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DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By *R. M. [Signature]*

* * * * *

In the Matter of the Application of)
)
)
) SAUL VALDERRAMA,
)
)
) Respondent.
)

No. H-32126 LA
L-2005080794

DECISION

The Proposed Decision dated November 30, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on ~~FEB 9 2008~~

IT IS SO ORDERED 1-9-06

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

SAUL VALDERRAMA,

Respondent.

Case No. H-32126 LA

OAH No. L2005080794

PROPOSED DECISION

Sandra L. Hitt, Administrative Law Judge, Office of Administrative Hearings, heard this matter on November 1, 2005, at Los Angeles, California.

Elliott Mac Lennan, staff counsel for the Department of Real Estate (DRE), represented Complainant.

Saul Valderrama (Respondent) appeared in propria persona.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Complainant, Maria Suarez, Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in her official capacity.
2. Respondent applied for a Salesperson License from DRE in June of 2004. His application was denied and this hearing ensued.
3. On August 16, 1994, Respondent was convicted, on a plea of nolo contendere, in Case Number 8JM10563-01 in Los Angeles County Municipal Court, State of California, of a violation of California Penal Code 273, subdivision (a)(1) (willful cruelty to a child), a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation for three years. Respondent was ordered to spend 15 days in the county jail with credit for four days served, perform 20 days of community service with Caltrans, and complete 20 Alcoholics Anonymous (AA) meetings and 24 sessions of a domestic violence program. On August 17, 1994, the court modified its order reducing the jail time and increasing the Caltrans service to 25 days.

On September 12, 1994, Respondent presented proof of enrollment in Acacia Counseling and was ordered to pay \$50 to the victim restitution fund. Respondent completed his Caltrans service, attended 20 AA meetings, and paid \$50 to the victim restitution fund.

On July 15, 1996 Respondent was found in violation of his probation because he had dropped out of the domestic violence program without completing 24 sessions. Respondent testified at the hearing of this matter that he dropped out of the domestic violence program because he "thought it was a joke." Respondent was ordered to spend 60 days in the Los Angeles County jail, less four days served. On October 24, 1997, Respondent filed proof of completion of 24 sessions of a domestic violence program. Respondent completed his probation.

4. The facts and circumstances underlying the 1994 conviction are as follows: Respondent was a father by the time he was 18 years old. In 1994 Respondent was 19 years of age and one year out of high school. He was living with his girlfriend Claudia Sosa (now his wife) and son and daughter. He was immature and lacking in good relationship and parenting skills. His daughter was then approximately 18 months old. On the day of the incident, his daughter was crying; Respondent wanted to pick his daughter up, but Claudia did not want him to do that. Respondent started arguing with Claudia while he was holding the child. Respondent pulled Claudia's hair and she fell.

5. On September 23, 1998, Respondent was convicted, on a plea of nolo contendere in Case Number 94M06929, in Los Angeles County Municipal Court, State of California, of another violation of California Penal Code 273, subdivision (a) (1), (willful cruelty to a child) and a violation of California Penal Code section 240 (assault). Both crimes are misdemeanors. Respondent was placed on summary probation for four years and ordered to serve 120 days in the county jail, less 120 days already served. Respondent was ordered to pay fines, fees and restitution in the amount of \$335, and to complete a one-year domestic violence program. Respondent's probation ended on September 22, 2002.

6. The facts and circumstances underlying the 1998 conviction are as follows: Respondent threw a shoe at Claudia during an argument. They were arguing over money. Respondent wanted to go out to eat and Claudia said that they did not have enough money to do that. The shoe did not hit Claudia. Respondent's son, Steven, witnessed the argument and said, "Don't worry, mom, when I grow up I'm going to be a policeman and take Dad to jail." Respondent did not like that and pulled the child by his ear into the child's bedroom. Afterwards, Claudia left with the children and went to her mother's house in Covina, California, where she called the police. Claudia then went to the police station in Covina to report the incident.

7. Respondent cooperated with the investigation by DRE, providing requested information (Exhibits 7 and 8).

8. Since his conviction, Respondent has changed his attitude. Respondent and Claudia have married. They were married in February of 1999, soon after Respondent got out of jail. Claudia continued her college education and is now a school psychologist. She has taught Respondent better ways to interact with their children. Respondent is more mature now; he is 30 years old. Respondent and Claudia get along better now, they understand each other better. Respondent works in the mortgage industry; he "does pretty well." Respondent owns two houses. Respondent does not have the financial struggle that he had in the early years of his marriage. He supports his family. Respondent participates in his children's school fundraisers and co-manages an adult baseball league. He belongs to the Mid-Valley Chamber of Commerce. He has interacted with members of the public on and off the job. There have been no complaints about Respondent from his mortgage industry clients. Respondent testified that he now only drinks on special occasions; he does not have a drug or alcohol problem. Respondent testified that he is seeking a real estate salesperson's license with the hope of one day obtaining a broker's license.

