

By

* * *

Respondent.

On July 21, 2005, respondent's real estate salesperson license was revoked with the right to a restricted license. On the same date, a restricted real estate salesperson license was issued by the Department of Real Estate to respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Decision, in case No. H-31623 LA. This Order granted Respondent the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the Business

1 and Professions Code and to enumerated additional terms,
2 conditions and restrictions imposed under authority of Section
3 10156.6 of said Code. Among those terms, conditions and
4 restrictions, Respondent was required to take and pass the
5 Professional Responsibility Examination administered by the
6 Department within six (6) months from July 21, 2005. The
7 Commissioner has determined that as of January 21, 2006,
8 Respondent has failed to satisfy these conditions, and as
9 such, is in violation of Section 10177(k) of the Business and
10 Professions Code. Respondent has no right to renew the
11 restricted license if this condition is not satisfied by the
12 date of its expiration (Section 10156.7 of the Business and
13 Professions Code.)

14
15 NOW, THEREFORE, IT IS ORDERED under authority of
16 Section 10156.7 of the Business and Professions Code of the
17 State of California that the restricted real estate
18 salesperson license heretofore issued to respondent and the
19 exercise of any privileges thereunder is hereby suspended
20 until such time as Respondent provides proof satisfactory to
21 the Department of having taken and passed the Professional
22 Responsibility Examination administered by the Department, as
23 referred to above, or pending final determination made after
24 hearing (see "Hearing Rights" set forth below).

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1 IT IS FURTHER ORDERED that all license certificates
2 and identification cards issued by Department which are in the
3 possession of respondent be immediately surrendered by
4 personal delivery or by mailing in the enclosed, self-
5 addressed envelope to:

6 Department of Real Estate
7 Attn: Flag Section
8 P. O. Box 187000
Sacramento, CA 95818-7000

9 HEARING RIGHTS: Pursuant to the provisions of Section
10 10156.7 of the Business and Professions Code, you have the
11 right to a hearing to contest the Commissioner's determination
12 that you are in violation of Section 10177(k). If you desire
13 a hearing, you must submit a written request. The request may
14 be in any form, as long as it is in writing and indicates that
15 you want a hearing. Unless a written request for a hearing,
16 signed by or on behalf of you, is delivered or mailed to the
17 Department at 320 West Fourth Street, Suite 350, Los Angeles,
18 California, within 20 days after the date that this Order was
19 mailed to or served on you, the Department will not be
20 obligated or required to provide you with a hearing.

21 This Order shall be effective immediately.

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23 DATED: 5-9-06, 2006

24 JEFF DAVIS
25 Real Estate Commissioner
26
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FILED
JUL 01 2005

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By

* * * * *

In the Matter of the Accusation of)
)
)
J. SHELTON BENNETT,)
)
)
Respondent.)

No. H-31623 LA

L-2005030200

DECISION

The Proposed Decision dated May 26, 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.

The Decision suspends or revokes one or more real estate licenses on grounds of conviction of a crime and knowingly making a false statement of fact required to be revealed in an application for license.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on July 21, 2005

IT IS SO ORDERED

JEFF DAVI
Real Estate Commissioner

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

In the Matter of the Accusation Against:

J. SHELTON BENNETT,
aka JAY SHELTON BENNETT,

Real Estate Salesperson License No. 00756122,

Respondent.

Case No. H-31623 LA

OAH No. L2005030200

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on April 28, 2005.

Darlene Averetta, Assistant Chief Counsel, represented Janice Waddell (complainant) and the Department of Real Estate.

Frank M. Buda, Attorney at Law, represented J. Shelton Bennett, also known as Jay Shelton Bennett (respondent). Respondent was also present at the hearing.

Sworn testimony and documentary evidence was received, the record was closed, and the matter submitted on April 28, 2005.

The issue addressed in this proceeding is whether respondent's license as a real estate salesperson should be disciplined for cause due to a criminal conviction, and failure to disclose said conviction in his salesperson license renewal application.

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

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FACTUAL FINDINGS

Jurisdiction

2. 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

3. Respondent was first licensed by the California Department of Real Estate as a real estate salesperson, license number 00756122, on October 10, 1979. Respondent's license is currently active will expire on August 3, 2008. (Complainant exhibit 2.)

4. On January 19, 2005, complainant filed the Accusation to impose discipline on respondent's real estate salesperson license. Respondent submitted a timely Notice of Defense on Accusation, thereby requesting a hearing to present a defense or matters in mitigation or extenuation to the charges and allegations in the Accusation. (Complainant exhibit 1.)

