

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

In the Matter of the Accusation Against:

CALVIN JOE MOORE,

Real Estate Salesperson License Identification
No. 00901633

Respondent.

Case No. H - 31520 LA

OAH No. L2004120466

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on March 2, 2005.

Elliott Mac Lennan, Staff Counsel represented Maria Suarez, Deputy Real Estate Commissioner of the State of California (complainant) and the Department of Real Estate.

Calvin Joe Moore (respondent) appeared and represented himself.

Sworn testimony and documentary evidence was received, but the record was held open to allow respondent an opportunity to submit an exhibit by May 31, 2005. Respondent did not submit the additional exhibit by the due date and the matter was submitted on May 31, 2005.

The issue in this proceeding is whether respondent's license as a real estate broker should be disciplined based on his criminal convictions.

The Administrative Law Judge makes the following factual findings, legal conclusions and order:

FACTUAL FINDINGS

Jurisdiction

1. The Administrative Law Judge takes official notice that complainant filed the Accusation while acting in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate, State of California. (Complainant exhibit 1.)

License

2. The California Department of Real Estate originally licensed respondent as a real estate broker, license number 00901633, on November 15, 1985. The license is currently active and will expire on June 7, 2007. (Complainant exhibits 1 and 2.)

Conviction

3. On October 24, 2003, in the Superior Court of California, County of Los Angeles, in Case No. 3LM09377, *People v. Calvin Joe Moore*, the court convicted respondent on pleas of nolo contendere of violating Penal Code section 273.5, subdivision (a), willfully inflicting corporal injury on a spouse or cohabitant that results in a traumatic condition, and Penal Code section 591, unlawful and malicious removal or obstruction of a telephone or power line, both misdemeanor offenses.

The court suspended imposition of sentence and placed respondent on summary probation for a period of three (3) years under certain terms and conditions, including three days in county jail, payment of fines and restitution, and enrollment in a domestic violence program. (Complainant exhibit 3.)

4. The facts and circumstances surrounding the offense and conviction are that on October 22, 2003, respondent got into an argument with a female with whom he had been cohabitating for two and one-half years. As the argument became more heated, the victim struck respondent several times with a closed fist, after which respondent picked up a portable radio/compact disc (CD) player and threw it at the victim, striking her in the arm and hand. During the altercation, the victim tried to use the telephone to call the police, but respondent removed the telephone line from the wall receptacle. When the victim then attempted to contact the police on her cellular telephone, respondent grabbed the telephone from her hand and only returned it when he was exiting the premises. After he departed, the victim contacted the police. The investigating police officer identified fresh scratches on the victim's left biceps / triceps area, as documented in a Long Beach Police Department Incident - Arrest Report. (Complainant exhibit 4.)

Testimony of Cynthia Moore

5. Ms. Cynthia Moore, who testified on behalf of respondent, was the victim in the domestic violence incident that resulted in respondent's arrest and conviction. She stated that she and respondent are not married (the fact that they have the same last name is merely a coincidence), but she had known him for approximately four years and they still have a relationship wherein they date and periodically cohabitate.

Ms. Moore testified that upon arising in respondent's residence on the morning of October 22, 2003, she noted that respondent was "agitated." In the course of an argument that then started, respondent picked up the victim's compact disc player, which Ms. Moore also described as a small "boombox," and threw it at her. When Ms. Moore attempted to use respondent's telephone, respondent grabbed it from her. In response, Ms. Moore then attempted to use her cell phone to place a call, but respondent again grabbed the phone from her hands. She stated that he "slammed" the telephone down on the television and left the premises. Ms. Moore then contacted the police.

When police officers arrived at Mr. Moore's residence, Ms. Moore showed them the compact disc player and said that she did not want respondent arrested. The police officers took photographs of Ms. Moore and her injuries.

Ms. Moore testified that the police report (complainant exhibit 4) is not true regarding the altercation, and that she does not know why the police misconstrued what actually happened.

6. Respondent offered into evidence a letter, dated March 12, 2004, written by Ms. Moore and addressed to Superior Court "Judge Andrews" (respondent exhibit B). In her letter, Ms. Moore wrote that she and respondent "got into a very heated argument and as Mr. Moore was yelling and fussing, he struck out at me, at which time I began to fight him." She also wrote that she called the police "not because I was being abused . . . I just did not want Mr. Moore to ever strike out because of his anger toward any female." She also stated that "Mr. Moore is not a violent man and he has a great amount of restraint. . . . Mr. Moore doesn't abuse nor fight females as I know." Ms. Moore asked the judge not to cause Mr. Moore to "pay for a wrongful Long Beach Police Dept. error."