9. Respondent has not had either conviction expunged.

10. Post-conviction, Respondent completed continuing education courses in real estate, ethics, agency and sales.

* * * * *

CONCLUSIONS OF LAW

1. Cause exists to deny Respondent's Application under section 480, subdivision (a) and section 10177, subdivision (b) of the California Business and Professions Code. California Business and Professions Code section 480 provides in pertinent part that "The Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made." Section 2910, subdivision (a) (10), Chapter 6, Title 10 of the California Code of Regulations (Regulations of the Real Estate Commissioner) provides in pertinent part: a crime shall be deemed to be substantially related if it involves conduct which demonstrates a pattern of repeated and willful disregard of the law. Respondent was convicted of three crimes within a four year period during 1994-1998 (Findings 3 and 5). In aggravation, Respondent also violated the conditions of his probation for the 1994 conviction, scoffing at the requirement that he complete 24 sessions of a domestic violence program, and Respondent had just recently completed probation for his 1994 conviction when he was convicted again in 1998.

2. Respondent's convictions for violation of California Penal Code section 273, subdivision (a) and section 240, as committed, are not crimes of moral turpitude.

In *People v. Sanders* (1992) 10 Cal. App 4th 1268, 1275 the court found that while a violation of California Penal Code section 273, subdivision (d) constituted a crime of moral

turpitude, a violation of penal Code section 273, subdivision (a) did not. A violation of section 273, subdivision (d) involves willful infliction upon a child of cruel or inhuman corporal punishment or injury resulting in a traumatic condition, whereas section 273, subdivision (a) can be violated by negligence.

The standard of moral turpitude for purposes of impeachment may be different from the standard in license discipline cases. In the discipline of a license, it may be necessary to look behind the fact of conviction to ascertain the nature of the crime and the circumstances under which it occurred in order to determine fitness to practice. *People v. Armendariz* (1985) 174 Cal.App. 3d 674, 682, citing *In Re Rothrock* (1940) 16 Cal 2d 449.

Battery is not a crime of moral turpitude per se. (See, e.g. *People v. Mansfield* (1988) 200 Cal.App.3d 82; *People v. Thornton* (1992) 3 Cal.App 4th 419.) However, battery can be a crime of moral turpitude as committed. See, e.g. *People v. Lindsay* (1989) 209 Cal.App.3d 849 (battery of a police officer.) Assault, which is a lesser included crime of battery, also is not a crime of moral turpitude per se. See, *In Re Rothrock* (1940) 16 Cal 2d 449, 458-459 (assault with a deadly weapon). In our case, Respondent's "assault" consisted of throwing a shoe in the direction of his wife, but not hitting her with the shoe (Finding 6). Under Penal Code section 240, an assault is an "unlawful attempt, coupled with the present ability to commit a violent injury on the person of another." Respondent's act barely qualifies as an "assault." However, "violent injury" under section 240 is not synonymous with bodily harm, but is synonymous with "physical force." *People v. Herrera* (1970) 6 Cal.App. 3d 846. In throwing the shoe, Respondent used physical force. Under *People v. Armendariz*, *People v. Mansfield*, *People v. Thornton* and that line of cases, Respondent's assault, as committed, cannot be said to constitute a crime of moral turpitude.

3. California Code of Regulations, Title 10, section 2911 sets forth the criteria for rehabilitation following a conviction when a license has been denied. Respondent has shown rehabilitation since his last conviction seven years ago (Finding 8). Specifically, Respondent has met criterion (a) (passage of time since conviction or crime). Respondent's convictions occurred when he was in his teens and early 20's (Findings 5 and 8). Respondent has met Criterion (e); he has completed his probation (Findings 3 and 5). Respondent has shown stability of family life (Criterion (h)). Respondent and his girlfriend have married. They were married in February of 1999, soon after Respondent got out of jail (Findings 4 and 8). Respondent's wife continued her college education and is now a school psychologist. She has taught Respondent better ways to interact with their children (Finding 8). Respondent is more mature now; he is 30 years old (Finding 8). Respondent no longer has the financial struggle he had seven years ago. Respondent has shown new and different business and social relationships (Criterion (m)). Respondent works in the mortgage industry; he does well financially and supports his family (Finding 8). Respondent owns two houses (Finding 8). Respondent has shown involvement in social programs (Criterion (l)); he participates in fundraisers for his children's school and co-manages an adult baseball league (Finding 8). He belongs to the Mid-Valley Chamber of Commerce (Finding 8). Respondent has changed his attitude (Finding 8; Criterion (n)). He has interacted with members of the public on and off the job and has had no complaints from his clients (Finding 8). Respondent now only drinks

