

DEC 29 2006

DEPARTMENT OF REAL ESTATE

BY:

* * * * *

No. H-33064 LA
L-2006080352

DECISION

The Proposed Decision dated November 29, 2006, 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 January 18, 2007.

IT IS SO ORDERED December 27, 2006

JEFF DAVI
Real Estate Commissioner

Thompson (for Jeff Davis)

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOSUE GONZALEZ,

Respondent.

Case No. H-33064 LA

OAH No. L2006080352

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 31, 2006, at Los Angeles, California.

Jennifer Granat, Real Estate Counsel, represented Complainant.

Josue Gonzalez (Respondent) represented himself.

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

FINDINGS OF FACT

1. Maria Suarez made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. At all times pertinent hereto, Respondent was and now is licensed by the Department of Real Estate (Department) as a real estate salesperson.

3. On July 14, 2005, in the Superior Court of the State of California, County of Orange, Respondent was found guilty, after a trial by jury, of one count of violating Penal Code section 243, subdivision (e)(1), "former dating relationship violence" and one count of violating Penal Code section 415, subdivision (2), disturbing the peace. That same day the court placed Respondent on three years informal probation on condition that he spend four days in the County Jail, with credit for four days served, complete a 52 week Batterers' Treatment Program, stay away from the victim, and pay fines and fees totaling \$835. This amount was paid on September 12, 2005. Respondent was to enroll in the batterer's program by September 14, 2005. On September 12, 2005, the court modified Respondent's probation by granting him a leave of absence from the program for one year. Respondent enrolled in the program on September 12, 2006.

4. The facts and circumstances of the crime are as follows: On January 18, 2005, Respondent's victim, his former girlfriend, was at work as a bank teller when Respondent came to her place of employment and demanded in a loud voice, using vile and profane language, to see her. A number of bank customers were present. The victim left her place behind the teller's station and went out to the bank parking lot. Respondent followed and confronted her, yelling, gesticulating and using obscenities. Respondent then put his hands on the victim's shoulders and pushed her back against a car. The victim ran back into the bank and then into the employee lunchroom. Respondent followed the victim to the lunchroom and continued to yell and swear at her. The bank manager was able to escort the victim to the vault where he and a customer stood guard for the victim's protection. When Respondent was told the police had been summoned he fled the bank and drove away.

5. The above confrontation took place after Respondent learned that his former girlfriend had suffered a miscarriage. Apparently, he learned this information from a third party and was angry that his former girlfriend did not tell him directly. Respondent's above described conduct appeared to be disproportionate to the immediate stimulus. Respondent had been suffering from depression and had attempted suicide by an overdose of Atarax¹ several weeks before the confrontation occurred. He was placed on a 72-hour psychiatric hold at a local hospital. Respondent was diagnosed with major depressive disorder. He was released from the hospital in late December 2004 and told to have a follow-up evaluation. He was prescribed antidepressants and it was recommended that he participate in psychotherapy.

6. Respondent had a psychiatric evaluation on January 10, 2005. He admitted to using marijuana three times per week and to the "social" use of alcoholic beverages. He gave a history of an abusive relationship with his father, which included physical altercations. Respondent was advised to discontinue the use of marijuana. His prescription for antidepressants was renewed. Psychotherapy was again recommended.

7. On January 25, 2005, one week after the incident at the bank, Respondent had a 50 minute psychotherapy session. He denied being depressed or having suicidal ideation. According to the psychiatric notes from that session, Respondent's "main concern [was] relationship with parents and wanting to set boundaries with them." He felt his parents "treat him as a child (Respondent was 23 at the time, the oldest of five siblings)." He apparently did not mention the incident at the bank during the therapy session.

8. Respondent had a 15 minute follow up "medication management" evaluation on February 9, 2005. He reported that his "problem with his ex-girlfriend was resolved" and that his "relationship with [his] father [was] better after therapy." His antidepressant medications were continued. On May 4, 2005, Respondent had another 15 minute

¹ According to the Physician's Desk Reference, Atarax (hydroxyzine hydrochloride) is an antihistamine used to relieve the symptoms of common anxiety and tension and, in combination with other medications, to treat anxiety that results from physical illness. It also relieves itching from allergic reactions and can be used as a sedative before and after general anesthesia.

medication management evaluation. During this session, Respondent disclosed the altercation he had with his former girlfriend, including "the police were called which resulted in his arrest. He spent the night in jail and felt ashamed. This has worsened his relationship with his dad." His antidepressant medications were continued.²

9. According to his testimony, Respondent "went to treatment for a little while" for his depression, then stopped because he "felt better" and because "it was too expensive" to continue.

10. Respondent has worked full time for his father, a real estate broker, for approximately four years; however, he currently works part time and attends college. He has never had any customer complaints. He is active in his church. He rents a condominium from his father; however, he is now thinking of moving back into his parent's home. Respondent would seek treatment again if he "started feeling bad." As of the date of hearing, Respondent had attended seven of the court-ordered 52 weekly batterer's treatment program sessions.

11. On November 17, 2005, Respondent completed a Conviction Detail Report and filed it with the Department. The report form required Respondent to "provide the details of this crime, including a complete description of the facts and circumstances that led to your conviction. . . . You should describe who participated in the crime, who the victim was, what losses were suffered, and when, where, and how the crime occurred." In response, Respondent wrote, "I did not commit this crime. The only thing I did was disturb the peace." At the hearing of this matter, Respondent recognized that he did commit a crime, but stated, "It was all so stupid."

