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DEPARTMENT OF REAL ESTATE



DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-31124 LA
)	
)	L-2004080636
ARTHUR LLOYD FARLEY,)	
)	
)	
Respondent.)	

DECISION

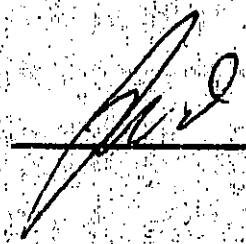
The Proposed Decision dated January 11, 2005, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(b)(3) of the Government Code of the State of California, the Proposed Decision, at page 1, the case number is amended to read, "H-31124 LA"; at page 1 and page 5, all mention of respondent's name is amended to read, "Arthur Lloyd Farley".

This Decision shall become effective at 12 o'clock noon on February 9, 2005.

IT IS SO ORDERED 29, 2005.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ARTHUR L. FARLEY,

Respondent.

Case No. H-31124

OAH No. L2004080636

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 8, 2004.

James R. Peel, Staff Counsel, represented Complainant Janice A. Waddell, Deputy Real Estate Commissioner.

Arthur L. Farley (hereinafter Respondent) was present at hearing and represented himself.

Oral and documentary evidence was received and the matter was submitted on December 8, 2004.

FACTUAL FINDINGS

1. Janice A. Waddell (Complainant) made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California, the Department of Real Estate (Department).
2. Respondent was licensed by the Department as a real estate salesperson on November 9, 1984, License No. 00876121. Respondent's real estate salesperson's license was in full force and effect at all times relevant to the allegations contained in the Accusation and will expire on February 25, 2006, unless renewed.
3. On October 3, 2001, in the Superior Court of California, County of Orange, Case No. 01SM04929, Respondent was convicted on his guilty plea to one count of willful infliction of corporal injury upon his spouse, in violation of Penal Code section 273.5, subdivision (a), a misdemeanor and a crime of moral turpitude that is substantially related to the qualifications, functions, and duties of a real estate salesperson. Imposition of sentence was suspended and Respondent was placed on three (3) years probation and ordered to serve

two (2) days in county jail, with credit for two (2) days served. As a condition of probation, Respondent was ordered to pay \$200.00 to the restitution fund, \$200.00 to the domestic violence fund, and to make a \$250.00 donation to Human Options—a Battered Woman's Shelter. Respondent was ordered to enroll and complete a batterer's program through KC Services. Respondent successfully completed all of the terms and conditions of his probation and on November 11, 2004, his probation was terminated.

4. The facts and circumstances surrounding Respondent's October 3, 2001, conviction are that on October 2, 2001, Respondent and his wife, Denise Farley, became involved in a domestic dispute. The argument was precipitated by a disagreement about how the couple's family could protect themselves against an attack following the September 11, 2001, terrorist attack in New York City. Respondent's wife suggested the family should purchase gas masks to protect against any subsequent chemical attack by terrorists. Respondent disagreed and an argument ensued. Later that day, Respondent overheard his wife on the telephone discussing the need for gas masks to protect against another terrorist attack. Respondent became angry and confronted Mrs. Farley. They begin to argue and shout at each other. Respondent then pushed Mrs. Farley and she fell to the floor, hitting the back of her head on the floor.

5. Respondent was concerned he may have injured his wife and called the paramedics and the police department to report the incident. Respondent was cooperative with police officers when they arrived and explained what had transpired. He told the officers he and his wife had argued and he became angry and pushed her to the floor. He stated that she may have hit her head on the floor. Mrs. Farley told the paramedics and police officers that her husband had thrown her to the floor and she hit her head. Mrs. Farley declined any medical assistance and stated that she did not want the incident to become public. An examination of Mrs. Farley by the police officers revealed a small cut on her arm and a quarter-size bump on the back of her head. Respondent was arrested and charged with corporal injury to a spouse and battery against a spouse.