Testimony of Respondent Calvin Moore

7. Respondent testified that during the 20 years he had been licensed in real estate, he had no incidents or problems. Respondent works in real estate during the day, handling property sales and listings, and at night is employed as a cashier at a card club. He stated that on the date of the domestic violence incident, he just wanted to be alone. He admits that he handled the situation with Ms. Moore in an improper way.

8. In the Conviction Detail Report he submitted to the Department of Real Estate (complainant exhibit 6), respondent stated he allowed Ms. Moore to temporarily stay at his residence after she was removed from her apartment. After two weeks, respondent felt that Ms. Moore had overextended her stay and he asked her to leave. An argument ensued and respondent started packing her belongings. Ms. Moore interfered when respondent was packing her radio and, as a result, received a scratch on her arm. Mr. Moore stated he was angry.

9. Respondent stated that he has had to participate in a court-ordered domestic violence program and attend classes in anger management. These classes allegedly changed his way of thinking, in that he realizes that he made some mistakes, and he has benefited from the learning experience. (Complainant exhibit 6; Respondent exhibit A.)

10. Respondent said that he spent three days in jail for the subject offense and pled nolo contendere because he could not risk further incarceration.

11. During the administrative hearing, respondent presented evidence of a meeting he scheduled for March 16, 2005, at the Law Offices of the Los Angeles County Public Defender, to initiate the process of having his conviction expunged. (Respondent exhibit C.)

LEGAL CONCLUSIONS

Legal Authority

1. Business and Professions Code section 490 states, in pertinent part: "A [department] may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

2. Business and Professions Code section 10177 states, in pertinent part, that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude . . . irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

Moral Turpitude

3. When considered in isolation, removal of a telephone line would not be considered to be *per se* a crime of moral turpitude. However, domestic violence is considered to be a crime of moral turpitude. While its elements alone do not negate one of the required traits of the real estate profession, that is, it would not establish a reasonable basis for concluding that the perpetrator lacks integrity or is inherently dishonest, it does however indicate general immorality. (See *People v. Thornton* (1992) 3 Cal.App.4th 419, 422 - 424; *People v. Mansfield* (1992) 200 Cal.App.3d 82, 88 - 89.)

Specifically, with respect to domestic violence:

To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable.

To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it wilfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.

(*People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402)

4. "Corporal injury" means a bodily injury. Under Penal Code section 273.5, subdivision (c), a "traumatic condition" is defined as a condition of the body such as a wound or external or internal injury, whether of minor or serious nature, caused by a physical force. Respondent's offense of domestic violence involves moral turpitude because corporal injury that results in a traumatic condition, by its legal definition, involves the use of force on another person in the form of harmful or offensive contact and demonstrates a readiness to do harm to another. (See CALJIC No. 9.35 (6th ed. 1996); *Guerrero de Nodahl v. INS* (9th Cir. 1969) 407 F.2d 1405; *Grageda v. INS* (9th Cir. 1993) 12 F.3d 919.)

Penal Code section 273.5, subdivision (a), makes no distinction between a spouse and a cohabitant. The statute prohibits equally the willful infliction of harm upon either one of these victims. A person who cohabits with the offender maintains a relationship of a familial nature with the perpetrator of the harm. This relationship is likely to be one of trust and possibly dependency, similar to that of a spousal relationship. Because of this special nature of spousal relationships and non-spousal cohabiting-partner relationships, the Legislature deliberately provided that even minor injuries inflicted in these contexts are in violation of the law. Violence between the parties of such a relationship is different from that between strangers or acquaintances, which may or may not involve moral turpitude, depending on the nature of the offense as delineated by statute.

Inasmuch as willful infliction of injury upon a cohabitant constitutes the same violation under Penal Code section 273.5, subdivision (a), as infliction of injury on a spouse, and is as reprehensible as spousal abuse, willful infliction of injury upon a cohabitant involves moral turpitude.

5. During the domestic altercation, Ms. Moore attempted to contact authorities for assistance to end the violence. Respondent obstructed her attempt by interfering with the telephone connection in his residence. Regardless of whether respondent merely disconnected the device or actually damaged the device, he interfered with a call for help. As such, his action was inextricably tied to the domestic violence incident, in that he prevented the victim from obtaining timely assistance and relief in the conflict, potentially instilling fear and helplessness in the victim. Under the circumstances, respondent's malicious act of removing the telephone line also demonstrated moral turpitude.