on special occasions (Finding 8). Post conviction, Respondent completed continuing education courses in real estate, ethics, agency and sales. He is planning to pursue a broker's license (Findings 8 and 10; Criterion (i)).

4. Although Complainant has cause to deny Respondent's Application, it is not unreasonable to issue him a restricted license as set forth in Regulations of the Real Estate Commissioner, Regulation 2930. Respondent's convictions did not involve moral turpitude, and he has met all of the rehabilitation criteria applicable to him except for expungement of those convictions. Under these circumstances, the public interest would not be adversely affected in the event of Respondent's licensure, provided it is conditioned as set forth in the order below.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's Application for a Real Estate Salesperson License is denied; provided, however, a restricted Real Estate Salesperson License shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence 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 this restricted license.

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

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:


(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to Section 10154, if Respondent has not satisfied the requirements for an unqualified license under Section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

Date: November 30, 2005


SANDRA L. HITT
Administrative Law Judge
Office of Administrative Hearings

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FILED
AUG - 2 2005
DEPARTMENT OF REAL ESTATE

By *R. Medelhoff*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
SAUL VALDERRAMA,)
Respondent.)

No. H-32126 LA
STATEMENT OF ISSUES

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for Statement of Issues
against SAUL VALDERRAMA (Respondent), is informed and alleges in
her official capacity as follows:

I

Respondent made application to the Department of Real
Estate of the State of California for a real estate salesperson
license on or about June 28, 2004, subject to Section 10153.4
under the Real Estate Law (Part 1 of Division 4 of the California
Business and Professions Code) (Code).

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CRIMINAL CONVICTIONS

II

On or about September 23, 1998, in the Municipal Court of California, County of Los Angeles, in Case No. 8JM01563, Respondent was convicted of violating the California Penal Code Sections 273a(a) (Great Bodily Injury/Death to Child) and 240 (Assault), misdemeanors.

III

On or about August 16, 1994, in the Municipal Court of California, County of Los Angeles, in Case No. 94M06929, Respondent was convicted of violating the California Penal Code Sections 242 (Battery) and 273a(a)(1) (Cruelty to Child), misdemeanors.

IV

The matters described in Paragraphs II and III, above, involve moral turpitude and are substantially related under Section 2910, Chapter 6, Title 10 of the California Code of Regulations, to the functions, duties and responsibilities of a real estate license.

V

The matters described in Paragraphs II and III, above, constitute cause for the denial of Respondent's application for a real estate salesperson license under Code Sections 480(a) and/or 10177(b).

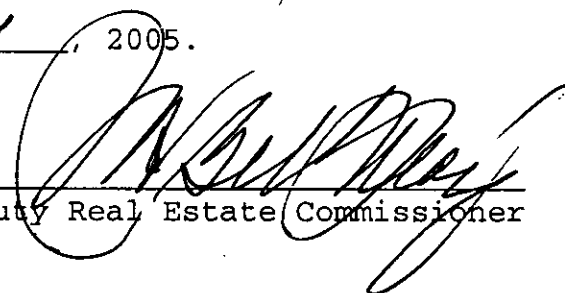
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1 These proceedings are brought under the provisions of
2 Section 10100, Division 4 of the California Business and
3 Professions Code and Sections 11500 through 11529 of the
4 California Government Code.

5 WHEREFORE, the Complainant prays that above-entitled
6 matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of, a real estate salesperson
9 license to Respondent, SAUL VALDERRAMA, and for such other and
10 further relief as may be proper under the law.

11 Dated at Los Angeles, California

12 this 25th day of July, 2005.

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15 
16 Deputy Real Estate Commissioner
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24 cc: Saul Valderrama
25 Goodyear Home Loan Corp.
26 Maria Suarez
27 Sacto
GD