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FILED

SEP 19 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

PETER KAM CHAN,

Respondent..

DRE No. H-34561 LA

OAH No. L-2008010353

DECISION AFTER REJECTION

This matter came on for hearing before Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, in Los Angeles, California, on March 13, 2008.

Elliott Mac Lennan, Counsel, represented the Complainant. The Respondent, Peter Kam Chan, appeared in person without counsel.

Evidence was received, the record was closed, and the matter was submitted.

On March 27, 2008, the Administrative Law Judge rendered a Proposed Decision (hereinafter "the Proposed Decision") which the Real Estate Commissioner declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Real Estate Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Real Estate Commissioner upon

1 the record, the transcript of proceedings held on March 13, 2008, and upon written argument
2 offered by Respondent and Complainant.

3 Written argument was not submitted by Respondent. Written argument has been
4 submitted on behalf of Complainant.

5 I have given careful consideration to the record in this case, including the
6 transcript of proceedings of March 13, 2008 and written argument offered by Complainant.

7 The following shall constitute the Decision of the Real Estate Commissioner in
8 these proceedings.

9 FACTUAL FINDINGS

10 1. Maria Suarez, Deputy Real Estate Commissioner of the Department of
11 Real Estate of the State of California (Department) filed Accusation No. H-34561 LA in her
12 official capacity on December 6, 2007. Respondent filed a timely Notice of Defense.

13 2. Respondent is licensed as a real estate broker and holds license
14 number 01046813

15 3. On May 8, 2007, in the Los Angeles County Superior Court,
16 Respondent pled nolo contendere and was convicted of one count of violating Penal Code
17 section 243, subdivision (e)(1), spousal battery, a misdemeanor. The court then placed
18 Respondent on summary probation for three years, on condition, among others, the he serve
19 one day in custody, pay fines and fees in the amount of \$520.00, and enroll and complete
20 domestic violence counseling sessions

21 Respondent committed the offense on August 16, 2006. According to the
22 police report, Respondent became angry with his wife, Kate Qian, over money reflected on a
23 bank statement. When she came home, Respondent pulled her out of her car, slapped her in
24 the face, and threatened her. They argued, and during the argument; Respondent continued
25 to slap her in the face, up to 20 times, as well as punching her in the shoulder and chest.
26 Respondent's attack on his wife caused some slight swelling on her face.

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1 4. Respondent's conviction involves moral turpitude and is substantially
2 related to the qualifications, functions, or duties of a real estate broker in that his conduct
3 caused substantial injury to another. Title 10, California Code of Regulations, section 2910,
4 subdivision (a)(8).

5 5. Respondent testified when he attacked his wife, he was having a really
6 bad day. He had had a bad day in the office, his asthma was acting up; he had had to move
7 into the duplex where his wife was then living, and when he saw a bank statement, he
8 noticed that some money was missing from his account. Respondent admitted striking her a
9 few times but denied that he struck her 20 times.

10 Respondent and Ms. Qian were married for about seven years. They had
11 known each other for about a year before they married. They have since divorced, but each
12 lives in one unit of a duplex Respondent owns. They see each other daily. Respondent called
13 them friends.

14 Respondent obtained his broker's license in 2000 but has never worked in the
15 real estate field and is not sure if he ever will. He is employed as an accountant for Los
16 Angeles County, where he has worked for 11 years. He obtained a bachelor's degree in
17 accounting from UCLA and recently received a master's degree from California State
18 University Los Angeles. He also attended law school for one semester.

19 Respondent testified he remains on probation but hopes his attorney will file
20 papers shortly to have probation terminated and his conviction expunged. He served one day
21 in jail before posting bail, and paid all the court costs. He completed a domestic abuse
22 program which lasted one year. He performed work for CalTrans for five days and then did
23 ten days of community service doing cleanup work.

24 6. Kate Qian testified she was married to Respondent until 2007 when
25 they divorced. Since Respondent committed the spousal battery on her, he has not been
26 violent toward her. She has noticed that he has changed since his arrest. She testified that

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1 Respondent has a temper, but he appears to have learned how to handle it better and does not
2 get angry at small things any longer.

3 7. Ms. Qian described an incident that occurred on July 4, 2006. According
4 to her, Respondent became angry with her, held a handgun to her head, and threatened to kill
5 her. He then led her to the rear of the yard, fired a bullet into the dirt, and gave her the
6 expended casing as if to intimidate and remind her of his power. Respondent denied this
7 occurred.