Conviction

5. On April 1, 2004, in the Superior Court of California, County of Riverside, in Case No. INM144993, the court convicted respondent on pleas of guilty of violating Penal Code section 273.5, subdivision (e), infliction of corporal injury on a domestic partner within seven years of a similar conviction, and Penal Code section 273.6, subdivision (a), intentional and knowing violation of a protective order, both misdemeanor offenses.

As a consequence of respondent's conviction, pursuant to a plea agreement the court imposed summary probation for a period of 36 months on certain terms and conditions, including 90 days of weekend custody under a work release program, with credit for service of 27 days, 30 hours of community service, enrollment in a certified 52-week Domestic Violence / Batterers Program, attendance in an alcohol abuse program, and various prohibitions with respect to domestic violence against respondent's wife. (Complainant exhibit 3.)

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6. The facts and circumstances surrounding the offenses and convictions relate back to a series of events that started in April 2000.

a. Although not alleged by the Department of Real Estate as a separate cause for discipline, on April 12, 2000, in the Superior Court of California, respondent was convicted for inflicting corporal injury on his spouse. As a consequence of that conviction, the court imposed summary probation on respondent for a period of 36 months on terms and conditions, including mandatory enrollment in a 52-week Domestic Violence / Batterers program. (Complainant exhibit 7.)

b. Although not alleged as a cause for discipline, on April 19, 2001, respondent's spouse obtained a Domestic Violence Restraining Order against him. By the terms of the restraining order, respondent was to stay at least 100 yards away from his spouse, with certain exceptions related to respondent's child visitation rights. The restraining order was effective through April 18 2004. (Complainant exhibit 4.)

c. In December 2001, after allegedly reconciling with his wife, respondent moved back into the family home. However, respondent's spouse took no action to remove the restraining order that was still in effect.

d. On March 14, 2004, a Riverside County deputy sheriff responded to a domestic violence call made by respondent's spouse. Based on the deputy's investigation, which included observing injuries sustained by Ms. Bennett (scratches or bruises on her hand, leg, and ankle), and reviewing the restraining order that was still in effect, respondent was located, arrested, and booked for both domestic violence and violation of a court order. When the deputy sheriff first confronted respondent to make the arrest, respondent repeatedly identified himself as David Stephen. Although respondent provided false information to the peace officer, and was so charged in the criminal complaint, pursuant to respondent's plea agreement that charge was dismissed. (Complainant exhibit 5.)

Salesperson Renewal Application

7. On June 30, 2004, respondent submitted a Salesperson Renewal Application to the Department of Real Estate, wherein he signed, under penalty of perjury, that the answers and statements given in the application are true and correct.

Item 3 on the renewal application asked respondent if he had been convicted of any violation of law within the past four years. In answering item 3, respondent marked the box designating "NO."

Item 15 on the license renewal application provides space for respondent to provide a detailed explanation of an affirmative response to item 3, including information about the court of conviction, arresting agency, date of conviction,

code section violated, disposition, and case number. Item 16 provides space for respondent to sign and date completion of item 15.

Respondent did not provide any information in item 15 and did not date or sign item 16, thereby depriving the Department of Real Estate of pertinent information it needed to consider. (Complainant exhibit 6.)

8. Although not alleged by the Department of Real Estate as a separate cause for discipline, consideration is given to respondent's salesperson license renewal application of June 16, 2000. In that application, respondent also failed to disclose a reportable conviction, i.e., his conviction of April 12, 2000. This fact constitutes an aggravating circumstance in that it demonstrates a pattern of conduct, as well as a lack of integrity and honesty, which may affect the degree of discipline, if any, that is imposed on respondent's license. (Complainant exhibit 8.)

Respondent's Testimony

9. Respondent is 45 years old, has been married for 13 years, and has two children; an 11 year-old son and seven year-old daughter. Respondent does not live with his family.

10. Respondent has been licensed as a real estate salesperson since 1979 and his license had not been previously disciplined by the Department of Real Estate. He currently works as an independent contractor for Welk Resort Group in Escondido, California, where he sells real estate "time shares" -- a form of sales in which respondent has been quite successful. (See respondent exhibit C.)

11. With respect to the domestic violence incident in 2000, respondent stated that he got into an argument with his wife because she was spending too much time on the computer and not enough time with their children. Respondent disconnected the computer and when he moved the monitor it inadvertently hit his wife's leg causing a scratch. Respondent's wife then called 911 and had respondent arrested.

12. With respect to the domestic violence incident on March 14, 2004, respondent stated that after he returned home from work he got into an argument with his wife. Due to the conflict, respondent decided to collect some of his clothes and leave the premises. When his wife tried to stop him from leaving, respondent pushed her out of the way, took his clothes, and left. Respondent testified that his wife was not seriously injured and did not need medical care. Ms. Bennett, however, again called the police.

