

FILED
AUG 31 2005
DEPARTMENT OF REAL ESTATE


DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-31631 LA
)	
PHILLIP GERARD ROQUE,	L-2005030626
)	
)	
Respondent.	
)	

DECISION

The Proposed Decision dated June 10, 2005, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Section 11517(b)(3) of the Government Code of the State of California, the Proposed Decision, at page 5, Order, line 4, "therefore" is amended to read "therefor".

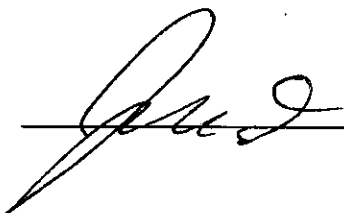
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

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

This Decision shall become effective at 12 o'clock noon on September 20, 2005.

IT IS SO ORDERED 7-20, 2005.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILLIP GERARD ROQUE,

Respondent.

Case No. H-31631 LA
OAH No. L2005030626

PROPOSED DECISION

This matter came on regularly for hearing before Mark T. Roohk, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California on May 23, 2005.

Elliott Mac Lennan, Real Estate Counsel, represented Complainant Janice A. Waddell (Complainant).

Respondent Phillip Gerard Roque (Respondent) was present throughout the hearing and represented himself.

Oral and documentary evidence was received, the matter argued, the record was closed at the conclusion of the hearing and the case submitted for decision.

FACTUAL FINDINGS

1. Complainant Janice A. Waddell, Deputy Real Estate Commissioner of the State of California, made and filed the Accusation in this proceeding in her official capacity and not otherwise.

2. Respondent Phillip Gerard Roque is licensed by the Department as a real estate broker, license ID# 01182415. The license was originally issued in 1997. Respondent was first licensed by the Department as a salesperson in 1994. Respondent's license is current, with an expiration date of April 1, 2009.

3. The Accusation in this matter was filed on January 25, 2005, and was served on Respondent. Respondent timely filed a Notice of Defense contesting the charges set forth therein, and this hearing followed.

4. On February 8, 2002, Respondent was convicted in case number 1GL04302 of the Superior Court of the State of California, County of Los Angeles, on his plea of nolo contendere to one count each of violating Vehicle Code sections 20002, subdivision (a) (hit and run driving with property damage) and 23152, subdivision (b) (driving with a blood alcohol level over .08). Respondent was placed on summary probation for a period of three years under certain terms and conditions, including participation in an alcohol program and payment of fines and penalties. (Exhibit 3.)

5. The circumstances underlying this conviction are as follows: on or about September 2, 2001, Respondent had been out with a female friend during which time he had at least two alcoholic drinks, and while driving back to his residence he side-swiped a parked vehicle. Respondent continued home without stopping at the scene, and was subsequently arrested by police.

6. Also on February 8, 2002, Respondent was convicted in case number 1GL04214 of the Superior Court of the State of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Penal Code section 242 (battery). Respondent was placed on summary probation for 3 years under certain terms and conditions, including enrollment in a 52 week domestic violence counseling program, participation in the Grandview Residential Program in lieu of 60 days jail time, and payment of a restitution fine of \$100. (Exhibit 4.)

7. The circumstances underlying this conviction are as follows: on or about September 28, 2001, Respondent had arranged to meet with his estranged wife in front of the Glendale Police Department. Respondent and his wife had separated and were in the process of getting a divorce during this time period; they had agreed to share custody of their young son, and the meeting in front of the police station was for purposes of making the exchange. Respondent was standing in front of the station when his wife walked up holding the boy in her arms. A dispute ensued, during which Respondent attempted to pull his son out of his wife's arms. Police officers had observed the dispute from outside the station, and Respondent's wife went inside the station and alerted other officers. Respondent, who had been drinking alcohol prior to coming to the station, was uncooperative when police approached him and was ultimately arrested.

