question

15 Given the fact that Respondent has not established
16 that he has complied with Regulations 2911(1), 2911(n)(1) and
17 2911(n)(2) and is in violation of Code Section 10177(a), I am
18 not satisfied that Respondent is sufficiently rehabilitated to
19 receive a real estate broker license.
20

21 NOW, THEREFORE, IT IS ORDERED that Respondent's
22 petition for reinstatement of Respondent's broker license is
23 denied.

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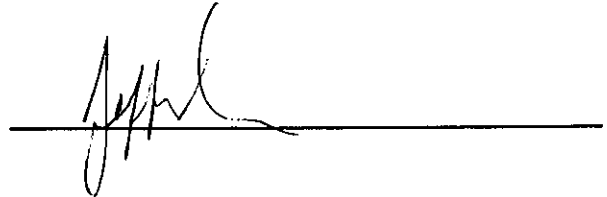
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This Order shall become effective at 12 o'clock noon

on APR 28 2009.

DATED: 3/29/09.

JEFF DAVI
Real Estate Commissioner

A handwritten signature, likely of Jeff Davi, is written over a horizontal line. The signature is cursive and stylized.

FILED
AUG 30 2005
DEPARTMENT OF REAL ESTATE

By K. McDevitt

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-30851 LA
ALAN ROGER VAN DE VORT,	)	L-2004050154
Respondent.	)	

DECISION AFTER REJECTION

This matter was heard on September 7, 2004, by
Administrative Law Judge ("ALJ") Vincent Nafarette at the Office
of Administrative Hearings ("OAH") in Los Angeles, California.

Respondent ALAN ROGER VAN DE VORT ("Respondent")
appeared personally and was represented by Frank M. Buda, Esq.

Elliott Mac Lennan, Counsel, represented the
Complainant.

Evidence was received. At the conclusion of the
hearing, the record was held open until January 31, 2005, for the
filing of written argument. On January 28, 2005, Complainant
filed its Closing Argument which was marked as Exhibit 5. On

1 January 29, 2005, Respondent filed his Closing Argument and
2 Motion to Augment Record which was marked as Exhibit K.
3 Administrative Law Judge Nafarette hereby granted Respondent's
4 motion to augment the record with the certificate from the
5 attended Domestic Violence Program and the progress report from
6 the Batterer's Intervention Program. Said documents were
7 admitted into the evidentiary record as Exhibit L and the hearing
8 was closed.

9 On March 11, 2005, the Administrative Law Judge
10 submitted a Proposed Decision which I declined to adopt as my
11 Decision herein.

12 Pursuant to Section 11517(c) of the Government Code of
13 the State of California, Respondent was served with notice of my
14 determination not to adopt the Proposed Decision of the
15 Administrative Law Judge along with a copy of said Proposed
16 Decision. On April 15, 2005, Respondent was notified that the
17 case would be decided by me upon the record, the transcript of
18 proceedings held on September 7, 2004, and upon written argument
19 offered by Respondent and Complainant.
20

21 On July 15, 2005, argument was received from
22 Respondent. On August 8, 2005, Complainant submitted argument.

23 The Proposed Decision dated March 11, 2005, of the
24 Administrative Law Judge of the Office of Administrative
25 Hearings is hereby adopted as the Decision of the Real Estate
26 Commissioner in the above-entitled matter.
27

1 The right to reinstatement of a revoked real estate
2 license is controlled by Section 11522 of the Government Code.
3 A copy of Section 11522 and a copy of the Commissioner's
4 Criteria of Rehabilitation are attached hereto for the
5 information of Respondent.

6 This Decision shall become effective at 12 o'clock noon
7 on SEP 19, 2005.

8 IT IS SO ORDERED 8-29, 2005.

9 JEFF DAVI
10 Real Estate Commissioner
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BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ALAN ROGER VAN DE VORT,

Respondent.

Case No. H-30851 LA

OAH No. L-2004050154

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on September 7, 2004, in Los Angeles. Complainant was represented by Elliott Mac Lennan, Staff Counsel. Respondent was present and represented by Frank Buda, Attorney at Law.