Substantial Relationship

6. California Code of Regulations, title 10, section 2910 sets forth various criteria to be considered in determining if a crime or act is substantially related to the qualifications, functions, or duties of a licensee. Subdivision (a)(8) provides that "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another" is substantially related to the qualifications, functions or duties of a real estate broker.

7. The underlying circumstances of respondent's domestic violence and telephone obstruction convictions show that he intended or threatened to do substantial injury to his cohabitant or her property. These crimes not only involve moral turpitude but are also substantially related to the qualifications, functions, or duties of a real estate licensee for purposes of both Business and Professions Code sections 10177 and 490.

8. A professional license may not require an agency to reexamine independently the facts that underlie a guilty plea and may not relitigate the issue of guilt previously resolved in a criminal court. An administrative agency is entitled to rely on the applicant's plea to establish that a criminal conviction involved moral turpitude. (See *Arneson v. Fox* (1980) 28 Cal.3d 440.)

"[A]n examination of the express language of [Business and Professions Code] section 10177.5 [] makes the judgment itself the operative fact upon which disciplinary action is imposed; irrelevant, therefore are the acts or omissions of the licensee which led to the judgment." (*Richards v. Gordon* (1967) 254 Cal.App.2d 735, 741.) However, under Business and Professions Code section 493, the Department of Real Estate "may inquire into the circumstances surrounding the commission of the crime in order to fix the

degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

Credibility

9. According to the Long Beach Police Report (complainant exhibit 4), Ms. Cynthia Moore provided the investigating officers with detailed information regarding the circumstances of her altercation with respondent, including that respondent initiated the altercation, "picked up a portable radio/CD player and threw it at [her] hitting her right arm/hand," and that he "grabbed [] the phone line and ripped [it] from the connector in the wall." The police report further states: "The victim is willing to prosecute, can testify to her statements made in this report, was given a crime report receipt and information on how to obtain a TRO [temporary restraining order.]"

10. In her letter, prepared approximately five months after the incident, Ms. Moore stated that although respondent struck out at her, she fought back and did not want respondent to have to pay for what had happened.

11. While admitting and expressing remorse over the altercation, respondent tried to minimize its severity. For example, respondent testified that he merely unplugged the telephone jack from the wall.

12. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance, supra*, 189 Cal.App.3d at 1052.)

13. Under Government Code section 11513, subdivision (c), "any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in civil actions. A police officer's report, even if unsworn, constitutes the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (*Lake v. Reed* (1997) 16 Cal. 4th 448, 460-461.) Pursuant to Government Code section 11530, subdivision (d), "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence." Given this evidentiary framework, Ms. Moore's statements to investigating officers, which are considered administrative

hearsay, can be used to explain or supplement her statements when testifying under oath during the administrative hearing, including consideration of prior inconsistent statements to assess her credibility. Additionally, Respondent's statements to investigating officers can be considered direct evidence. (*Id.* at p. 461.)

While both Ms. Moore and respondent appeared sincere in their testimony, the administrative law judge must weigh the contents of the police report that was contemporaneously prepared based on the reporting officer's observations and the information provided by the victim at that time, against the retrospective perceptions of the victim, which must be viewed in the light of the respondent and victim's continuing relationship and respondent's realization of the significant impact that the criminal conviction and potential administrative discipline may have on his license as a real estate broker. The police report contained a 1-1/3 page detailed narrative, describing the altercation, and containing information that could only have been provided by either respondent or the victim. There is no reason why the investigating officers would have fabricated their report. As such, the Administrative Law Judge gives greater weight to the report prepared by the investigating police officer, who is presumed to have properly performed his official public duties at the time.

Rehabilitation

14. The Department of Real Estate has established criteria for rehabilitation from conviction of a crime to be considered in a disciplinary proceeding. The rehabilitation criteria are found at California Code of Regulations, title 10, section 2911, and are summarized as follows:

- a. Passage of at least two years since the most recent criminal conviction or act
- b. Restitution to any person who has suffered monetary losses
- c. Expungement of criminal convictions
- d. Expungement or discontinuance of a requirement to register as a sex offender
- e. Successful completion or early discharge from probation or parole
- f. Abstinence for at least two years from the use of controlled substances or alcohol
- g. Family life stability of and fulfillment of parental and familial responsibilities
- h. Completion of, or enrollment in, formal education or vocational training courses
- i. Discharge or bona fide efforts toward discharging debts or obligations
- j. Correction of business practices that may result in injury to others
- k. Involvement in community, church or privately-sponsored programs
- l. New and different social and business relationships
- m. Change in attitude, as evidenced by applicant / respondent and other persons knowledgeable and competent to testify and absence of subsequent convictions

15. Although it has not been two years since respondent's conviction, he had been diligent in complying with the terms and conditions of his probation, which is not scheduled to end until October 2006. (Respondent exhibit A.) Respondent is now seeking expungement of his conviction, which if approved, would result in early termination of probation. (Respondent exhibit C.) As indicated above, the instruction respondent received in domestic violence and anger management has led to a change in his attitude regarding dealing with conflicts. Thus, respondent has addressed most of the criteria applicable to his situation.