8. In aggravation of the convictions described above, Respondent had previously been convicted on January 9, 2001, in case number 0GL04909 of the Superior Court of the State of California, County of Los Angeles, on his plea of nolo contendere to one count of violating Penal Code section 415 (disturbing the peace). The circumstances underlying this conviction also involved Respondent's marital relationship, and his consumption of alcohol. For this conviction, Respondent was placed on summary probation for one year and ordered to attend one Alcoholics Anonymous meeting per week for 12 weeks and to pay several fines and fees. (Exhibit 5.)

9. The convictions described above in Factual Findings 4 and 6 are substantially related to the qualifications, functions, and duties of a real estate broker's license, pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (11).

10. Respondent has successfully completed all probation terms for the above convictions. Included in this were 52 weeks of the Domestic Violence Batterers' Treatment Program, which Respondent completed in March 2003 (Exhibit A); 60 days in the Grandview Foundation's sober living program, which Respondent completed in April 2002 (Exhibits B & D); three months in Right On's first offender alcohol program, which Respondent completed in early 2002 (Exhibit C). Respondent testified that he learned a great deal from these programs, including the value of better communication with not just his ex-wife, from whom he was divorced at the end of 2002, but with all people. Respondent still shares custody of his son with his ex-wife, but he describes his current relationship with her as having "improved dramatically" in the last two years, and that it has been a long time since they had any disagreements, but even when there is a disagreement, things are handled much more civilly now. Respondent also testified that he has curtailed his drinking substantially since the time of the convictions, although he admits still drinking on occasion. However, Respondent does not drink alcohol at all while his son is in his custody.

11. While Respondent accepts responsibility for his convictions, he clearly believes that his responsibility is more limited than other evidence would suggest. In his description of the events underlying all three convictions, Respondent's testimony essentially characterized his behaviors at the time as unwise but nevertheless justifiable, and he openly placed the blame for two of the convictions on his ex-wife's desire to do damage to him. Regarding his consumption of alcohol, Respondent believes he does not have a drinking problem, and instead feels that his misconduct during the period in question had more to do with his marital issues. Respondent believes that the experience he went through and the counseling he obtained both through the court-ordered programs and on his own have made him a different person today.

LEGAL CONCLUSIONS

Cause exists to suspend or revoke Respondent's real estate broker license pursuant to the provisions of Business and Professions Code sections 498 and 10177, subdivision (b), for convictions of crimes that are substantially related to the qualifications, functions, and duties of a real estate license, as set forth in Factual Findings 4, 5, 6, and 7.

As a part of the regulations governing the practice of real estate in the State of California, the Department has developed certain criteria, set forth in the California Code of Regulations, title 10, section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of one or more convictions.

A review of those criteria applicable to the facts of this case reveals the following:

A. The Guidelines recommend the passage of not less than 2 years since the most recent criminal conviction that is substantially related to the qualifications, functions, and duties of a real estate license. Respondent's convictions occurred in February 2002, more than 3 years ago.

B. The Guidelines recommend considering payment of restitution. Respondent has paid all restitution required by his criminal sentence.

C. The Guidelines recommend considering expungement of Respondent's convictions, or successful completion or early discharge from probation or parole. Respondent has not filed a petition under Penal Code section 1203.4 for expungement for any of his convictions, and while he completed his probation in a timely manner, there is no evidence that probation was terminated early.

D. The Guidelines recommend considering abstinence from the use of controlled substances or alcohol for not less than two (2) years if the conviction was attributable in part to such use. While Respondent has participated in and successfully completed alcohol programs in 2002, he never actually quit drinking alcohol, and admits to still consuming alcohol on occasion.

E. The Guidelines recommend considering new and different social relationships and stability of family life subsequent to the conviction. Respondent was experiencing the breakup of his marriage at the time of his convictions. Since the convictions, his divorce has become final, and he has substantially improved relations with his ex-wife, with whom he still interacts due to their shared interest in their son.

The Guidelines also recommend evaluating several factors relating to changes in the licensee's attitude since the time of the conviction. While Respondent appears to have gained some insight into what caused his misconduct, it is clear he still blames his ex-wife and other outside factors in large part for his convictions. Respondent also presented no testimony from other individuals as to any change in his attitude.