At the conclusion of the hearing, the parties requested that record be held open until January 31, 2005, for the filing of written argument. The request was granted. On January 28, 2005, complainant filed its Closing Argument which was marked as Exhibit 5. On January 29, 2005, respondent filed his Closing Argument and Motion to Augment Record which was marked as Exhibit K. The Administrative Law Judge hereby grants respondent's motion to augment the record with the certificate from the Domestic Violence Program and the progress report from the Batterer's Intervention Program. Said documents are admitted into evidence as Exhibit L.

Oral and documentary evidence having been received, the Administrative Law Judge submits this matter for decision on January 29, 2005, and finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on April 13, 2004, the Accusation, Case No. H-30851 LA, was made and filed by complainant 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 April 7, 1989, the Department issued real estate broker's license no. 00867428 and licensing rights to Alan Roger Van De Vort (hereinafter

respondent). Said license expires on May 16, 2006, and currently is in full force and effect.

(B) Respondent is engaged in the real estate business as Alan Van De Vort & Associates. As a real estate broker, he represents buyers and sellers in sales or exchanges of residential and commercial properties. His main office is located at 12292 Cinnabar Road in Santa Ana and he has a branch office at 213 Park Avenue in Laguna Beach. He employs one real estate salesperson.

(C) At all times relevant herein, respondent has held licensing rights as a real estate broker under the Real Estate Law. He has no prior disciplinary history with the Department.

3. (A) On or about October 25, 2002, before the Superior Court of California, County of Orange, State of California, in *People v. Alan Roger Van De Vort*, Case No. 02CF2165FA, respondent was convicted on his plea of guilty of presenting a false or misleading information on an insurance claim in violation of Penal Code section 550, subdivision (b)(1), a misdemeanor and crime involving moral turpitude.

(B) As result of the conviction, imposition of sentence was suspended and respondent was placed on informal probation for three (3) years on condition, in part, that he obey all laws and orders of the court, pay a restitution fine of \$100, complete 120 hours of community service, pay restitution in an amount determined by the Victim Witness Program, and pay the costs of investigation incurred by the Automobile Club not to exceed \$2,500.

(C) The facts and circumstances of respondent's offense are that, on or about November 12, 1999, he filed a false or misleading claim with his automobile insurance company. Respondent reported that his new sport utility vehicle had been stolen when, in fact, he had an accident and left the disabled vehicle at the side of the freeway. On an undetermined date in November 1999, at 12:30 a.m., respondent was driving home on the 405 Freeway after a social occasion with a woman. Near the Irvine Spectrum in Orange County, he had an accident that caused his SUV to suffer three flat tires and a damaged undercarriage. Respondent walked away from the accident and off the freeway. He called his estranged wife Adriana to come pick him up. He made his false insurance claim in the next day or two.

(D) Respondent's conviction for presenting false or misleading information on an insurance claim was for a crime substantially related to the qualifications, functions, or duties of a real estate salesperson. Honesty and integrity are qualities expected of a Department licensee.

4. (A) On January 30, 2003, respondent paid the \$100 restitution fine. On October 27, 2003, he filed with the court proof of his having completed the 120 hours

of community service. Respondent performed the community service by working at the Main Place Christian Fellowship.

(B) On or about January 29, 2003, respondent made full restitution by paying \$586.80 to the Automobile Club of Southern California. On February 4, 2003, the Automobile Club advised the Victim Witness Program that it was declining any further payment of restitution. Respondent is still on probation for his offense.

5. Respondent did not credibly explain why he filed or made a false automobile insurance claim. He stated that he had not been drinking and, while he was disoriented after the accident, he was not disoriented when he committed his offense. Respondent indicated he was scared and did not know what to do because he had left the scene of the accident. He stated he is sorry and embarrassed by his conduct.

6. (A) On or about September 17, 2003, before the Superior Court of California, County of Orange, State of California, in *People v. Alan Roger Van De Vort*, Case No. 02SM04451MA, respondent was convicted on his plea of guilty of spousal battery in violation of Penal Code section 243, subdivision (e)(1), a misdemeanor and crime involving moral turpitude.