8 While this incident is described in the police report, and while the police
9 officers at the time they arrested Respondent confiscated his firearms, no criminal charges
10 relating to this incident were filed and Complainant did not charge Respondent with this
11 conduct in the Accusation. The only evidence corroborating Ms. Qian's testimony are hearsay
12 statements contained in the police report from Ms. Qian's daughter describing the incident. The
13 evidence is insufficient to establish that Respondent threatened Ms. Qian.

14 CONCLUSIONS OF LAW

15 1. Business and Professions Code section 490 provides in part:

16 *A board may suspend or revoke a license on the ground that the*
17 *licensee has been convicted of a crime, if the crime is substantially related to*
18 *the qualifications, functions, or duties of the business or profession for*
19 *which the license was issued. A conviction within the meaning of this section*
20 *means a plea or verdict of guilty or a conviction following a plea of nolo*
21 *contender....*

22 2. Business and Professions Code Section 10177 provides in pertinent part:

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

25 *(b) Entered a plea of guilty [to] ... a felony or a crime involving moral*
26 *turpitude*

27 ///

1 3. Cause to suspend or revoke Respondent's real estate broker license was
2 established pursuant to Business and Professions Code sections 490 and 10177, subdivision
3 (b), conviction of offenses that are substantially related to the qualifications, functions, and
4 duties of a real estate licensee, by reason of Findings 3 and 4.

5 4. California Code of Regulations, title 10, section 2912 sets forth the
6 Department's criteria of rehabilitation. The evidence in light of those criteria shows
7 Respondent was convicted of a misdemeanor that involved an act of violence against his wife
8 19 months ago and was sentenced less than a year ago, and will remain on probation for
9 another two years. He paid the fine.

10 One of the criteria relates to a change in attitude from that which existed at the
11 time of the commission of the criminal acts. It was Respondent's temper that precipitated the
12 offense, and according to Ms. Qian, the victim of the assault, Respondent has changed and has
13 learned how to manage his temper. She attributed the change to his arrest, something that had
14 never happened to him before, and she observed that he now does not get angry at small
15 things. In addition, Respondent completed 52-weeks of domestic violence counseling.
16 Respondent also recently obtained a master's degree in accounting.

17 Looking at all the evidence, Respondent committed one act of violence
18 against his wife but which caused no serious injury. Ms. Qian's testimony suggests that he is
19 less likely to commit such an act again because he knows how to manage his anger.
20 Respondent's work history is stable, as shown by his continuous employment for the County
21 of Los Angeles for 11 years. Based on this evidence, it would not be against the public
22 interest to allow Respondent to remain in the real estate field, if he so chooses, but with a
23 restricted license.

24 ORDER

25 All licenses and licensing rights of Respondent Peter Kam Chan under the
26 Real Estate Law are revoked; provided, however, a restricted real estate salesperson license
27 shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions

1 Code if Respondent makes application therefor and pays to the Department of Real Estate
2 the appropriate fee for the restricted license within 90 days from the effective date of this

3 Decision. The restricted license issued to the Respondent shall be subject to all of the
4 provisions of section 10156.7 of the Business and Professions Code and to the following
5 limitations, conditions, and restrictions imposed under authority of section 10156.6 of said
6 Code:

7 1. The restricted license issued to Respondent may be suspended prior to
8 hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or
9 plea of nolo contendere to a crime which is substantially related to respondent's fitness or
10 capacity as a real estate licensee.

11 2. The restricted license issued to Respondent may be suspended prior to
12 hearing by Order of the Real Estate Commissioner on evidence satisfactory to the
13 Commissioner that Respondent has violated provisions of the California Real Estate Law,
14 the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions
15 attaching to this restricted license.

16 3. Respondent shall not be eligible to apply for the issuance of an
17 unrestricted real estate license nor for the removal of any of the conditions, limitations or
18 restrictions attaching to the restricted license until two (2) years have elapsed from the
19 effective date of this Decision.

20 4. Respondent shall, within nine months from the effective date of this
21 Decision, present evidence satisfactory to the Real Estate Commission that Respondent has,
22 since the most recent issuance of an original or renewal real estate license, taken and
23 successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of
24 the Real Estate Law for renewal of a real estate license. If Respondent fails to satisfy this
25 condition, the Commissioner may order the suspension of the restricted license until
26 respondent presents such evidence. The Commissioner shall afford Respondent the

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1 opportunity for a hearing pursuant to the Administrative Procedure Act to present such
2 evidence.

