

FILED

MAY 27 2008

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

BY: 

* * * * *

In the Matter of the Accusation of) No. H-34455 LA
GILBERT JESUS TAYLOR,) L-2008010348
Respondent.)

DECISION

The Proposed Decision dated April 23, 2008, 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(c)(2) of the Government Code, the following correction and change are made to the Proposed Decision:

Factual Findings, Page 1, paragraph No. 1, line 2; "On November 16, 2007" is amended to read "On November 20, 2007".

Order, Page 7, No. 3, the word "four" is replaced with the word "three".

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 June 11, 2008.

IT IS SO ORDERED


JEFF DAVI
Real Estate Commissioner


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of

GILBERT JESUS TAYLOR,

Respondent.

Case No. H-34455 LA

OAH No. L2008010348

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 11, 2008, in Los Angeles, California.

Cheryl D. Keily, Staff Counsel, represented Deputy Real Estate Commissioner Robin Trujillo (Complainant).

Edward O. Lear, Attorney at Law, Century Law Group, represented Gilbert Jesus Taylor (Respondent). Respondent was present.

The ALJ held the record open to allow Respondent to submit additional documents by March 25, 2008, and to allow Complainant to object to Respondent's submission by April 1, 2008. Respondent filed additional documents on March 25, 2008; the documents were marked for identification as Exhibit B. On March 26, 2008, Complainant filed a letter asserting no objection to the admission of Exhibit B. Complainant's letter was marked for identification as Exhibit 6, Exhibit B was admitted into the record, and the record was then closed. The matter was deemed submitted for decision on March 26, 2008.

FACTUAL FINDINGS

1. On November 1, 2007, Complainant, acting in her official capacity, filed the Accusation. This action then ensued. On November 16, 2007, Respondent filed the Notice of Defense through his attorney. 20,

2. Complainant contends Respondent's misdemeanor conviction provides grounds for the suspension or revocation of his real estate broker license, pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

3. Respondent contends that the events that led to his conviction, and the conviction itself, constituted isolated incidents and that, despite the conviction, he is not a danger to the

public as a licensed real estate broker. Respondent argues that it is therefore appropriate to allow him to continue working as a licensed real estate broker.

4. The Department of Real Estate (the Department) issued a real estate broker license to Respondent on January 14, 2005; it expires on January 13, 2009, unless renewed. The Department has not taken any disciplinary action against Respondent until this action. Respondent's real estate broker license was in effect at all times relevant to this action.

5. On August 17, 2007, following a nolo contendere plea, the Los Angeles County Superior Court, in case number 7DY03577, convicted Respondent of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a misdemeanor. The court suspended the imposition of Respondent's sentence and placed him on three years of summary probation.

6. The terms and conditions of probation included, among other terms, serving five days in the county jail, paying \$120 in fines and restitution, serving 10 days of community service through CalTrans (with credit for one day), completing a 52-week anger management course, and agreements to obey all laws and all orders of the sentencing court. Respondent has completed the jail sentence, the community service, the 52-week anger management course, and has paid the ordered fines and restitution.

7. The facts underlying the conviction are that, on April 24, 2007, in Downey, California, Respondent was attempting to park his car in a parking space at his place of employment; his wife was also in the car with him. A man on a cellular telephone was standing in the parking space in which Respondent was attempting to park. Respondent motioned for the man to move out of the way but the man refused and motioned for Respondent to park elsewhere. Despite the man's refusal to move, Respondent slowly moved his car into the parking space until his car made contact with the man, pushing the man back and causing him to fall to the ground. The man claimed to have suffered physical injuries but the evidence did not establish that the man suffered any injuries.

8. Respondent admits to being the aggressor in the incident. He described the incident as a "dumb decision." He understands that his actions were wrong and could have physically hurt the victim; he was remorseful. Respondent has taken responsibility for the incident and has learned from it. He is now more cautious when driving. Respondent realizes that automobiles can be dangerous and he has learned to control his temper when dealing with traffic and other drivers. Persons familiar with Respondent, including close friends, colleagues, his wife, and his mother described Respondent as a mild-mannered individual with strong family values and a strong work ethic. They consistently described the acts that led to Respondent's conviction as actions that were completely out of character from the person they know.