(B) As result of the conviction, imposition of sentence was suspended and respondent was placed on informal probation for three (3) years on condition, in part, that he obey all laws and orders of the court, pay a restitution fine of \$200, pay \$700 to domestic violence funds, pay restitution in an amount determined by the Victim Witness Program, attend and complete a batterers treatment program, not use any force or violence against his spouse Olga Kimasova and his former wife Adriana Peterson, and not have any contact or go within 300 yards of Adriana Peterson. Respondent was served with a protective order that he have no contact with his former wife Adriana Peterson.

(C) The facts and circumstances of respondent's offense are that, on or about October 31, 2002, respondent had an argument with his second wife, Olga. Olga is from the Ukraine and 23 years younger than respondent. He had met her in November 2001 and brought her and her young daughter to California in July 2002. They married on September 23, 2002. A month later, in late October 2002, Olga stated she wanted a divorce. On Halloween night, she dropped a piece of paper with a phone number written on it and took her daughter out for trick or treat activities. When confronted about the telephone number, Olga said it belonged to a neighbor who had a daughter who was the same age as her daughter. Respondent called the telephone number and a man said Olga had asked him for his number and he had no children. Respondent became angry and jealous and the parties began having an argument. Olga locked him out of the house and laughed at him through a window. When she let him back into the house, respondent continued their argument which escalated into a physical fight. He pushed open a bedroom door which struck Olga in

her arm. Respondent also pushed his spouse. After the fight, respondent's wife Olga moved in with his former spouse, Adriana.

(D) Respondent's conviction for spousal battery was for a crime substantially related to the qualifications, functions, or duties of a real estate salesperson within the meaning of California Code of Regulations, title 17, section 2910, subdivision (a)(8). The offense of battery involves the doing an unlawful act with the intent or threat of doing substantial injury to another person.

7. On December 17, 2003, respondent paid \$900 to the Court, satisfying all fines and fees due under his sentencing order for his domestic violence conviction. He remains on probation for his offense.

8. On October 29, 2004, respondent successfully completed the 52-week batterers treatment or domestic violence program at Associates in Counseling and Mediation in Orange. According to the final report of the program, respondent took responsibility for his own behavior, participated constructively in-group sessions, and appeared motivated to improve himself. He tested negative on drug testing. His counselor has opined that respondent does not have an anger management problem and does not pose a danger to his wife or the public.

9. With respect to his domestic violence conviction, respondent indicated that he only pushed the bedroom door which then struck his wife. While he expressed regret for pushing his wife, Olga, he implied that his pushing of the door was the extent of his conduct. Respondent's testimony about the incident was not completely credible, for he admitted pushing his wife when he pleaded guilty to the offense and the court also issued a protective order prohibiting him from harassing or threatening his former wife, Adriana.

10. Respondent's wife, Olga, indicated that, since October 31, 2002, respondent and she have had no "further physical fights". They have gotten back together and respondent's behavior has improved since he attended the batterer's treatment program. He is supportive of his and her children and is a better father and husband.

11. (A) The mother of respondent's fifteen-year-old daughter stated that he supports her and her daughter and participates in all aspects of his daughter's life. She indicated that he is good person and father.

(B) In his letter of reference, respondent's friend, Maurice Bauer, indicated that he has known respondent for over fifteen years on a professional and personal basis and has always found him to be an honest person with integrity and the highest ethical standards. Respondent's dentist for over ten years stated respondent has always been a loving and caring provider and has not displayed any signs of anger. Respondent submitted other letters of reference from friends and associates.

12. Respondent has been licensed as a real estate broker for fifteen years. He represents buyers and sellers in larger transactions which involve the transfer or change of ownership of apartment buildings, land, and retail centers. He has handled over 500 transactions in past two years. In addition, respondent has taken about 45 hours of continuing education classes in real estate.

13. Respondent has not been discharged from probation for either of his two convictions and has not obtained expungement of either conviction. He regrets both of his offenses but was not particularly candid or forthcoming about the circumstances of either offense.

14. Respondent is 57 years old and has been married to his second wife, Olga, now for two and one-half years. He has two children, ages 4 and 16, and his wife has one child, age 14.

* * * * *

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

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent's real estate broker's license under Business and Professions Code section 10177, subdivision (b), for convictions of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings nos. 3 - 4 and 6 - 8 above.