13. Respondent's work as a real estate salesperson is his sole source of income. He stated that he did not disclose his convictions on his real estate license renewal applications because he was afraid of jeopardizing his license and livelihood.

14. Respondent has completed approximately 2/3 of his 52-week anger management program. After completing the program, he intends to attend marriage counseling, and anticipates that his wife will then seek removal of the restraining order against him. Respondent's wife is also undergoing counseling.

15. Respondent is still on probation for his 2004 conviction.

16. Several letters were received that attested to respondent's character, including letters from Norman R. Ross, Assistant Vice President of the Welk Resort Group (respondent exhibit A); David Caufield, respondent's counselor (respondent exhibit F); Candice Iseminger, an eight-year friend of respondent (respondent exhibit G); and Philip Donner, a colleague (respondent exhibit H). The letters collectively describe Respondent as honest, truthful, and diligent in seeking to change his life for the better.

17. Respondent also provided a letter from his wife, wherein she states that she and respondent had been living together at the time of the 2004 incident. Ms. Bennett states that she and respondent are continuing to work on their relationship and that respondent has shown great improvement since participating in his current counseling program. Ms. Bennett appears to be concerned primarily about respondent's continued ability to use his real estate license to earn a living and provide for his family. (Respondent exhibit D.)

18. Respondent testified that he has never had any altercation with any of his real estate clients.

LEGAL CONCLUSIONS

Legal Authority

1. Business and Professions Code section 490 states, in pertinent part:

"A board 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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere."

2. Business and Professions Code section 498 states:

"A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

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3. Business and Professions Code section 10177 states, in pertinent part:

"The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following [¶] . . . [¶]

"(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

"(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"

Moral Turpitude

4. For Respondent's license to be disciplined under Business and Professions Code section 10177, subdivision (b), respondent's conviction must be for a crime of moral turpitude or, in the alternative, constitute a felony offense.

5. Although not amenable to a precise definition, "moral turpitude" connotes a readiness to do evil, an act of baseness, vileness or "depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.)

6. By reason of the matters set forth in Factual Findings 5 and 6, in 2004 respondent was convicted on one count of inflicting corporal punishment on a domestic partner within seven years of a prior such violation, and one count of violating a restraining order. Neither of the two counts under which respondent was convicted in 2004 was a felony. Although there is no authority for the proposition that violating a restraining order involves moral turpitude, inflicting corporal punishment on one's spouse does constitute a crime of moral turpitude in that it involves physical injury sufficient to cause a traumatic condition.

"[S]ection 273.5, unlike the statutes involved in the various battery cases, defines criminal conduct not in terms of circumstances which aggravate the crime of simple battery but rather by description of specific elements. . . .

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

Substantial Relationship

7. California Code of Regulations, title 10, section 2910, states, in pertinent part:

"(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves: [¶] . . . [¶]

"(8) 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.

"(9) Contempt of court or willful failure to comply with a court order. [¶] . . . [¶]

"(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

"(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee."

8. Conduct resulting in corporal injury upon a spouse 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 conviction is also substantially related to the real estate profession because it raises concerns about his commitment to follow the law and to resolve disputes in a non-violent manner.

Respondent's 2004 convictions are substantially related to the qualifications, functions or duties of a real estate salesperson in that he failed to comply with a court order when he violated the restraining order pertaining to Ms. Bennett.

Rehabilitation

9. 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 2912, 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. Payment of fines imposed in connection with the criminal conviction
- h. Correction of business practices responsible in some degree for the conviction
- i. New and different social and business relationships
- j. Family life stability of and fulfillment of parental and familial responsibilities
- k. Completion of, or enrollment in, formal education or vocational training courses
- l. Involvement in community, church or privately-sponsored programs
- m. Change in attitude, as evidenced by applicant / respondent and other persons knowledgeable and competent to testify and absence of subsequent convictions

10. Measured against the rehabilitation criteria and other relevant considerations, respondent has not sufficiently established his rehabilitation. Although respondent is working toward improving himself through counseling, it must be noted that he is still on probation and the counseling is court-ordered. Respondent is not pursuing any educational program, other than what is required to meet his real estate continuing education requirements (respondent exhibit B). He is not involved in charitable/community activities other than what is ordered as part of his probation.

11. Respondent's 2004 conviction and salesperson renewal application are the only causes for discipline alleged in complainant's accusation and which are considered in determining whether respondent's license should be disciplined. The 2000 conviction and renewal application are considered only for purposes of assessing respondent's credibility and the degree of discipline, if any, to be imposed.