Decision

16. The standard of proof in this proceeding is "clear and convincing evidence to a reasonable certainty," meaning that complainant is obliged to adduce evidence that is clear, explicit, and unequivocal -- so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. ((*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1893; *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

17. Complainant established by clear and convincing evidence to a reasonable certainty that respondent's license to practice as a real estate broker is subject to discipline pursuant to Business and Professions Code section 490, for conviction of crimes of moral turpitude substantially related to the qualifications, functions, and duties of a real estate broker. (Factual Findings 3 and 4; Legal Conclusions 1, 6, 7, and 8.)

18. Complainant established by clear and convincing evidence to a reasonable certainty that respondent's license to practice as a real estate broker is subject to discipline pursuant to Business and Professions Code section 10177, subdivision (b), for conviction of crimes involving moral turpitude (Factual Findings 3 and 4; Legal Conclusions 2, 3 through 8.)

19. 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 domestic violence and anger management classes have altered the way he responds to certain situations. (Factual Findings 3 and 9; Legal Conclusion 14.)

20. Given that there is no evidence that respondent had previously been disciplined by the Department of Real Estate, when the whole record is considered, it appears that the public can be protected by an order whereby respondent's license is suspended, but a major portion of that suspension is stayed, and Respondent is placed on probation

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Calvin Joe Moore under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

1. If Respondent petitions, the thirty (30) days actual suspension (or a portion thereof) shall also be stayed upon condition that:

a. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250.00 for each day of the suspension for a total monetary penalty of up to \$7,500.00.

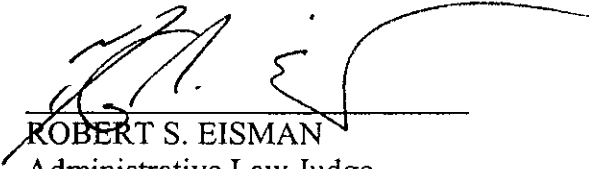
b. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter;

2. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

3. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension, in which event respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

4. If no further cause for disciplinary action against the real estate license of Respondent occurs within two years from the effective date of the Decision, the stay hereby granted shall become permanent.

June 1, 2005


ROBERT S. EISMAN

Administrative Law Judge
Office of Administrative Hearings

Success

FILED
JUN 28 2005
DEPARTMENT OF REAL ESTATE

By K. Maderholt

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-31520 LA
CALVIN JOE MOORE,	)	
	)	L-2004120466
Respondent.	)	
	)	
	)	

NOTICE

TO: CALVIN JOE MOORE, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated June 1, 2005, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated June 1, 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 March 2, 2005, and any written argument hereafter submitted on behalf of Respondent and Complainant.

1 Written argument of Respondent to be considered by me
2 must be submitted within 15 days after receipt of the transcript
3 of the proceedings of March 2, 2005, at the Los Angeles office of
4 the Department of Real Estate unless an extension of the time is
5 granted for good cause shown.

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

11 DATED: June 27, 2005

12
13 JEFF DAVI
14 Real Estate Commissioner

15 *John R. Liberator*

16
17 BY: John R. Liberator
18 Chief Deputy Commissioner

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

In the Matter of the Accusation Against:

CALVIN JOE MOORE,

Real Estate Salesperson License Identification
No. 00901633

Respondent.

Case No. H - 31520 LA

OAH No. L2004120466

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on March 2, 2005.

Elliott Mac Lennan, Staff Counsel represented Maria Suarez, Deputy Real Estate Commissioner of the State of California (complainant) and the Department of Real Estate.

Calvin Joe Moore (respondent) appeared and represented himself.

Sworn testimony and documentary evidence was received, but the record was held open to allow respondent an opportunity to submit an exhibit by May 31, 2005. Respondent did not submit the additional exhibit by the due date and the matter was submitted on May 31, 2005.

The issue in this proceeding is whether respondent's license as a real estate broker should be disciplined based on his criminal convictions.