2. Grounds also exist to revoke or suspend respondent's real estate broker's license under Business and Professions Code section 490 for convictions of crimes substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings nos. 3 - 4 and 6 - 8 above.

3. Rehabilitation--It was not established that respondent is rehabilitated from his convictions for presenting false information of a insurance claim and spousal battery under the criteria set forth in California Code of Regulations, title 10, section 2911, based on Findings 4, 5, and 7 - 14 above. His convictions are recent and he remains on probation for both offenses. He did not credibly explain why he committed the insurance claim offense and did not present any clear insight into his thought patterns at that time of his offense. Thus, it is not clear whether respondent

has changed his attitude from that which existed at the time of his commission of the offense. Respondent regrets his conduct towards his wife and did thereafter complete the batterer's program. However, he did not personally indicate what he may have learned from said domestic violence program and downplayed his conduct in the domestic incident. His failure to be fully candid and forthcoming about both offenses not only affected his credibility but also demonstrated that he is not yet rehabilitated from his crimes. Inasmuch as respondent has practiced as real estate broker for 16 years without any disciplinary history, the appropriate discipline in this matter should be a period of probation with a condition that he take a course in ethics.

Respondent's argument that his misdemeanor spousal battery conviction does not involve moral turpitude and is not substantially related to the qualifications, functions, or duties of a real estate licensee is not persuasive. First, under Penal Code section 242, battery is defined as any willful and unlawful use of force or violence upon the person of another. Battery is also defined as the application of force to another, resulting in harmful or offensive contact. (Black's Law Dict. (7th ed. 1999) p. 146.) Moral turpitude has been defined as conduct that is contrary to justice, honesty, or morality. (Black's Law Dict. (7th ed. 1999) p. 1026.) Respondent's offense of battery involves moral turpitude, for battery by its legal definition involves the use of force on another person which results in harmful or offensive contact and demonstrates a readiness to do harm to another.

Second, under the Department's regulations, a crime is deemed substantially related to the qualifications, functions, or duties of a real estate licensee when a licensee has done an unlawful act with the "intent or threat of doing substantial injury" to another person. (Cal. Code Regs. tit. 17, §2910, subd. (a)(8).) There need not be showing then of an actual injury under the regulation. Here, battery is an act that involves the unlawful use of force or violence on another. In his testimony, respondent implied that he only pushed the bedroom door that hit his wife's arm. However, he also testified about pushing his wife and admitted on his criminal plea waiver form that he pushed his wife. There was no probative evidence of an injury to his wife but it is significant that the wife wrote that she and respondent have not had "further physical fights". The clear and convincing weight of the evidence demonstrated that respondent did more than push the door--he engaged in a physical fight with his wife and pushed her. As such, the underlying circumstances of respondent's battery conviction show that he intended or threatened to do substantial injury to his spouse. His crime not only involves moral turpitude but is also substantially related to the qualifications, functions, or duties of a real estate licensee for purposes of Business and Professions Code sections 10177 and 490, separately.

* * * * *

Wherefore, the following Order is hereby made:

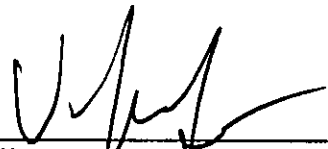
ORDER

All real estate licenses and licensing rights of respondent Alan R. Van De Vort shall be revoked, based on Conclusions of Laws Nos. 1 and 2, separately and for all; provided, however, said order of revocation will be stayed and 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 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 and Order, based on Conclusions of Law no. 3. 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 (2) 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.

5. Respondent shall, within six months from the effective date of this
Decision, take and pass the Professional Responsibility Examination administered by
the Department including the payment of the appropriate examination fee. If
respondent fails to satisfy this condition, the Commissioner may order the suspension
of respondent's license until he passes the examination.