6. Respondent is 60 years old and has been married for over 23 years to Denise Farley. He is a commercial real estate loan officer and worked in this capacity for over 20 years. Respondent immediately took full responsibility for his conduct and pleaded guilty to the charge of corporal injury to a spouse one day after the incident occurred. Her has not petitioned to have the conviction expunged because he believes he should accept full responsibility for his conduct. At hearing, Respondent did not attempt to justify his actions or minimize the seriousness of his conduct. His demeanor was that of an honest and truthful witness who realized he had made a mistake. Respondent admitted that he argued with his wife and that a lapse in judgment and his inability to control his anger caused him to become physical with his wife. He stated that he called the police after the incident because he realized the situation had become volatile. Respondent asserted that he voluntarily removed himself from the couples' residence after the incident.¹

¹ The arrest report indicated that an Emergency Protective Order was obtained by Mrs. Farley against Respondent that required Respondent to stay at least 100 yards away from the residence for a period of seven days. The report

7. Mrs. Farley testified that she was partly responsible for the confrontation with her husband because she had consumed a couple of glasses of wine and instigated the argument. She said the argument was a "ridiculous fight" and stated that since the incident, Respondent has never been physical with her again. Mrs. Farley recalled one minor domestic dispute prior to the October 2, 2001 incident, but that the incident was not reported to authorities. Although the Farleys have had subsequent disputes, none of these disputes have escalated into physical confrontation. Respondent and his wife have had a good marriage since the October 2001 incident, a marriage which Mrs. Farley describes as a "lot of fun."

8. Respondent successfully completed the terms and condition of his probation which ended in November 2004. He paid all of the restitution and fines ordered by the court. Respondent enrolled in the Batterer's Intervention counseling program in October 2001, and completed the 52-week program in November 2002. Marianne Abulone, MFT, the Executive Director of Associates in Counseling & Mediation, an approved program under Batterer's Intervention, wrote a letter on Respondent's behalf attesting to his successful completion of the program and how Respondent has applied what he learned in the program to his marriage.

9. Respondent has been very proficient and competent as a loan officer and is respected by his peers. Michael J. Skibba, Respondent's real estate broker at Commercial Lending Resource where Respondent is currently employed, stated that Respondent has a very high level of ethical responsibility and that he is well versed in all aspects of real estate transactions. Mrs. Farley also testified that she has never known Respondent to become abusive with any of his clients.

10. Respondent has also been involved in his community and church as is evidenced by his volunteer service and contributions to the Samaritan's Purse, an international relief organization supporting children around the world. Respondent has been involved with a project known as "Operation Christmas Child" which collects and distributes gifts to children internationally.

11. Respondent has no prior incidents of criminal misconduct before the October 2001 incident, and has not incurred any criminal convictions since October 2001.

12. There is sufficient evidence to conclude that Respondent has rehabilitated himself from his October 3, 2001 conviction for corporal injury upon his spouse, such that there would be no risk of significant injury to the public health and safety if he is allowed to retain his real estate salesperson's license.

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indicates however, that Ms. Farley was reluctant to consent to the order and consented only after being persuaded by the arresting officers.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's real estate salesperson's license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Factual Findings 3 through 5.

Corporal injury upon a spouse, a violation of Penal Code section 273.5, is substantially related to the qualifications, functions, and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), which provides that any unlawful act done with the intent or threat of doing substantial injury to the person or property of another is substantially related to the licensee's activities. Respondent's criminal offense also constitutes a crime of moral turpitude in that it involved physical injury upon his spouse. (See *People v. Rodriguez* (1992) 5 Cal.App.4th 1393 at p. 1402.)

2. Respondent has shown sufficient evidence to establish that the public's interest would not be placed at significant risk if he is allowed to retain his real estate salesperson's license, by reason of Factual Findings 6 through 12.

California Code of Regulations, title 10, section 2912, contains the Department's Disciplinary Guidelines and the criteria to be considered when determining whether a licensee has been rehabilitated from a criminal conviction. Section 2912 provides, in relevant part, that criteria showing rehabilitation includes: (1) a passage of not less than two (2) years since the most recent criminal conviction incurred by the licensee; (2) payment of restitution ordered for substantially related acts or omissions; (3) expungement of any convictions incurred; (4) successful completion or early discharge of probation; (5) payment of any fines imposed in connection with the conviction; (6) stability of family life and fulfillment or parental and familial responsibilities subsequent to the conviction; (7) significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefit or to solve social problems; and (8) a change in attitude from that which existed at the time of the commission of the criminal act.