9. Respondent is the owner of a property management company in Downey. He is the father of three young boys. Respondent is involved in his children's lives; he coaches in one of his son's youth soccer league. For several years, Respondent has donated his time and money to a local charity that offers athletic scholarships to high school students who are entering college. He considers himself a devout Catholic.

LEGAL CONCLUSIONS

1. Cause does not exist to revoke or suspend Respondent's real estate broker license, pursuant to Business and Professions Code section 490, as set forth in Factual Findings 1-9, and Legal Conclusions 3 and 13.

2. Cause exists to revoke or suspend Respondent's real estate broker license, pursuant to Business and Professions Code section 10177, subdivision (b), as set forth in Factual Findings 1-9, and Legal Conclusions 4-12.

3. Business and Professions Code section 490 states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime if the crime is substantially related to the qualifications, function, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

4. Business and Professions Code section 10177, subdivision (b) states in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee . . . who has done any of the following . . .

[¶] . . . [¶]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

5. California Code of Regulations, title 10, section 2910 states in pertinent part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime . . . the crime . . . 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 Code if it involves:

[¶] . . . [¶]

(8) Doing of any unlawful act . . . with the intent or threat of doing substantial injury to the person . . . of another.

6. California Code of Regulations, title 10, section 2912 states in pertinent part:

The following criteria have been developed by the department pursuant to Section 482(b) of the business and Professions Code for the purpose of evaluation 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.

[¶] . . . [¶]

(e) Successful completion or early discharge from probation or parole.

[¶] . . . [¶]

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

[¶] . . . [¶]

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.

[¶] . . . [¶]

(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.

[¶] . . . [¶]

(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.

7. Respondent's crime of assault with his car involved the intent or threat of doing substantial injury to the man standing in the parking space. Moving forward slowly, even inching forward, until the car made contact with the man, could have severely injured him. Therefore, Respondent's crime is substantially related to the qualifications, functions, and duties of a Department licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

8. In her Accusation, Complainant alleges that the facts underlying Respondent's crime involved moral turpitude. However, the Legislature amended Business and Professions Code section 10177, subdivision (b) in 2007, effective January 1, 2008, deleting the previous requirement that misdemeanors must involve moral turpitude to be considered as a basis for discipline. (See Legal Conclusion 3.) The statute, as amended, only requires that the crime bear a substantial relationship to a Department licensee's qualifications, functions, or duties. (*Ibid.*) When the Legislature enacts a law, including a statutory amendment, it must be interpreted and taken as it is found, and the complete operative force of the Legislature's action cannot be prevented or impaired. (See *Plum v. State Bd. of Control* (1942) 51 Cal.App.2d 382, 385.) Thus, a finding of moral turpitude, in this matter, is unnecessary.¹

9. Being convicted of a substantially related crime provides cause to revoke or suspend Respondent's real estate broker license. (Bus. & Prof. Code, § 10177, subd. (b).) However, here, license discipline less severe than revocation is appropriate given that the facts underlying the conviction lessen the severity of the crime, and the crime was an isolated incident that contrasts Respondent's background, a background that meets several rehabilitative regulatory criteria. Taking these factors into consideration, it is reasonable to conclude that Respondent's continued licensure as a real estate broker would not place the public in danger, as long as the license is restricted for a time beyond his on-going criminal probation.

10. Respondent's assault of the man in the parking space resulted more out of a rash and immature battle of wills than, an intent to harm him. The evidence proved Respondent moved his car slowly into the space. There is no doubt Respondent's actions constituted an assault, however, Respondent acted more in an effort to intimidate the man into moving than in an effort to actually hit or physically nudge the man out. While the crime provides cause for

¹ If moral turpitude were required in this case, case law would support a conclusion that Respondent's crime involved moral turpitude. (See *People v. Elwell* (1988) 206 Cal.App.3d 171, 175; *People v. Thomas* (1988) 206 Cal.App.3d 689, 700.)

discipline, the severity of a conviction for assault with a deadly weapon is lessened by these particular facts.