DATED: March 11, 2008



Vincent Nafarrate
Administrative Law Judge
Office of Administrative Hearings

Handwritten signature/initials

FILED
APR 15 2005
DEPARTMENT OF REAL ESTATE

By *[Handwritten signature]*

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

In the Matter of the Accusation of	)	No. H-30851 LA
ALAN ROGER VAN DE VORT,	)	
	)	L-2004050154
Respondent.	)	
	)	

NOTICE

TO: ALAN ROGER VAN DE VORT, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 11, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 11, 2005, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on September 7,

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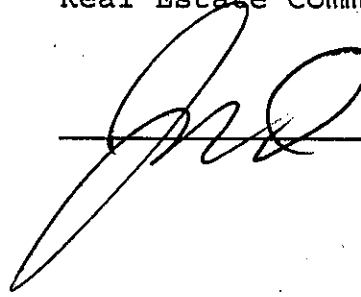
1 2004, and any written argument hereafter submitted on behalf of
2 Respondent and Complainant.

3 Written argument of Respondent to be considered by me
4 must be submitted within 15 days after receipt of the transcript
5 of the proceedings of September 7, 2004, at the Los Angeles
6 office of the Department of Real Estate unless an extension of
7 the time is granted for good cause shown.

8 Written argument of Complainant to be considered by me
9 must be submitted within 15 days after receipt of the argument of
10 Respondent at the Los Angeles office of the Department of Real
11 Estate unless an extension of the time is granted for good cause
12 shown.

13 DATED: 4-12, 2005

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15 JEFF DAVI
Real Estate Commissioner

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BEFORE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ALAN ROGER VAN DE VORT,

Respondent.

Case No. H-30851 LA

OAH No. L-2004050154

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on September 7, 2004, in Los Angeles. Complainant was represented by Elliott Mac Lennan, Staff Counsel. Respondent was present and represented by Frank Buda, Attorney at Law.

At the conclusion of the hearing, the parties requested that record be held open until January 31, 2005, for the filing of written argument. The request was granted. On January 28, 2005, complainant filed its Closing Argument which was marked as Exhibit 5. On January 29, 2005, respondent filed his Closing Argument and Motion to Augment Record which was marked as Exhibit K. The Administrative Law Judge hereby grants respondent's motion to augment the record with the certificate from the Domestic Violence Program and the progress report from the Batterer's Intervention Program. Said documents are admitted into evidence as Exhibit L.

Oral and documentary evidence having been received, the Administrative Law Judge submits this matter for decision on January 29, 2005, and finds as follows:

FINDINGS OF FACT

1. The Administrative Law Judge takes official notice that, on April 13, 2004, the Accusation, Case No. H-30851 LA, was made and filed by complainant 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 April 7, 1989, the Department issued real estate broker's license no. 00867428 and licensing rights to Alan Roger Van De Vort (hereinafter

respondent). Said license expires on May 16, 2006, and currently is in full force and effect.

(B) Respondent is engaged in the real estate business as Alan Van De Vort & Associates. As a real estate broker, he represents buyers and sellers in sales or exchanges of residential and commercial properties. His main office is located at 12292 Cinnabar Road in Santa Ana and he has a branch office at 213 Park Avenue in Laguna Beach. He employs one real estate salesperson.

(C) At all times relevant herein, respondent has held licensing rights as a real estate broker under the Real Estate Law. He has no prior disciplinary history with the Department.

3. (A) On or about October 25, 2002, before the Superior Court of California, County of Orange, State of California, in *People v. Alan Roger Van De Vort*, Case No. 02CF2165FA, respondent was convicted on his plea of guilty of presenting a false or misleading information on an insurance claim in violation of Penal Code section 550, subdivision (b)(1), a misdemeanor and crime involving moral turpitude.

(B) As result of the conviction, imposition of sentence was suspended and respondent was placed on informal probation for three (3) years on condition, in part, that he obey all laws and orders of the court, pay a restitution fine of \$100, complete 120 hours of community service, pay restitution in an amount determined by the Victim Witness Program, and pay the costs of investigation incurred by the Automobile Club not to exceed \$2,500.

(C) The facts and circumstances of respondent's offense are that, on or about November 12, 1999, he filed a false or misleading claim with his automobile insurance company. Respondent reported that his new sport utility vehicle had been stolen when, in fact, he had an accident and left the disabled vehicle at the side of the freeway. On an undetermined date in November 1999, at 12:30 a.m., respondent was driving home on the 405 Freeway after a social occasion with a woman. Near the Irvine Spectrum in Orange County, he had an accident that caused his SUV to suffer three flat tires and a damaged undercarriage. Respondent walked away from the accident and off the freeway. He called his estranged wife Adriana to come pick him up. He made his false insurance claim in the next day or two.

