

FILED  
FEB - 6 2007

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By K. Theobald

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In the Matter of the Accusation of )	No. H-33023 LA
ROBERT GARCIA, )	L-2006090711
)	
)	
Respondent. )	
_____ )	

DECISION

The Proposed Decision dated January 5, 2007, 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 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 FEB 26 2007.

IT IS SO ORDERED

1-30-07

JEFF DAVIS  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

ROBERT GARCIA,

Respondent.

Case No. H – 33023 LA

OAH No. L 2006090711

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 7, 2006.

Elliott Mac Lennan, Staff Counsel, represented Janice Waddell (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Robert Garcia, aka Roberto Dugal Garcia (Respondent), was present throughout the hearing and represented himself.

Oral and documentary evidence was received, and the matter was argued. The case was submitted for decision on December 7, 2006.

FACTUAL FINDINGS

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. Respondent is presently licensed and/or has license rights as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (Code). He was originally licensed on March 4, 2004.
3. On November 29, 2005, in the California Superior Court, County of San Bernardino, Respondent, upon a plea of guilty, was convicted of violating Penal Code

section 243, subdivision (e) (1), battery on spouse/cohabitating etc, a misdemeanor. The court placed Respondent on conditional and revocable release for a period of three years upon certain terms and conditions, including, successfully completing a 52-week Batterers' Treatment Program, serving 20 days in the county jail on weekender/work release program, and paying \$440 to the Domestic Violence Trust. Respondent has paid the money to the trust, completed the work release program, and is completing the Batterers' Treatment Program. Respondent is currently on probation which will end on November 29, 2008.

4. The facts giving rise to Respondent's conviction are as follows: Respondent and his girlfriend had lived together for approximately a year. They had quarrels over severe money issues and his work as a real estate salesman. She wanted him to go into a different line of work. She was pregnant by him. They had separated, but at the time of the incident, he was staying with her. She told Respondent that she was going to go back to a former boyfriend and an argument ensued. Respondent pushed her against a chair and wall. She had some bruises and a cut inside her mouth. She did not require medical treatment. Respondent left the scene and was subsequently cited into court. Following the incident, Respondent sent his girl friend a threatening note telling her to walk away from the situation. Respondent said that he sent the email because she was emailing his employer and other agents at his place of employment.

5. Respondent has no other criminal convictions and no other administrative actions have been filed against him.

6. Respondent expressed deep regrets over his actions. He stated that he has not forgiven himself for what happened and is shamed and embarrassed by it. He has found the domestic violence classes helpful.

7. Respondent currently is employed by a realty company and has been so employed for the past 16 months. His employer is aware of his criminal conviction.

8. Respondent is a member of the National Board of Realtors, Citrus Valley Chapter.

9. Respondent lives alone and has two daughters -- ages 1 and 2.

10. Respondent is a graduate of Pasadena City College.

11. Respondent is active in his church in El Monte. He regularly attends Bible study sessions and Sunday services.

## LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Respondent's criminal conviction involved moral turpitude due to the close relationship of Respondent and the victim.

3. Respondent's criminal conviction is substantially related to the qualifications, functions, and/or duties of a licensee of the Department, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a) (8), in that it involved doing an unlawful act with the threat of doing substantial injury to the person or property of another.

4. Cause exists, under the provisions of Business and Profession Code sections 490 and 10177, subdivision (b), to suspend or revoke Respondent's license and license rights.

5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2912, provides factors to be considered in evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding has been initiated because of a criminal conviction.

6. Respondent was convicted of a serious offense. It has been a year since Respondent's criminal conviction. He remains on probation until 2008. Respondent has recognized the seriousness of his mistake. He is completing the required anger management course. While it is early in his rehabilitative process to make a final judgment on his recovery, Respondent has no other criminal convictions and a good employment history. He is active in his church and engaged in study classes. He is endeavoring to pull his life together. His employer is aware of his criminal conviction and presumably will be willing to monitor Respondent's activities. While it is a close case, a restricted license under these circumstances is appropriate.

## ORDER

All licenses and licensing rights of Respondent Robert Garcia 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 therefore 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 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 years have elapsed from the effective date of this Decision.

4. 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.

DATED: January 5, 2007.

  
N. GREGORY TAYLOR  
Administrative Law Judge  
Office of Administrative Hearings

*Handwritten initials/signature in top left corner.*

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4 -or- (213) 576-6982 (office)

FILED  
JUN 29 2006  
DEPARTMENT OF REAL ESTATE

By *K. Medelich*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of ) No. H- 33023 LA  
12 ROBERT GARCIA, ) ACCUSATION  
13 Respondent. )  
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15 The Complainant, Janice Waddell, a Deputy Real Estate  
16 Commissioner of the State of California, for cause of accusation  
17 against ROBERT GARCIA aka Robert Dugal Garcia, is informed and  
18 alleges in her official capacity as follows:

19 1.

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

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2.

Respondent was originally licensed by the Department of Real Estate of the State California as a real estate salesperson on March 4, 2005.

3.

On November 29, 2005, in the Superior Court of California, County of San Bernardino, Rancho Cucamonga District, respondent was convicted in Case Number MWV100576, upon a guilty plea to once count of Penal Code Section 273a (corporal injury on spouse), a misdemeanor substantially related under Section 2910(a)(8), 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/or 10177(b).

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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 the license and license rights of respondent ROBERT GARCIA 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 provision of law.

Dated at Los Angeles, California

This *2 May 2016*

  
\_\_\_\_\_  
Deputy Real Estate Commissioner

cc: Robert Garcia  
Mulhearn Realtors  
Janice Waddell  
Sacto