Respondent stated that he is remorseful and that he is disappointed in himself. However, based on respondent's pattern of misrepresentation in his Salesperson License Renewal Applications, his attempts to minimize the severity of the domestic violence incidents, his attempt to mislead peace officers by intentionally representing himself as another person, and his demeanor while testifying, respondent is not deemed credible.

Respondent's questionable credibility extends to consideration of his account of the domestic violence incident that occurred on March 14, 2004, in that it varies significantly from what is contained in the investigating officer's incident report. (Complainant exhibits 5 and 6.)

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Cause for Discipline

12. Complainant established by clear and convincing evidence that respondent's real estate salesperson license is subject to discipline pursuant to Business and Professions Code section 490, in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a real estate salesperson.

The substantial relationship associated with respondent's conviction is established pursuant to the criteria set forth in California Code of Regulations, title 13, sections 2910, subdivisions (a)(8), (a)(9), and (a)(10). (Factual Finding 5 and Legal Conclusions 1, 7, and 8.)

13. Complainant established by clear and convincing evidence that respondent's real estate salesperson license is subject to discipline pursuant to Business and Professions Code section 10177, subdivision (b), in that he was convicted of a crime involving moral turpitude and which is substantially related to the qualifications, functions, and duties of a real estate salesperson. (Factual Finding 5 and Legal Conclusions 3 through 8.)

14. Complainant established by clear and convincing evidence that respondent's real estate salesperson license is subject to discipline pursuant to Business and Professions Code section 498, in that in his salesperson license renewal application, respondent committed an act of fraud, deceit, or knowing misrepresentation when he failed to provide pertinent information about his most recent conviction. (Factual Finding 7 and Legal Conclusion 2.)

"Where the occupation is one wherein those following it act as the agents and representatives of others and in a more or less confidential and fiduciary capacity, it certainly can be fairly said that those pursuing it should have in a particular degree the qualifications of 'honesty, truthfulness and good reputation.' . . . The occupation of a real estate agent is of just this sort. He acts for others and in a more or less confidential and fiduciary capacity." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 177.)

"[A]ppellant's lack of candor in completing his license application is itself sufficient to sustain a finding that appellant does not yet appreciate the need to speak honestly about and to accept responsibility for one's actions. . . . 'One's character trait for honesty and integrity is an important qualification to be a real estate salesperson inasmuch as clients rely on the licensee's integrity in representing them, disclosing important facts about the properties he is privy to and holding monies in a fiduciary capacity.' The public exposing itself to a real estate licensee has reason to believe the licensee must have demonstrated a degree of honesty and integrity in order to have obtained a license. [Citation.]" (*Harrington v. Department of Real Estate* (1989) 214 Cal. App. 3d 394, 406)

15. Complainant established by clear and convincing evidence that respondent's real estate salesperson license is subject to discipline pursuant to Business and Professions Code section 10177, subdivision (a), in that he procured a real estate license renewal by fraud, misrepresentation, or deceit, when he failed to provide pertinent information about his most recent conviction in the renewal application. (Factual Finding 7 and Legal Conclusion 3.)

Decision

16. The standard of proof in this proceeding is "clear and convincing 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. (*In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

In light of the foregoing factual findings and legal conclusions, complainant has met that burden. (See *Martin v. Alcoholic Bev. App. Bd.* (1950) 52 Cal.2d 259.)

17. The objective of a disciplinary proceeding is to protect the public, the licensed profession or occupation, maintain integrity, high standards, and preserve public confidence in licensed real estate salespersons.¹ The purpose of proceedings of this type is not to punish the respondent. In particular, the statutes relating to real estate salesperson licenses are designed to protect the public from any potential risk of harm.² The law looks with favor upon those who have been properly reformed.³ To that end, respondent bears a burden, against an act of misconduct and a conviction, to establish his reformation. He has not met that burden.

18. Respondent contends that none of the incidents resulting in discipline had anything to do with his real estate clients and there was no nexus to establish that respondent's criminal convictions were substantially related to his occupation as a real estate salesperson. Respondent's contention is rejected. Based on the entire record, including consideration of respondent's 2004 conviction and his deceptive 2004 license renewal application, respondent's real estate salesperson license should be revoked. However, after due consideration to the length of time respondent has retained a vested interest in his license, and his ongoing efforts to change his life through counseling, respondent should be given an opportunity to continue working as a salesperson, but with certain limitations and restrictions.

¹ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1030-1031; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

² *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

³ *Resner v. State Bar* (1967) 67 Cal.2d 799, 811.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of respondent J. Shelton Bennett, also known as Jay Shelton Bennett, under the Real Estate Law are revoked; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions:

1. Any restricted real estate license issued to respondent pursuant to this Decision shall be suspended for 60 days from the date of issuance of said restricted license.