3 5. Respondent shall submit with any application for license under an
4 employing broker, or any application for transfer to a new employing broker, a statement signed
5 by the prospective employing real estate broker on a form approved by the Department of Real
6 Estate which shall certify:

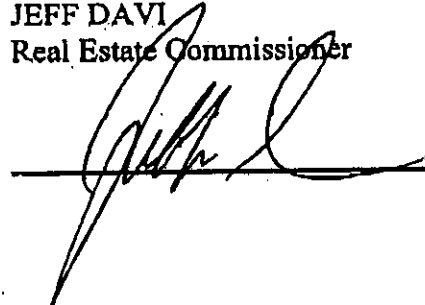
7 A. That the employing broker has read the Decision of the Commissioner
8 which granted the right to a restricted license; and

9 B.. That the employing broker will exercise close supervision over the
10 performance by the restricted licensee relating to activities for which a real estate license is
11 required.

12 This Order shall become effective October 9, 2008

13 IT IS SO ORDERED 9-16., 2008.

14 JEFF DAVI
15 Real Estate Commissioner

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Sack

FILED

AUG 21 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	DRE No. H-34561 LA
PETER KAM CHAN,	)	OAH No. 2008010353
Respondent.	)	

ORDER DELAYING DECISION AFTER REJECTION

On April 22, 2008, Respondent was notified that the Proposed Decision dated March 27, 2008, of the Administrative Law Judge was not adopted as the Decision of the Real Estate Commissioner. Respondent was notified that the disposition of his case would be determined by me after consideration of the record, including the transcript of the proceedings held on March 13, 2008.

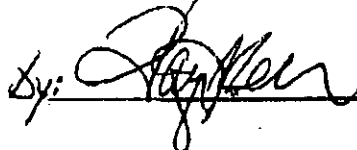
Pursuant to Section 11517(c) of the Government Code of the State of California my Decision After Rejection of the proposed decision in this matter is due. However, it is necessary that my Decision After Rejection be delayed for 30 days

1 inasmuch as it has not been possible for me to adequately review
2 the evidence and circumstances of Respondent's case.

3 THEREFORE, IT IS ORDERED that the decision in this
4 matter shall be delayed for a period of 30 days, up to and
5 including September 19, 2008.

6 DATED August 21, 2008

8 JEFF DAVI
9 Real Estate Commissioner

10 By: 

11
12 By WAYNE S. BELL
13 Chief Counsel

Intro

FILED

APR 22 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-34561 LA
	)	
PETER KAM CHAN,	)	L-2008010353
	)	
Respondent.	)	

NOTICE

TO: PETER KAM CHAN, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated March 27, 2008, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated March 27, 2008, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on March 13, 2008, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of March 13, 2008, at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

Written argument of Complainant to be considered by me must be submitted within 15 days after receipt of the argument of Respondent at the Los Angeles office of the Department of Real Estate unless an extension of the time is granted for good cause shown.

DATED :

JEFF DAVIS
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

PETER KAM CHAN,

Respondent.

Case No. H-34561 LA

OAH No. L2008010353

PROPOSED DECISION

On March 13, 2008, in Los Angeles, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Elliott Mac Lennan, Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on March 13, 2008.

FACTUAL FINDINGS

1. Maria Suarez, Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department) filed Accusation No. H-34561 LA in her official capacity on December 6, 2007. Respondent filed a timely Notice of Defense.

2. Respondent is licensed as a real estate broker and holds license number 01046813

3. On May 8, 2007, in the Los Angeles County Superior Court, respondent pled nolo contendere and was convicted of one count of violating Penal Code section 243, subdivision (e)(1), spousal battery, a misdemeanor. The court then placed respondent on summary probation for three years, on condition, among others, the he serve one day in

custody, pay fines and fees in the amount of \$520.00, and enroll and complete domestic violence counseling sessions

Respondent committed the offense on August 16, 2006. According to the police report, respondent became angry with his wife, Kate Qian, over money reflected on a bank statement. When she came home, respondent pulled her out of her car, slapped her in the face, and threatened her. They argued, and during the argument, respondent continued to slap her in the face, up to 20 times, as well as punching her in the shoulder and chest. Respondent's attack on his wife caused some slight swelling on her face.

4. Respondent's conviction involves moral turpitude and is substantially related to the qualifications, functions, or duties of a real estate broker in that his conduct caused substantial injury to another Title 10, California Code of Regulations, section 2910, subdivision (a)(8).

5. Respondent testified when he attacked his wife, he was having a really bad day. He had had a bad day in the office, his asthma was acting up, he had had to move into the duplex where his wife was then living, and when he saw a bank statement, he noticed that some money was missing from his account. Respondent admitted striking her a few times but denied that he struck her 20 times.