(D) Respondent's conviction for presenting false or misleading information on an insurance claim was for a crime substantially related to the qualifications, functions, or duties of a real estate salesperson. Honesty and integrity are qualities expected of a Department licensee.

4. (A) On January 30, 2003, respondent paid the \$100 restitution fine. On October 27, 2003, he filed with the court proof of his having completed the 120 hours

of community service. Respondent performed the community service by working at the Main Place Christian Fellowship.

(B) On or about January 29, 2003, respondent made full restitution by paying \$586.80 to the Automobile Club of Southern California. On February 4, 2003, the Automobile Club advised the Victim Witness Program that it was declining any further payment of restitution. Respondent is still on probation for his offense.

5. Respondent did not credibly explain why he filed or made a false automobile insurance claim. He stated that he had not been drinking and, while he was disoriented after the accident, he was not disoriented when he committed his offense. Respondent indicated he was scared and did not know what to do because he had left the scene of the accident. He stated he is sorry and embarrassed by his conduct.

6. (A) On or about September 17, 2003, before the Superior Court of California, County of Orange, State of California, in *People v. Alan Roger Van De Vort*, Case No. 02SM04451MA, respondent was convicted on his plea of guilty of spousal battery in violation of Penal Code section 243, subdivision (e)(1), a misdemeanor and crime involving moral turpitude.

(B) As result of the conviction, imposition of sentence was suspended and respondent was placed on informal probation for three (3) years on condition, in part, that he obey all laws and orders of the court, pay a restitution fine of \$200, pay \$700 to domestic violence funds, pay restitution in an amount determined by the Victim Witness Program, attend and complete a batterers treatment program, not use any force or violence against his spouse Olga Kimasova and his former wife Adriana Peterson, and not have any contact or go within 300 yards of Adriana Peterson. Respondent was served with a protective order that he have no contact with his former wife Adriana Peterson.

(C) The facts and circumstances of respondent's offense are that, on or about October 31, 2002, respondent had an argument with his second wife, Olga. Olga is from the Ukraine and 23 years younger than respondent. He had met her in November 2001 and brought her and her young daughter to California in July 2002. They married on September 23, 2002. A month later, in late October 2002, Olga stated she wanted a divorce. On Halloween night, she dropped a piece of paper with a phone number written on it and took her daughter out for trick or treat activities. When confronted about the telephone number, Olga said it belonged to a neighbor who had a daughter who was the same age as her daughter. Respondent called the telephone number and a man said Olga had asked him for his number and he had no children. Respondent became angry and jealous and the parties began having an argument. Olga locked him out of the house and laughed at him through a window. When she let him back into the house, respondent continued their argument which escalated into a physical fight. He pushed open a bedroom door which struck Olga in

her arm. Respondent also pushed his spouse. After the fight, respondent's wife Olga moved in with his former spouse, Adriana.

(D) Respondent's conviction for spousal battery was for a crime substantially related to the qualifications, functions, or duties of a real estate salesperson within the meaning of California Code of Regulations, title 17, section 2910, subdivision (a)(8). The offense of battery involves the doing an unlawful act with the intent or threat of doing substantial injury to another person.

7. On December 17, 2003, respondent paid \$900 to the Court, satisfying all fines and fees due under his sentencing order for his domestic violence conviction. He remains on probation for his offense.

8. On October 29, 2004, respondent successfully completed the 52-week batterers treatment or domestic violence program at Associates in Counseling and Mediation in Orange. According to the final report of the program, respondent took responsibility for his own behavior, participated constructively in-group sessions, and appeared motivated to improve himself. He tested negative on drug testing. His counselor has opined that respondent does not have an anger management problem and does not pose a danger to his wife or the public.

9. With respect to his domestic violence conviction, respondent indicated that he only pushed the bedroom door which then struck his wife. While he expressed regret for pushing his wife, Olga, he implied that his pushing of the door was the extent of his conduct. Respondent's testimony about the incident was not completely credible, for he admitted pushing his wife when he pleaded guilty to the offense and the court also issued a protective order prohibiting him from harassing or threatening his former wife, Adriana.

