



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

**In the Matter of the Accusation of:**

**MARK AMAR VACHANI,**

**Respondent.**

**No. H-33585 LA**

**OAH No. 2008040525**

**PROPOSED DECISION**

This matter was heard on October 20, 2008, in Los Angeles, California. Janis S. Rovner, Administrative Law Judge with the Office of Administrative Hearings presided. James Peel, Staff Counsel, appeared on behalf of Janice A. Waddell (Complainant). Mark Amar Vachani was present throughout the hearing and represented himself, with assistance from his daughter, Shantel Vachani.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter submitted for decision on October 20, 2008.

**FACTUAL FINDINGS**

1. On June 15, 2006, Complainant filed the Accusation while acting in her official capacity as Deputy Real Estate Commissioner of the Department of Real Estate (Department), State of California.

2. At all relevant times, Respondent held a real estate broker license issued by the Department. Respondent's license will expire on May 9, 2009, unless renewed.

3. (a) On May 10, 2005, in the Superior Court of California, County of Orange, Case Number, Case No. 02HF1563, Respondent pled nolo contendere and was convicted thereon, as follows: one count of violating Penal Code section 550, subdivision (a)(1) (presenting false or fraudulent insurance claim for payment), a felony, and one count of violating Penal Code section 148, subdivision (a)(1) (resisting or obstructing a public officer), a misdemeanor.

(b) In connection with these convictions, the court suspended imposition of sentence and placed Respondent on formal probation for five years. Terms and conditions of his probation included the following: Spend 90 days in home detention; pay \$200 of restitution; pay probation costs; and obey all laws.

(c) Respondent's crimes occurred at separate times. As to his conviction for presenting a false or fraudulent insurance claim, the evidence established that on May 1, 2002, Respondent's wife, Mrs. Deepa Vachani, was driving their car, a 1985 Mercedes Benz. A car pulled in front of the Mercedes on the road and Mrs. Vachani rear ended the car. The Mercedes apparently suffered some damage to the front end because Respondent called his insurance company to make a claim. The insurance company told him that the Mercedes was not insured, and Respondent immediately arranged for the car to be insured, effective at 12:01 a.m. the next morning, May 2, 2002. Later, on May 2, 2002, Respondent's wife was driving to the auto body shop with him in the car. Respondent claims that a car pulled out and turned a U-turn in front of their car and his wife ran into the car. The other car fled the scene. Respondent filed a claim with the insurance company for damage to the car, ostensibly from the second accident. The insurance company began an investigation into Respondent's insurance claim. The evidence shows that the second accident did not occur. Respondent made a false or fraudulent claim to the insurance company claiming that there was a second accident on May 2, 2002, that caused damage to the car. However, the damage to the car occurred as a result of the initial accident on May 1, 2002, when the car was not insured.

(d) The crime involving obstructing or resisting a public officer occurred on February 26, 2003, when a police officer was attempting to serve a warrant on Respondent and his wife for their arrest in connection with the false auto insurance claim. Respondent's wife was in the front yard of their home when the police officer confronted her with the warrant. She became belligerent, walked away, and the officer pursued her. Soon, they were involved in a physical struggle. Respondent joined the struggle when he came out of the house after he heard his wife screaming. Respondent did not know who the police officer was. The officer was trying to hold on to Mrs. Vachani and Respondent was trying to pull her away. Respondent claims that he thought his wife was being sexually assaulted when he exited his home. He did not know that it was a police officer trying to arrest his wife because the officer was in plain clothes and was driving an unmarked car. Respondent tried to call "911" from his cell phone during the struggle. Both Respondent and his wife were eventually arrested. Respondent blames the police officer for this crime and claims he did not know that the individual trying to make the arrest was a police officer.

(e) At hearing, Respondent stated that he did not commit the crimes, especially the crime involving the false insurance claim; but, his credibility on this issue is in doubt. According to his criminal plea agreement, Respondent admitted to both crimes. Also, in convicting Respondent, the court found a factual basis for the plea. In addition, Respondent admitted giving an inconsistent version of events to the district attorney who was interviewing him about the insurance claim, telling the D.A. that the first accident never happened.

(f) Respondent's crime of presenting a false or fraudulent insurance claim involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee in that the crime involves dishonesty or fraud. His actions in obstructing a police officer, which he admitted in criminal court, do not involve moral turpitude, nor are they substantially related to the qualifications, functions and duties of a real estate licensee.

4. Respondent claims that he pled nolo contendere to avoid the mental and physical toll of a trial. Respondent is not a well man and suffers from heart problems. However, Respondent admitted these crimes to the court in his criminal plea agreement. His current denial shows only that he does not accept responsibility for his actions.

5. Respondent has been a real estate broker for over 23-years in California and this is the only blemish on his record. Except for these crimes, he has an exemplary record as a broker, and no other encounters with the criminal justice system.

6. In 1970, Respondent received his degree in engineering from Seneca University in Canada. After returning home to his native India, he got married and then returned to Canada to enter the real estate business. In 1984, he moved to California and became a real estate sales person and then became a licensed a real estate broker in 1985. He has been in the business since then. Respondent and his wife settled in the Irvine area and raised four children, three boys and a girl. The children are now approximately 33, 30, 29 and 27 years of age. All have completed college. Most notably, one son is a real estate broker and received a master's in business from the University of California at Irvine. His daughter has her Bachelor's and Master's degree and has just completed law school, all at the University of California in Los Angeles. Respondent has a stable family life.