In any disciplinary proceeding such as this, the primary concern is public protection. As demonstrated above, Respondent has satisfied some but not all of the Department's guidelines for rehabilitation. Of greatest concern are that Respondent takes only limited responsibility for his actions and that he still drinks alcohol on occasion, despite the evidence clearly establishing that consumption of alcohol, even more than marital problems, was common to all three convictions. At the same time, there is no evidence of Respondent having any further alcohol-related issues in the last three years, or of any of Respondent's personal problems having an impact at any time on his professional duties and obligations. Accordingly, outright revocation or suspension of Respondent's broker license is not required to protect the public. However, because of the concerns expressed above, it would be appropriate to restrict Respondent's license and place it under certain conditions for a period of time.

ORDER

The licenses and licensing rights of Respondent Phillip Gerard Roque under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days of the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.

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

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two (2) years have elapsed from the effective date of this Decision.

4. During the term of any restricted license, Respondent shall submit to the Department, as of the last day of each March, June, September, and December, proof satisfactory to the Real Estate Commissioner of Respondent's ongoing participation in a recognized drug and alcohol diversion program. Said proof shall be submitted to the Manager of the Crisis Response Team at the Los Angeles office of the Department of Real Estate and shall be verified as true and accurate by Respondent under penalty of perjury.

The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with Section 11500 et seq. of the Government Code if such proof is not timely submitted as provided for herein, or as provided for in any subsequent agreement between Respondent and the Commissioner. The suspension shall remain in effect until such proof is submitted or until Respondent enters into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent shall, within nine (9) 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 renewed real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

DATED: _____

6/10/05



MARK T. ROOHK
Administrative Law Judge
Office of Administrative Hearings

5/20/05
file

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FILED
JAN 25 2005
DEPARTMENT OF REAL ESTATE

By *Janice A. Waddell*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-31631 LA
	)	
PHILLIP GERARD ROQUE,	)	<u>ACCUSATION</u>
	)	
Respondent.	)	
	)	

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

I

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

II

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

1 III

2 Respondent was licensed by the Department of Real
3 Estate of the State of California as a real estate broker
4 effective April 2, 1997.

5 IV

6 On or about February 8, 2002, in the Superior Court of
7 California, County of Los Angeles, Respondent was convicted of
8 violating Vehicle Code Section 23152(b) (driving with blood
9 alcohol .08% or more) and Vehicle Code Section 20002(a) (hit and
10 run property damage).

11 V

12 On or about February 8, 2002, in the Superior Court of
13 California, County of Los Angeles, Respondent was convicted of
14 violating Penal Code Section 242 (battery).

15 VI

16 On or about January 9, 2001, in the Superior Court of
17 California, County of Los Angeles, Respondent was convicted of
18 violating Penal Code Section 415 (disturbing the peace alcohol
19 related).

20 VII

21 The above-referenced matters involve moral turpitude
22 and bear a substantial relationship to the qualifications,
23 functions or duties of a real estate licensee.

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25 ///

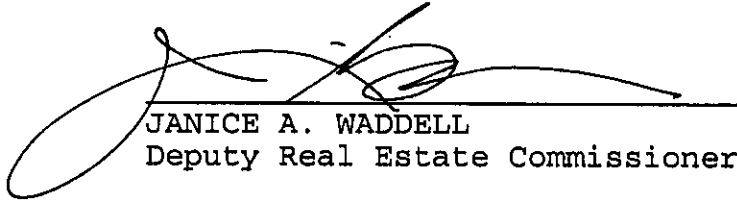
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VIII

Respondent's convictions alleged in Paragraphs IV, V, and VI are cause under Code Sections 490 and 10177(b) for suspension or revocation of all licenses and license rights of Respondent under the Real Estate Law.

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

Dated at Los Angeles, California,
this 25 day of January, 2005.


JANICE A. WADDELL
Deputy Real Estate Commissioner

cc: Phillip Gerard Roque
Janice A. Waddell
Sacto.
LA