10. Respondent's wife, Olga, indicated that, since October 31, 2002, respondent and she have had no "further physical fights". They have gotten back together and respondent's behavior has improved since he attended the batterer's treatment program. He is supportive of his and her children and is a better father and husband.

11. (A) The mother of respondent's fifteen-year-old daughter stated that he supports her and her daughter and participates in all aspects of his daughter's life. She indicated that he is good person and father.

(B) In his letter of reference, respondent's friend, Maurice Bauer, indicated that he has known respondent for over fifteen years on a professional and personal basis and has always found him to be an honest person with integrity and the highest ethical standards. Respondent's dentist for over ten years stated respondent has always been a loving and caring provider and has not displayed any signs of anger. Respondent submitted other letters of reference from friends and associates.

12. Respondent has been licensed as a real estate broker for fifteen years. He represents buyers and sellers in larger transactions which involve the transfer or change of ownership of apartment buildings, land, and retail centers. He has handled over 500 transactions in past two years. In addition, respondent has taken about 45 hours of continuing education classes in real estate.

13. Respondent has not been discharged from probation for either of his two convictions and has not obtained expungement of either conviction. He regrets both of his offenses but was not particularly candid or forthcoming about the circumstances of either offense.

14. Respondent is 57 years old and has been married to his second wife, Olga, now for two and one-half years. He has two children, ages 4 and 16, and his wife has one child, age 14.

* * * * *

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

CONCLUSIONS OF LAW

1. Grounds exist to revoke or suspend respondent's real estate broker's license under Business and Professions Code section 10177, subdivision (b), for convictions of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings nos. 3 - 4 and 6 - 8 above.

2. Grounds also exist to revoke or suspend respondent's real estate broker's license under Business and Professions Code section 490 for convictions of crimes substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings nos. 3 - 4 and 6 - 8 above.

3. Rehabilitation--It was not established that respondent is rehabilitated from his convictions for presenting false information of a insurance claim and spousal battery under the criteria set forth in California Code of Regulations, title 10, section 2911, based on Findings 4, 5, and 7 - 14 above. His convictions are recent and he remains on probation for both offenses. He did not credibly explain why he committed the insurance claim offense and did not present any clear insight into his thought patterns at that time of his offense. Thus, it is not clear whether respondent

has changed his attitude from that which existed at the time of his commission of the offense. Respondent regrets his conduct towards his wife and did thereafter complete the batterer's program. However, he did not personally indicate what he may have learned from said domestic violence program and downplayed his conduct in the domestic incident. His failure to be fully candid and forthcoming about both offenses not only affected his credibility but also demonstrated that he is not yet rehabilitated from his crimes. Inasmuch as respondent has practiced as real estate broker for 16 years without any disciplinary history, the appropriate discipline in this matter should be a period of probation with a condition that he take a course in ethics.

Respondent's argument that his misdemeanor spousal battery conviction does not involve moral turpitude and is not substantially related to the qualifications, functions, or duties of a real estate licensee is not persuasive. First, under Penal Code section 242, battery is defined as any willful and unlawful use of force or violence upon the person of another. Battery is also defined as the application of force to another, resulting in harmful or offensive contact. (Black's Law Dict. (7th ed. 1999) p. 146.) Moral turpitude has been defined as conduct that is contrary to justice, honesty, or morality. (Black's Law Dict. (7th ed. 1999) p. 1026.) Respondent's offense of battery involves moral turpitude, for battery by its legal definition involves the use of force on another person which results in harmful or offensive contact and demonstrates a readiness to do harm to another.