The Administrative Law Judge makes the following factual findings, legal conclusions and order:

FACTUAL FINDINGS

Jurisdiction

1. The Administrative Law Judge takes official notice that complainant filed the Accusation while acting in her official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate, State of California. (Complainant exhibit 1.)

License

2. The California Department of Real Estate originally licensed respondent as a real estate broker, license number 00901633, on November 15, 1985. The license is currently active and will expire on June 7, 2007. (Complainant exhibits 1 and 2.)

Conviction

3. On October 24, 2003, in the Superior Court of California, County of Los Angeles, in Case No. 3LM09377, *People v. Calvin Joe Moore*, the court convicted respondent on pleas of nolo contendere of violating Penal Code section 273.5, subdivision (a), willfully inflicting corporal injury on a spouse or cohabitant that results in a traumatic condition, and Penal Code section 591, unlawful and malicious removal or obstruction of a telephone or power line, both misdemeanor offenses.

The court suspended imposition of sentence and placed respondent on summary probation for a period of three (3) years under certain terms and conditions, including three days in county jail, payment of fines and restitution, and enrollment in a domestic violence program. (Complainant exhibit 3.)

4. The facts and circumstances surrounding the offense and conviction are that on October 22, 2003, respondent got into an argument with a female with whom he had been cohabitating for two and one-half years. As the argument became more heated, the victim struck respondent several times with a closed fist, after which respondent picked up a portable radio/compact disc (CD) player and threw it at the victim, striking her in the arm and hand. During the altercation, the victim tried to use the telephone to call the police, but respondent removed the telephone line from the wall receptacle. When the victim then attempted to contact the police on her cellular telephone, respondent grabbed the telephone from her hand and only returned it when he was exiting the premises. After he departed, the victim contacted the police. The investigating police officer identified fresh scratches on the victim's left biceps / triceps area, as documented in a Long Beach Police Department Incident - Arrest Report. (Complainant exhibit 4.)

Testimony of Cynthia Moore

5. Ms. Cynthia Moore, who testified on behalf of respondent, was the victim in the domestic violence incident that resulted in respondent's arrest and conviction. She stated that she and respondent are not married (the fact that they have the same last name is merely a coincidence), but she had known him for approximately four years and they still have a relationship wherein they date and periodically cohabitate.

Ms. Moore testified that upon arising in respondent's residence on the morning of October 22, 2003, she noted that respondent was "agitated." In the course of an argument that then started, respondent picked up the victim's compact disc player, which Ms. Moore also described as a small "boombox," and threw it at her. When Ms. Moore attempted to use respondent's telephone, respondent grabbed it from her. In response, Ms. Moore then attempted to use her cell phone to place a call, but respondent again grabbed the phone from her hands. She stated that he "slammed" the telephone down on the television and left the premises. Ms. Moore then contacted the police.

When police officers arrived at Mr. Moore's residence, Ms. Moore showed them the compact disc player and said that she did not want respondent arrested. The police officers took photographs of Ms. Moore and her injuries.

Ms. Moore testified that the police report (complainant exhibit 4) is not true regarding the altercation, and that she does not know why the police misconstrued what actually happened.

6. Respondent offered into evidence a letter, dated March 12, 2004, written by Ms. Moore and addressed to Superior Court "Judge Andrews" (respondent exhibit B). In her letter, Ms. Moore wrote that she and respondent "got into a very heated argument and as Mr. Moore was yelling and fussing, he struck out at me, at which time I began to fight him." She also wrote that she called the police "not because I was being abused . . . I just did not want Mr. Moore to ever strike out because of his anger toward any female." She also stated that "Mr. Moore is not a violent man and he has a great amount of restraint. . . . Mr. Moore doesn't abuse nor fight females as I know." Ms. Moore asked the judge not to cause Mr. Moore to "pay for a wrongful Long Beach Police Dept. error."

Testimony of Respondent Calvin Moore

7. Respondent testified that during the 20 years he had been licensed in real estate, he had no incidents or problems. Respondent works in real estate during the day, handling property sales and listings, and at night is employed as a cashier at a card club. He stated that on the date of the domestic violence incident, he just wanted to be alone. He admits that he handled the situation with Ms. Moore in an improper way.

8. In the Conviction Detail Report he submitted to the Department of Real Estate (complainant exhibit 6), respondent stated he allowed Ms. Moore to temporarily stay at his residence after she was removed from her apartment. After two weeks, respondent felt that Ms. Moore had overextended her stay and he asked her to leave. An argument ensued and respondent started packing her belongings. Ms. Moore interfered when respondent was packing her radio and, as a result, received a scratch on her arm. Mr. Moore stated he was angry.