11. Though Respondent has not met two significant criteria of rehabilitation (two years have not passed since the conviction and he has not completed his criminal probation (Cal. Code Regs., tit. 10, § 2912, subds. (a) & (e))), Respondent has met several other regulatory criteria for rehabilitation. He has paid the court-imposed fines and restitution associated with his probation. (Cal. Code Regs., tit. 10, § 2912, subd. (g).) He has had (prior to the conviction) and has (since the conviction) a stable family life. (Cal. Code Regs., tit. 10, § 2912, subd. (j).) He is involved in charitable work in his community and has a strong spiritual background. (Cal. Code Regs., tit. 10, § 2912, subd. (l).) He has changed his way of thinking, now being more cautious when driving and less quick to anger, and he has taken responsibility for his transgression. (Cal. Code Regs., tit. 10, § 2912, subds. (m)(1) & (m)(2).) He was remorseful at hearing. (*Ibid.*) Respondent has no history of committing other crimes reflective of an inability to conform to societal rules. (Cal. Code Regs., tit. 10, § 2912, subd. (m)(5).) With no other criminal history, it is reasonable to conclude that this one criminal act was an isolated incident.

12. Nevertheless, Respondent remains on criminal probation until approximately August 2010, a constraint that requires Respondent to act in accordance with the law. Whether Respondent continues to be law-abiding after probation is yet to be seen, though his history, other than his one conviction, bodes in his favor. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, despite being convicted of a crime substantially related to a licensee's qualifications, functions, and duties, the evidence supports a conclusion that the public would not be harmed by allowing Respondent to hold a restricted real estate broker license. Given that Respondent remains on criminal probation, it is appropriate to restrict Respondent's license for a period of time sufficiently beyond the estimated date by which such probation ends to ensure that Respondent's criminal act was indeed an isolated incident.

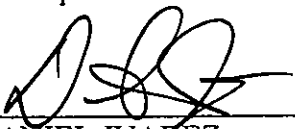
13. Complainant pled cause for discipline pursuant to Business and Professions Code sections 490 and 10177, subdivision (b). While the evidence established cause under section 10177, subdivision (b), no cause is found under section 490. In *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, the Court of Appeals held that Business and Professions Code section 490 "does not provide independent statutory authorization for [the Department] to suspend or revoke the license of a person based on his or her conviction of a crime. Only section 10177, subdivision (b) grants [the Department] that authority." (*Petropoulos, supra*, 142 Cal.App.4th at 567.) Thus, in accordance with *Petropoulos*, the authority to deny Respondent's license application comes solely from Business and Professions Code section 10177, subdivision (b); section 490 cannot independently sustain such cause.

ORDER

All licenses and licensing rights of Respondent Gilbert Jesus Taylor 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 ~~four~~ ^{three} 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: April 23, 2008



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

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FILED

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DEPARTMENT OF REAL ESTATE

BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 GILBERT JESUS TAYLOR,)
13 Respondent.)
14 _____)

No. H-34455 LA

A C C U S A T I O N

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against GILBERT JESUS TAYLOR, aka Gilbert Taylor, aka Gilbert J.
18 Taylor, ("Respondent") alleges as follows:

19 1.

20 The Complainant, Robin Trujillo, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 in her official capacity.
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2.

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 (Code) as a real estate broker.

3.

(CRIMINAL CONVICTION)

On or about August 17, 2007, in the Superior Court of California, County of Los Angeles, in Case No. 7DY03577, Respondent was convicted of violating California Penal Code Section 245(a)(1) (Assault with a Deadly Weapon Not a Firearm), a misdemeanor. The underlying facts of this crime involve moral turpitude, which bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

4.

The crime of which Respondent was convicted, as described in Paragraph 3, above, constitutes cause under Sections 490 and 10177(b) of the Code for the suspension or revocation of the license and license rights of Respondent under the Real Estate Law.

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

10 Dated at Los Angeles, California

11 this 30 day of October, 2007.
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16 Robin Trujillo
17 Deputy Real Estate Commissioner
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25 cc: GILBERT JESUS TAYLOR
26 Robin Trujillo
27 Sacto.