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

3. 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.

4. 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.

5. 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 four (4) years have elapsed from the effective date of this Decision.

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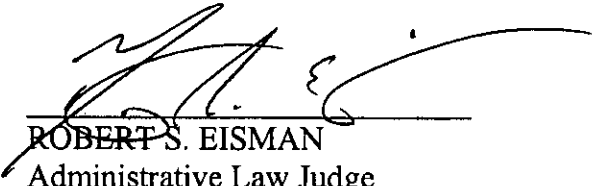
6. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

7. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

May 26, 2005.



ROBERT S. EISMAN

Administrative Law Judge
Office of Administrative Hearings

1 SHANNON M. CHAMBERS, Counsel (SBN 212459)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6916



9 By [Signature]

10 BEFORE THE DEPARTMENT OF REAL ESTATE

11 STATE OF CALIFORNIA

12 * * *

13 In the Matter of the Accusation of) No. H-31623 LA
14 J. SHELTON BENNETT,)
15 Respondent.)
16 ACCUSATION
17

18 The Complainant, Janice Waddell, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against J. SHELTON BENNETT, aka Jay Shelton Bennett,
21 ("Respondent") alleges as follows:

22 I

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

26 II

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

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III

1 On or about April 1, 2004, in the Superior Court of
2 California, County of Riverside, in Case No. INM144993,
3 Respondent, J. SHELTON BENNETT, aka Jay Shelton Bennett, was
4 convicted of violating California Penal Code Section 273.5(E)
5 (Inflict Corporal Injury Spouse), and convicted of violating
6 California Penal Code Section 273.6(A) (Violation Of A Court
7 Order) for violating the Temporary Restraining Order issued in
8 Case No. INV004110 on April 19, 2001, effective through April
9 18, 2004. The underlying facts of these crimes involve moral
10 turpitude, and bear a substantial relationship under Section
11 2910, Title 10, Chapter 6, California Code of Regulations to the
12 qualifications, functions or duties of a real estate licensee.
13

IV.

14 The crimes of which Respondent was convicted, as
15 described in Paragraph III above, constitutes cause under
16 Sections 490 and 10177(b) of the Code for the suspension or
17 revocation of the license and license rights of Respondent under
18 the Real Estate Law.
19

V.

(FAILURE TO REVEAL CONVICTIONS)

20 Question 3 of the Respondent's Salesperson Renewal
21 Application, completed by him on June 30, 2004, asks the
22 following: "WITHIN THE PAST FOUR YEAR PERIOD, HAVE YOU EVER
23 BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED
24 UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU
25 MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A
26
27

1 MISDEMEANOR OR FELONY OFFENSE". Respondent answered "No" to
2 Question No. 3 on his Salesperson Renewal Application, and
3 failed to reveal the conviction described above in Paragraph
4 III.

5 VI.

6 Respondent's failure to reveal the convictions set
7 forth herein in Paragraph III above, in his license application
8 is cause to suspend or revoke his present real estate license
9 and license rights pursuant to Business and Professions Code
10 Sections 498, and/or 10177(a).

11 VII.

12 (IN AGGRAVATION)

13 In aggravation of the above, on or around April 12,
14 2000, in the Superior Court of California, County of Riverside,
15 in Case No. INF034324, Respondent, J. SHELTON BENNETT, aka Jay
16 Shelton Bennett, was convicted of violating California Penal
17 Code Section 275.5(A) (Inflict Corporal Injury Spouse).

18 On or around June 16, 2000, Respondent submitted his
19 Salesperson Renewal Application. Question #3 of the
20 Respondent's Salesperson Renewal Application, asks the
21 following: "WITHIN THE PAST FOUR YEAR PERIOD, HAVE YOU EVER
22 BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED
23 UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU
24 MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A
25 MISDEMEANOR OR FELONY OFFENSE". Respondent answered "No" to
26 Question No. 3 on his Salesperson Renewal Application, and
27 failed to reveal the April 12, 2000 conviction.

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 the licenses and license rights of
5 Respondent, J. SHELTON BENNETT, under the Real Estate Law (Part
6 1 of Division 4 of the Business and Professions Code) and for
7 such other and further relief as may be proper under other
8 applicable provisions of law.

9 Dated at Los Angeles, California

10 this 13 day of January, 2005.

11 
12 Janice Waddell
Deputy Real Estate Commissioner

13 cc: J. Shelton Bennett
14 Vacation Interval Realty, Inc.
15 Janice Waddell
16 Sacto.
17 JL
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