9. Respondent stated that he has had to participate in a court-ordered domestic violence program and attend classes in anger management. These classes allegedly changed his way of thinking, in that he realizes that he made some mistakes, and he has benefited from the learning experience. (Complainant exhibit 6; Respondent exhibit A.)

10. Respondent said that he spent three days in jail for the subject offense and pled nolo contendere because he could not risk further incarceration.

11. During the administrative hearing, respondent presented evidence of a meeting he scheduled for March 16, 2005, at the Law Offices of the Los Angeles County Public Defender, to initiate the process of having his conviction expunged. (Respondent exhibit C.)

LEGAL CONCLUSIONS

Legal Authority

1. Business and Professions Code section 490 states, in pertinent part: "A [department] may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

2. Business and Professions Code section 10177 states, in pertinent part, that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude . . . irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

Moral Turpitude

3. When considered in isolation, removal of a telephone line would not be considered to be *per se* a crime of moral turpitude. However, domestic violence is considered to be a crime of moral turpitude. While its elements alone do not negate one of the required traits of the real estate profession, that is, it would not establish a reasonable basis for concluding that the perpetrator lacks integrity or is inherently dishonest, it does however indicate general immorality. (See *People v. Thornton* (1992) 3 Cal.App.4th 419, 422 - 424; *People v. Mansfield* (1992) 200 Cal.App.3d 82, 88 - 89.)

Specifically, with respect to domestic violence:

To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable.

To have joined in, and thus necessarily to be aware of, that special relationship, and then to violate it wilfully and with intent to injure, necessarily connotes the general readiness to do evil that has been held to define moral turpitude.

(*People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402)

4. "Corporal injury" means a bodily injury. Under Penal Code section 273.5, subdivision (c), a "traumatic condition" is defined as a condition of the body such as a wound or external or internal injury, whether of minor or serious nature, caused by a physical force. Respondent's offense of domestic violence involves moral turpitude because corporal injury that results in a traumatic condition, by its legal definition, involves the use of force on another person in the form of harmful or offensive contact and demonstrates a readiness to do harm to another. (See CALJIC No. 9.35 (6th ed. 1996); *Guerrero de Nodahl v. INS* (9th Cir. 1969) 407 F.2d 1405; *Grageda v. INS* (9th Cir. 1993) 12 F.3d 919.)

Penal Code section 273.5, subdivision (a), makes no distinction between a spouse and a cohabitant. The statute prohibits equally the willful infliction of harm upon either one of these victims. A person who cohabits with the offender maintains a relationship of a familial nature with the perpetrator of the harm. This relationship is likely to be one of trust and possibly dependency, similar to that of a spousal relationship. Because of this special nature of spousal relationships and non-spousal cohabiting-partner relationships, the Legislature deliberately provided that even minor injuries inflicted in these contexts are in violation of the law. Violence between the parties of such a relationship is different from that between strangers or acquaintances, which may or may not involve moral turpitude, depending on the nature of the offense as delineated by statute.

Inasmuch as willful infliction of injury upon a cohabitant constitutes the same violation under Penal Code section 273.5, subdivision (a), as infliction of injury on a spouse, and is as reprehensible as spousal abuse, willful infliction of injury upon a cohabitant involves moral turpitude.

5. During the domestic altercation, Ms. Moore attempted to contact authorities for assistance to end the violence. Respondent obstructed her attempt by interfering with the telephone connection in his residence. Regardless of whether respondent merely disconnected the device or actually damaged the device, he interfered with a call for help. As such, his action was inextricably tied to the domestic violence incident, in that he prevented the victim from obtaining timely assistance and relief in the conflict, potentially instilling fear and helplessness in the victim. Under the circumstances, respondent's malicious act of removing the telephone line also demonstrated moral turpitude.

Substantial Relationship

6. California Code of Regulations, title 10, section 2910 sets forth various criteria to be considered in determining if a crime or act is substantially related to the qualifications, functions, or duties of a licensee. Subdivision (a)(8) provides that "doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another" is substantially related to the qualifications, functions or duties of a real estate broker.

7. The underlying circumstances of respondent's domestic violence and telephone obstruction convictions show that he intended or threatened to do substantial injury to his cohabitant or her property. These crimes not only involve moral turpitude but are also substantially related to the qualifications, functions, or duties of a real estate licensee for purposes of both Business and Professions Code sections 10177 and 490.