Respondent has satisfied all of the relevant criteria for rehabilitation under the Department's Guidelines except that he has not petitioned to have his single conviction expunged. Respondent's conviction is over three years old, he has paid the restitution ordered by the court, and has successfully completed the terms and conditions of his probation. Respondent has sought and successfully completed a counseling program to address his anger issues and spousal abuse and appears to be applying what he has learned to his marital relationship with his wife. Mrs. Farley testified that their marriage has improved and that she is happy in her relationship with Respondent. Respondent has not petitioned to expunge his criminal conviction because he has chosen to fully accept responsibility for his actions.


Respondent recognizes his mistake and has taken responsibility for his actions. The record indicates that Respondent has honestly dealt with his anger problem and has taken positive steps to prevent the incident of spousal abuse from recurring. Respondent's misconduct has not impacted his relationship with his real estate clients or his ability to perform his duties as a real estate loan officer. Although such conduct is substantially related pursuant to the Department's regulations, the intimate and emotional factors that accompany domestic violence situations do not readily translate into the business environment, particularly where, as here, there does not exist a history of anger management incidents or violent offenses.

On this record, there is sufficient evidence to conclude that Respondent has established that he is rehabilitated from his October 2001 conduct. There is insufficient evidence to conclude that if Respondent is allowed to retain his real estate salesperson's license, it would present a significant risk of harm to the public's welfare. In light of substantial evidence of Respondent's rehabilitation, no useful purpose would be served by imposing license discipline at this time

ORDER

Accusation Number H-31124 LA against Respondent Arthur L. Farley is sustained without the imposition of discipline.

DATED: January 11, 2005


MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

Sacto.
Peel

FILED
OCT 27 2004
DEPARTMENT OF REAL ESTATE

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

[Handwritten Signature]

In the Matter of the Accusation of

ARTHUR LLOYD FARLEY

Respondent

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}

Case No. H-31124 LA

OAH No. L-2004080636

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 December 8, 2004, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

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

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

DEPARTMENT OF REAL ESTATE

Dated: October 27, 2004

By

[Handwritten Signature: James R. Peel]
JAMES R. PEEL, Counsel

cc: Arthur Lloyd Farley
Michael J. Skibba
Sacto./OAH

Handwritten initials: "H.R.D. Farley"

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

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

FILED
JUL 29 2004

DEPARTMENT OF REAL ESTATE
[Signature]

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H-31124 LA
ARTHUR LLOYD FARLEY,)	<u>ACCUSATION</u>
Respondent.)	

The Complainant, Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against ARTHUR LLOYD FARLEY, alleges as follows:

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The Complainant, Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

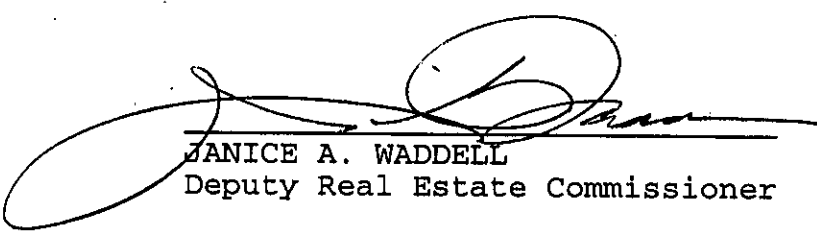
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ARTHUR LLOYD FARLEY (hereinafter referred to as "Respondent") is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter referred to as the "Code").

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

9 Dated at Los Angeles, California,

10 this 12 day of July, 2004.

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14 JANICE A. WADDELL
15 Deputy Real Estate Commissioner
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24 cc: Arthur Lloyd Farley
25 Michael John Skibba
26 Janice A. Waddell
27 Sacto.
AE