Respondent and Ms. Qian were married for about seven years. They had known each other for about a year before they married. They have since divorced, but each lives in one unit of a duplex respondent owns. They see each other daily. Respondent called them friends.

Respondent obtained his broker's license in 2000 but has never worked in the real estate field and is not sure if he ever will. He is employed as an accountant for Los Angeles County, where he has worked for 11 years. He obtained a bachelor's degree in accounting from UCLA and recently received a master's degree from California State University Los Angeles. He also attended law school for one semester.

Respondent testified he remains on probation but hopes his attorney will file papers shortly to have probation terminated and his conviction expunged. He served one day in jail before posting bail, and paid all the court costs. He completed a domestic abuse program which lasted one year. He performed work for CalTrans for five days and then did ten days of community service doing cleanup work.

6. Kate Qian testified she was married to respondent until 2007 when they divorced. Since respondent committed the spousal battery on her, he has not been violent toward her. She has noticed that he has changed since his arrest. She testified that respondent has a temper, but he appears to have learned how to handle it better and does not get angry at small things any longer.

7. Ms. Qian described an incident that occurred on July 4, 2006. According to her, respondent became angry with her, held a handgun to her head, and threatened to kill her. He then led her to the rear of the yard, fired a bullet into the dirt, and gave her the expended casing as if to intimidate and remind her of his power. Respondent denied this occurred.

While this incident is described in the police report, and while the police officers at the time they arrested respondent confiscated his firearms, no criminal charges relating to this incident were filed and complainant did not charge respondent with this conduct in the Accusation. The only evidence corroborating Ms. Qian's testimony are hearsay statements contained in the police report from Ms. Qian's daughter describing the incident. The evidence is insufficient to establish that respondent threatened Ms. Qian.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides in part:

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, functions, 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 . . .

2. Business and Professions Code Section 10177 provides 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 [to] . . . a felony or a crime involving moral turpitude

3. Cause to suspend or revoke respondent's real estate salesperson license was established pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), conviction of offenses that are substantially related to the qualifications, functions, and duties of a real estate salesperson, by reason of Findings 3 and 4.

4. California Code of Regulations, title 10, section 2912 sets forth the Department's criteria of rehabilitation. The evidence in light of those criteria shows respondent was convicted of a misdemeanor that involved an act of violence against his wife 19 months ago and was sentenced less than a year ago, and will remain on probation for another two years. He paid the fine.

One of the criteria relates to a change in attitude from that which existed at the time of the commission of the criminal acts. It was respondent's temper that precipitated the offense, and according to Ms. Qian, the victim of the assault, respondent has changed and has learned how to manage his temper. She attributed the change to his arrest, something that had never

happened to him before, and she observed that he now does not get angry at small things. In addition, respondent completed a 52-week domestic violence counseling.

Respondent also recently obtained a master's degree in accounting.

Looking at all the evidence, respondent committed one act of violence against his wife but which caused no serious injury. Ms. Qian's testimony suggests that he is less likely to commit such an act again because he knows how to manage his anger. Respondent's work history is stable, as shown by his continuous employment for the County of Los Angeles for 11 years. Based on this evidence, it would not be against the public interest to allow respondent to remain in the real estate field, if he so chooses, but with a restricted license.

ORDER

All licenses and licensing rights of respondent Peter Kam Chan 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 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 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 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 this 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 attaching to the restricted license until two (2) 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 Commission 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

NOT ADOPTED

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 respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

NOT
ADOPTED

DATED: 3/27/08


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED

DEC -6 2007

DEPARTMENT OF REAL ESTATE
BY: ABY

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-34561 LA

12 PETER KAM CHAN,)

ACCUSATION

13 Respondent.)

14
15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for cause of accusation
17 against PETER KAM CHAN aka Peter Wah Chan, 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 broker under the Real Estate Law (Part 1
22 of Division 4 of the California Business and Professions Code)
23 (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 September 30, 1989 and as a real estate broker on March 31, 2000.

3.

On May 8, 2007, in the Superior Court of California, County of Los Angeles, bearing Case No. 7AH01007, respondent was convicted upon a plea of nolo contendere to Penal Code Section 243(e)(1) (spousal battery), a misdemeanor.

4.

This crime, by its facts and circumstances, is substantially related under Section 2910(a)(8) of Chapter 6, Title 10 of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

5.

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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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 the license and license rights of respondent PETER
5 KAM CHAN under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provision of law.

8 Dated at Los Angeles, California

9 This

16th day of November 2007.


Deputy Real Estate Commissioner

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25 cc: Peter Kam Chan
26 Maria Suarez
27 Anthony Vo
Sacto