8. A professional license may not require an agency to reexamine independently the facts that underlie a guilty plea and may not relitigate the issue of guilt previously resolved in a criminal court. An administrative agency is entitled to rely on the applicant's plea to establish that a criminal conviction involved moral turpitude. (See *Arneson v. Fox* (1980) 28 Cal.3d 440.)

"[A]n examination of the express language of [Business and Professions Code] section 10177.5 [] makes the judgment itself the operative fact upon which disciplinary action is imposed; irrelevant, therefore are the acts or omissions of the licensee which led to the judgment." (*Richards v. Gordon* (1967) 254 Cal.App.2d 735, 741.) However, under Business and Professions Code section 493, the Department of Real Estate "may inquire into the circumstances surrounding the commission of the crime in order to fix the

degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

Credibility

9. According to the Long Beach Police Report (complainant exhibit 4), Ms. Cynthia Moore provided the investigating officers with detailed information regarding the circumstances of her altercation with respondent, including that respondent initiated the altercation, "picked up a portable radio/CD player and threw it at [her] hitting her right arm/hand," and that he "grabbed [] the phone line and ripped [it] from the connector in the wall." The police report further states: "The victim is willing to prosecute, can testify to her statements made in this report, was given a crime report receipt and information on how to obtain a TRO [temporary restraining order.]"

10. In her letter, prepared approximately five months after the incident, Ms. Moore stated that although respondent struck out at her, she fought back and did not want respondent to have to pay for what had happened.

11. While admitting and expressing remorse over the altercation, respondent tried to minimize its severity. For example, respondent testified that he merely unplugged the telephone jack from the wall.

12. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance, supra*, 189 Cal.App.3d at 1052.)

13. Under Government Code section 11513, subdivision (c), "any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in civil actions. A police officer's report, even if unsworn, constitutes the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs." (*Lake v. Reed* (1997) 16 Cal. 4th 448, 460-461.) Pursuant to Government Code section 11530, subdivision (d), "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence." Given this evidentiary framework, Ms. Moore's statements to investigating officers, which are considered administrative

hearsay, can be used to explain or supplement her statements when testifying under oath during the administrative hearing, including consideration of prior inconsistent statements to assess her credibility. Additionally, Respondent's statements to investigating officers can be considered direct evidence. (*Id.* at p. 461.)

While both Ms. Moore and respondent appeared sincere in their testimony, the administrative law judge must weigh the contents of the police report that was contemporaneously prepared based on the reporting officer's observations and the information provided by the victim at that time, against the retrospective perceptions of the victim, which must be viewed in the light of the respondent and victim's continuing relationship and respondent's realization of the significant impact that the criminal conviction and potential administrative discipline may have on his license as a real estate broker. The police report contained a 1-1/3 page detailed narrative, describing the altercation, and containing information that could only have been provided by either respondent or the victim. There is no reason why the investigating officers would have fabricated their report. As such, the Administrative Law Judge gives greater weight to the report prepared by the investigating police officer, who is presumed to have properly performed his official public duties at the time.

Rehabilitation

14. The Department of Real Estate has established criteria for rehabilitation from conviction of a crime to be considered in a disciplinary proceeding. The rehabilitation criteria are found at California Code of Regulations, title 10, section 2911, and are summarized as follows:

- a. Passage of at least two years since the most recent criminal conviction or act
- b. Restitution to any person who has suffered monetary losses
- c. Expungement of criminal convictions
- d. Expungement or discontinuance of a requirement to register as a sex offender
- e. Successful completion or early discharge from probation or parole
- f. Abstinence for at least two years from the use of controlled substances or alcohol
- g. Family life stability of and fulfillment of parental and familial responsibilities
- h. Completion of, or enrollment in, formal education or vocational training courses
- i. Discharge or bona fide efforts toward discharging debts or obligations
- j. Correction of business practices that may result in injury to others
- k. Involvement in community, church or privately-sponsored programs
- l. New and different social and business relationships
- m. Change in attitude, as evidenced by applicant / respondent and other persons knowledgeable and competent to testify and absence of subsequent convictions

15. Although it has not been two years since respondent's conviction, he had been diligent in complying with the terms and conditions of his probation, which is not scheduled to end until October 2006. (Respondent exhibit A.) Respondent is now seeking expungement of his conviction, which if approved, would result in early termination of probation. (Respondent exhibit C.) As indicated above, the instruction respondent received in domestic violence and anger management has led to a change in his attitude regarding dealing with conflicts. Thus, respondent has addressed most of the criteria applicable to his situation.