Second, under the Department's regulations, a crime is deemed substantially related to the qualifications, functions, or duties of a real estate licensee when a licensee has done an unlawful act with the "intent or threat of doing substantial injury" to another person. (Cal. Code Regs. tit. 17, §2910, subd. (a)(8).) There need not be showing then of an actual injury under the regulation. Here, battery is an act that involves the unlawful use of force or violence on another. In his testimony, respondent implied that he only pushed the bedroom door that hit his wife's arm. However, he also testified about pushing his wife and admitted on his criminal plea waiver form that he pushed his wife. There was no probative evidence of an injury to his wife but it is significant that the wife wrote that she and respondent have not had "further physical fights". The clear and convincing weight of the evidence demonstrated that respondent did more than push the door--he engaged in a physical fight with his wife and pushed her. As such, the underlying circumstances of respondent's battery conviction show that he intended or threatened to do substantial injury to his spouse. His crime not only involves moral turpitude but is also substantially related to the qualifications, functions, or duties of a real estate licensee for purposes of Business and Professions Code sections 10177 and 490, separately.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

not adopted

All real estate licenses and licensing rights of respondent Alan R. Van De Vort shall be revoked, based on Conclusions of Laws Nos. 1 and 2, separately and for all; provided, however, said order of revocation will be stayed and 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 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 and Order, based on Conclusions of Law no. 3. 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.

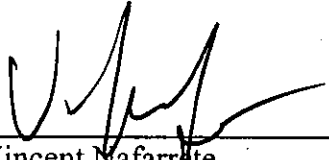
2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner 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 (2) 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.

5. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of respondent's license until he passes the examination.

DATED: March 11, 2005



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

Sacto
JLG

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

FILED
JUL 13 2004
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ALAN ROGER VAN DE VORT,

By K. Neiderholt

Case No. H-30851 LA

OAH No. L-2004050154

Respondent

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 **September 7, 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

JUL 13 2004

Dated:

By

ELLIOTT MAC LENNAN, Counsel

cc: Alan Roger Van De Vort
Sacto/OAH/GD

page 2

FILED
APR 19 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. Mederholt*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-30851 LA
ALAN ROGER VAN DE VORT,	)	<u>ACCUSATION</u>
Respondent.	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against ALAN ROGER VAN DE VORT aka Alan Roger Van Decort and Alan Roger Vandevort, is informed and alleges in her official capacity as follows:

1.

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

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1 2.

2 Respondent was originally licensed by the Department of
3 Real Estate of the State California as a real estate broker on
4 April 7, 1989.

5 3.

6 On September 17, 2003, in the Superior Court of
7 California, County of Orange, Harbor Justice Center, Laguna
8 Niguel Facility, respondent was convicted in Docket/Case No.
9 02SM04451, upon a guilty plea to one count of Penal Code Section
10 243(e)(1) (spousal battery), misdemeanor.

11 4.

12 On October 25, 2002, in the Superior Court of
13 California, County of Orange, Harbor Justice Center, respondent
14 was convicted in Docket/Case No. 02CF2165, upon a guilty plea to
15 one count of Penal Code Section 550(b)(1) (Present False or
16 Misleading Information on Insurance Claim), misdemeanor.

17 5.

18 The convictions alleged in Paragraphs 3 and 4, by their
19 facts and circumstances, involve moral turpitude and are
20 substantially related under Section 2910, Chapter 6, Title 10 of
21 the California Code of Regulations, to the qualifications,
22 functions or duties of a real estate licensee.

23 6.

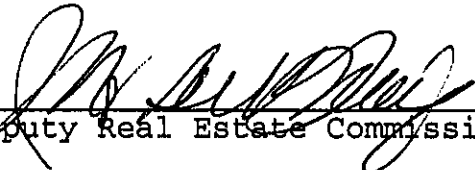
24 The convictions alleged in Paragraphs 3 and 4,
25 constitute cause for the suspension or revocation of the license
26
27

1 and license rights of respondent under Code Sections 490 and
2 10177(b).

3 WHEREFORE, Complainant prays that a hearing be
4 conducted on the allegations of this Accusation and that upon
5 proof thereof, a decision be rendered imposing disciplinary action
6 against the license and license rights of respondent ALAN ROGER
7 VAN DE VORT under the Real Estate Law (Part 1 of Division 4 of
8 the Business and Professions Code) and for such other and further
9 relief as may be proper under other applicable provision of law.

10 Dated at Los Angeles, California

11 This 13th day of April 2004.

12
13 
14 Deputy Real Estate Commissioner
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17
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22
23

24 cc: Alan Roger Van De Vort
25 Sacto
26 Maria Suarez
27 GD