* * * * *

CONCLUSIONS OF LAW

1. The statutes relating to licensing are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) These statutes typically authorize disciplinary proceedings as a means of accomplishing this objective. Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*)

2. The question that must be determined is whether Respondent's conviction, as set forth in Finding 3, is substantially related to the functions, duties and qualifications of a real

² At this time, Respondent's diagnosis was changed to "mild dysthymic disorder," a disorder closely related to depression but occurring intermittently rather than continuously.

estate licensee. If not, the conviction would not be grounds for license discipline. California Code of Regulations, title 10, section 2910, subdivision (a) lists the "Criteria of Substantial Relationship" promulgated by the Department. Subsection (8) provides that the following conduct is substantially related to the functions, duties, and qualifications of a real estate licensee: "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." Thus, Respondent's conduct, as set forth in Findings 3 and 4, are substantially related to the functions, duties and qualifications of a Department licensee.

6. 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).) Battery on a spouse or cohabitant is a crime involving moral turpitude. (*People v. Rodriguez* (1992) 5 Cal.App.4th 1398 [willful violation of a special relationship involving expectations of safety and stability, with intent to injure, connotes the general readiness to do evil that defines moral turpitude]; cf. *People v. Lepolo* (1997) 55 Cal.App.4th 85, 90-91; *People v. Sanders* (1992) 5 Cal.App.4th 1268, 1274.) The manner in which Respondent committed his crime, including the place and sustained nature of his conduct, shows that in this instance, Respondent's battery of his former girlfriend was a crime involving moral turpitude.

7. Grounds for license discipline have been established under the provisions of Business and Professions Code section 10177, subdivision (b) by reason of Findings 3 and 4, and Conclusions of Law 5 and 6.

8. Since cause for license discipline has been found, it must next be determined whether Respondent has been sufficiently rehabilitated from his conduct so as to retain licensure, even if on a restricted basis. The Department's criteria for rehabilitation from criminal conduct, such as would safeguard the public in the event of Respondent's licensure, are set forth California Code of Regulations, title 10, section 2911. That section lists 13 areas that should be examined to determine whether an applicant has been rehabilitated. Respondent has met virtually none of the criteria. In any event, rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors are just indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone – in fact not all of them together – can guarantee that an individual is truly rehabilitated. Therefore, merely meeting these criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to a license.

Rehabilitation is evaluated on the basis of two different scales. One is an internal, attitudinal scale and the other is an external objective scale. In other words, Respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused.

Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation. The rehabilitative state of facts is demonstrated by a track record of conduct that convinces and assures the Department that the public would be safe in continuing to grant the privileges of licensure to Respondent. Respondent must establish a track record of reliable, responsible and consistently appropriate conduct.

Respondent has not established either a state of mind or a state of facts by which the Department could reasonably be assured that Respondent would not reoffend and that the public safety would not be in jeopardy were he to retain his license. Although Respondent's criminal conduct occurred outside the licensed setting, there is no evidence that if, in future, Respondent again finds himself overcome with the day to day stresses of life, he might commit an act of violence against a person with whom he has come in contact by virtue of his licensed status.

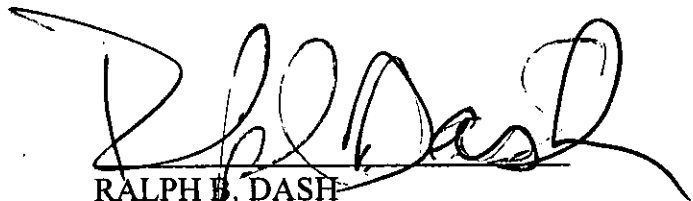
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The real estate salesperson's license issued to Respondent Josue Gonzalez, together with all licensing rights appurtenant thereto, is revoked.

Date: 11-29-06



RALPH E. DASH
Administrative Law Judge
Office of Administrative Hearings

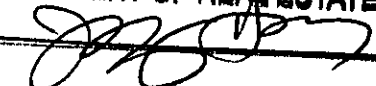
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FILED

JUL 17 2006

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	NO. H-33064 LA
	)	
JOSUE GONZALEZ,	)	<u>A C C U S A T I O N</u>
	)	
Respondent.	)	
	)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JOSUE GONZALEZ, ("Respondent"), is informed and alleges in her official capacity as follows:

I

At all times herein mentioned, Respondent JOSUE GONZALEZ was and is presently licensed by the Department of Real Estate of the State of California as a real estate salesperson under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code").

II

CONVICTION

On or about July 14, 2005, in the Superior Court of California, County of Orange, Case No. 05SM01234, Respondent was convicted of one (1) count of violating California Penal Code Sections 243(e)(1) (battery on spouse/former spouse) and 415(2) (disturbing the peace), crimes involving moral turpitude which are substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

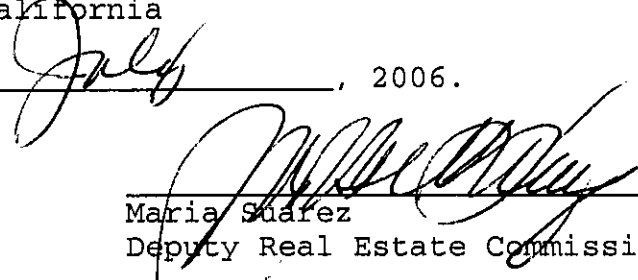
III

The crimes of which Respondent was convicted, as set forth above, constitute cause under Code Sections 490 and/or 10177(b) for the suspension or revocation of Respondent's license and license rights 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/or license rights of Respondent, JOSUE GONZALEZ, 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 provisions of law.

Dated at Los Angeles, California

this 12th day of July, 2006.



Maria Suarez
Deputy Real Estate Commissioner

1 cc: Josue Gonzalez
2 Jose G. Gonzalez
3 Maria Suarez
4 Sacto.
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