Decision

16. The standard of proof in this proceeding is "clear and convincing evidence to a reasonable certainty," meaning that complainant is obliged to adduce evidence that is clear, explicit, and unequivocal -- so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. ((*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1893; *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

17. Complainant established by clear and convincing evidence to a reasonable certainty that respondent's license to practice as a real estate broker is subject to discipline pursuant to Business and Professions Code section 490, for conviction of crimes of moral turpitude substantially related to the qualifications, functions, and duties of a real estate broker. (Factual Findings 3 and 4; Legal Conclusions 1, 6, 7, and 8.)

18. Complainant established by clear and convincing evidence to a reasonable certainty that respondent's license to practice as a real estate broker is subject to discipline pursuant to Business and Professions Code section 10177, subdivision (b), for conviction of crimes involving moral turpitude (Factual Findings 3 and 4; Legal Conclusions 2, 3 through 8.)

19. 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 domestic violence and anger management classes have altered the way he responds to certain situations. (Factual Findings 3 and 9; Legal Conclusion 14.)

20. Given that there is no evidence that respondent had previously been disciplined by the Department of Real Estate, when the whole record is considered, it appears that the public can be protected by an order whereby respondent's license is suspended, but a major portion of that suspension is stayed, and Respondent is placed on probation

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent Calvin Joe Moore under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision; provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

1. If Respondent petitions, the thirty (30) days actual suspension (or a portion thereof) shall also be stayed upon condition that:

a. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$250.00 for each day of the suspension for a total monetary penalty of up to \$7,500.00.

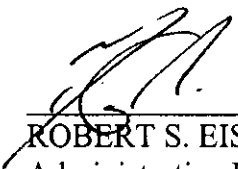
b. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be received by the Department prior to the effective date of the Decision in this matter;

2. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

3. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years of the effective date of this Decision. Should such a determination be made, the Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed suspension, in which event respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

4. If no further cause for disciplinary action against the real estate license of Respondent occurs within two years from the effective date of the Decision, the stay hereby granted shall become permanent.

June 1, 2005


ROBERT S. EISMAN

Administrative Law Judge
Office of Administrative Hearings

Handwritten initials

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 21 2005
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

CALVIN JOE MOORE,

By *K. Kiedorhult*

Case No. H-31520 LA

OAH No. L-2004120466

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Ste. 630, Los Angeles, CA on March 2, 2005, 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: JAN 21 2005

By

ELL
ELLIOTT MAC LENNAN, Counsel

cc: Calvin J. Moore
Sacto/OAH/GD

Handwritten: 10/20/04

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105
5
6
7
8 Telephone: (213) 576-6911 (direct)
9 -or- (213) 576-6982 (office)

FILED
NOV 22 2004
DEPARTMENT OF REAL ESTATE
By K. Frederick

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-31520LA
CALVIN JOE MOORE	)	<u>ACCUSATION</u>
Respondent.	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against CALVIN JOE MOORE, is informed and alleges in her official capacity as follows:

1.

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

2.

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate broker on November 15, 1985.

3.

On October 24, 2003, in the Superior Court of California, County of Los Angeles, State of California, in Case No. 3LM09377, respondent was convicted upon a plea of nolo contendere to one count of California Penal Code Sections 273.5(a) (Inflicting Corporal Injury on Spouse) and 591 (Injure Telephone/Power Line), misdemeanor crimes. These crimes, by their facts and circumstances, are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations "Regulations"), to the qualifications, functions or duties of a real estate licensee.

4.

The facts as alleged in Paragraph 3, above, constitute cause for the suspension or revocation of the license and license rights of respondent under Code Sections 490 and 10177(b).

///

///

///

///

///

///

///

///

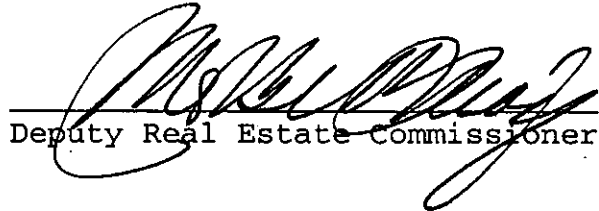
///

///

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 action
4 against the license and license rights of respondent CALVIN JOE
5 MOORE 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 provision of law.

8 Dated at Los Angeles, California

9 This *16th day of November 2004.*

10
11
12 
13 Deputy Real Estate Commissioner
14
15
16
17
18
19
20
21
22
23
24

25 cc: Calvin Joe Moore
26 Sacto
27 Maria Suarez
RGD