7. Respondent's convictions occurred over three and one-half years ago and the conduct that led to the crimes occurred over six and one-half years ago. On June 3, 2008, the Superior Court of California, County of Orange, terminated Respondent's criminal probation early. On June 11, 2008, the same court reduced Respondent's felony conviction to a misdemeanor pursuant to Penal Code section 17, and on September 9, 2008, both crimes were dismissed pursuant to Penal Code section 1203.4.

8. Respondent presented several letters attesting to his good character, honesty and integrity from people with whom he has worked, or performed services for, in his real estate business.

## LEGAL CONCLUSIONS

1. Business and Professions Code sections 490 and 10177, subdivision (b), provide that a real estate license may be suspended or revoked if the licensee has been convicted of felony or a crime involving moral turpitude<sup>1</sup> which is substantially related to the qualifications, functions and duties of a real estate licensee.

2. The Department has adopted a regulation to determine whether a crime or act is substantially related to the qualifications, functions and duties of a real estate licensee. California Code of Regulations, title 10, section 2910, states in part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the [Business and Professions] Code, 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 [Business and Professions] Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering on of an instrument or the uttering of a false statement.

[¶] . . . [¶]

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

[¶] . . . [¶]

(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.

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<sup>1</sup> The 2007 amendment to Business and Professions Code section 10177, subdivision (b) substituted "a crime substantially related to the qualifications, functions, or duties of a real estate licensee" for "a crime involving moral turpitude." However, this change in the statute was not made retroactive, and so the moral turpitude requirement is still applied in this matter. "[A] statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application." (*Meyers v. Phillip Morris Companies, Inc.* (2002) 28 Cal. 4<sup>th</sup> 828, 844.)

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(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 act 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.

Respondent's felony conviction fits within several provisions of California Code of Regulations, title 10, section 2910, including subdivisions (a)(1), (2), (4) and (8) and it is substantially related to the qualifications, functions and duties of a real estate licensee based on Factual Findings 3. It is concluded that Respondent's conviction for obstructing a public officer is not substantially related to the qualifications, functions or duties of a real estate licensee. That conviction does not fall within any of the Department's criteria and the conviction's specific circumstances do not show that it would likely recur in the context of Respondent's real estate business. Respondent believed that his spouse was being assaulted.

3. Complainant alleges that Respondent's crimes involve moral turpitude. In *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 400-401, the Court stated:

The concept of "moral turpitude" is an elusive one. However, there is widespread agreement that convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law. (Citations.)

Respondent's conviction for making a false or fraudulent insurance claim involves moral turpitude on its face. It was not shown, however, that the other crime involved moral turpitude on its face or by its facts and circumstances.

4. Cause exists to suspend or revoke Respondent's real estate broker's license, pursuant to Business and Professions Code sections 490 and 10177, subsection (b), for his conviction of a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee, as set forth in Factual Finding 3.

5. The Department has established a regulation designed to measure the extent of a licensee's rehabilitation following a criminal conviction. California Code of Regulations, title 10, section 2912, states:

The following criteria have been developed by the department pursuant to Section 482(b) of the Business and Professions Code 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 a crime committed by the licensee.

- (a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee.
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinance from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to the applicant's social adjustments.

(4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Respondent has satisfied many of the applicable rehabilitation criteria. Specifically, it has been more than two years from the time he was convicted (Cal. Code Regs., tit. 10, § 2910, subd. (a)); the court issued an order reducing the felony to a misdemeanor and then dismissed the convictions pursuant to Penal Code section 1203.4 (Cal. Code Regs., tit. 10, § 2910, subd. (c)); Respondent has a stable family life (Cal. Code Regs., tit. 10, § 2910, subd. (j)); and Respondent has had no other encounters with the criminal justice system (Cal. Code Regs., tit. 10, § 2910, subd. (m)(5)). These convictions appear to be an anomaly in an otherwise distinguished career. However, it is a concern that Respondent does not accept responsibility for the crimes. This is not a situation in which Respondent is being asked to be falsely contrite; rather, Respondent admitted these crimes when entering nolo contendere pleas, but now claims that he was innocent, particularly as it relates to the false claim conviction. Respondent claims that he entered the pleas to avoid the



emotional and physical toll of pursuing his innocence. It is true that Respondent has health problems. However, Respondent was not credible in his insistence that he did not commit the crime of presenting a false or fraudulent insurance claim, based on Factual Finding 3.

Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

Under the circumstances, the public safety, welfare and interest should be adequately protected by the issuance of a properly conditioned restricted license in this matter.

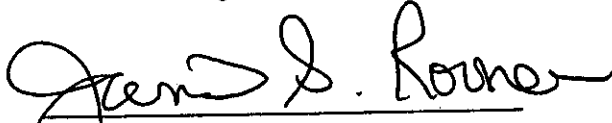
### ORDER

All licenses and licensing rights of Respondent Mark Amar Vachani 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 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 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, 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.

DATED: November 20, 2008

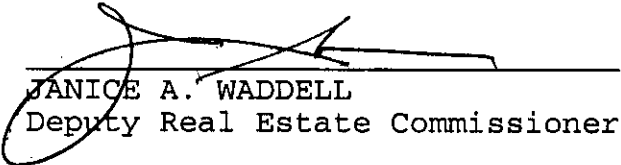
  
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JANIS S. ROVNER  
Administrative Law Judge  
Office of Administrative Hearings





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

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9 Dated at Los Angeles, California,  
10 this 15 day of June, 2006

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14 JANICE A. WADDELL  
15 Deputy Real Estate Commissioner  
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23 cc: Mark Amar Vachani  
24 Janice A. Waddell  
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