

FILED
SEP 22 2008

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

Laura B. Deane

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|--------------------------------------|----------------|
| In the Matter of the Accusation of) | No. H-34839 LA |
| VICTOR M. LOZA,) | L-2008050147 |
|) | |
|) | |
| Respondent.) | |
| _____) | |

DECISION

The Proposed Decision dated August 13, 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.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

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 OCT 14 2008.

IT IS SO ORDERED 9-16-08

JEFF DAVIS
Real Estate Commissioner

Jeff Davis

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

In the Matter of the Accusation Against:

VICTOR M. LOZA,

Respondent.

Case No. H-34839 LA

OAH No. L2008050147

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 16, 2008, in Los Angeles.

James Demus, Counsel, represented Robin Trujillo (Complainant), Deputy Real Estate Commissioner, California Department of Real Estate (Department).

Victor M. Loza (Respondent) was present and represented himself.

The matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. The Department originally issued a real estate salesperson license to Respondent on April 22, 2004. The Department's License History Certificate for Respondent (exhibit 2) indicates his license expired on April 21, 2008.
3. (A) On April 13, 2007, in the Superior Court of the State of California, County of Orange, in case number 06NM12671, Respondent was convicted, following his plea of guilty, of violating Penal Code section 653(m), subdivision (a) (harassing telephone calls), a misdemeanor.

(B) Imposition of sentence was suspended and Respondent was ordered to pay fines and fees totaling \$120.00, which Respondent paid as of the date of sentencing.

(C) The circumstances underlying the conviction occurred on July 28, 2006, when Respondent made a number of threatening telephone calls to his former girlfriend, who is the mother of his son, in which Respondent used obscene language and threatened to inflict serious injury on her.

(D) The conviction is substantially related to the qualifications, functions or duties of a licensed real estate salesperson, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8) (“[d]oing of any unlawful act . . . with the intent or threat of doing substantial injury to the person or property of another.”)

4. In aggravation, on April 13, 2007, in the Superior Court of the State of California, County of Orange, in case number 07NM03481, Respondent was also convicted, following his plea of guilty, of violating Penal Code section 273.6, subdivision (a) (violation of a protective order), a misdemeanor. The sentencing for this conviction was concurrent with that of the conviction described above. In this case, imposition of sentence was suspended, and Respondent was placed on informal probation for three years, under terms including that he serve 45 days in the county jail (with seven days credit given to him for time served), pay fines and fees totaling \$520, complete a domestic violence program, perform eight hours of community service, and be subject to a protective order in favor of his former girlfriend. Respondent has completed each of those requirements and so far has been in compliance with his probation. The circumstances underlying this conviction occurred on October 28, 2006.

5. Respondent’s misconduct arose out of his frustration over an ongoing dispute he was having with his former girlfriend regarding visitation of his then infant son. While Respondent displayed immaturity and extremely poor judgment in dealing with this situation, he did not intend to actually carry out the threats he made to his former girlfriend. As a result of the domestic violence counseling Respondent recently completed, he now has, according to him, “the right words and dialogue to express myself.” Respondent has also educated himself on his parental rights and, as a result, he has obtained satisfactory visitation with his son through the legal system. To avoid future conflicts, Respondent now limits his contact with his former girlfriend and tries to communicate with her in writing whenever possible. Respondent has also stayed current with his child support obligations, which lessens the likelihood of future conflicts.

6. Respondent has satisfied some of the criteria applicable to him as developed by the Department for evaluating the rehabilitation of a licensee following a conviction, as set forth in California Code of Regulations, title 10, section 2912. For example, he has paid the fines and fees imposed upon him in both of his criminal cases (criterion (g)). As discussed above, Respondent has established a new and improved relationship with the mother of his son that will reduce the likelihood of future conflict between them (criterion (i)). Finally, Respondent demonstrated that he has had a change of attitude for the better from that which existed at the time of his convictions (criterion (m)). For instance, Respondent has accepted full responsibility for his crimes. He appeared candid and contrite during the hearing. He has internalized the strategies he learned from the domestic violence counseling he attended and is now better equipped to deal with the issues that will arise with his former girlfriend over their son. Respondent has had no domestic problems since October of 2006, showing that he has used the counseling techniques effectively.

LEGAL CONCLUSIONS

1. *Cause for Discipline.* Cause was established for disciplinary action against Respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), in that Respondent's conviction for making harassing telephone calls was a misdemeanor crime that is substantially related to the duties, qualifications and functions of a real estate salesperson. (Factual Findings 1-3.)

2. *Disposition.* Outright revocation of Respondent's license is unwarranted. His two convictions were isolated to a stressful domestic situation. Respondent's poor reaction in that situation does not necessarily indicate he would behave similarly in a situation involving the use his license with a member of the public. For example, no evidence was presented of Respondent making threats or engaging in physical violence towards others. In any event, Respondent has remedied the problems that led to the convictions. He established a level of rehabilitation commensurate with his misconduct. Under these circumstances, a restricted license with terms calculated to reasonably protect the public is warranted. (Factual Findings 1-6.)

ORDER

All licenses and licensing rights of Respondent Victor M. Loza, 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 three years have elapsed from the effective date of this Decision and his criminal probation in case number 07NM03481 has expired or been terminated.

4. Respondent shall notify the Real Estate Commissioner in writing, within 10 days, if he has been arrested, if his criminal probation in case number 07NM03481 has been extended for any reason, if a motion to revoke his probation has been filed, or if the criminal court has made any finding or determination that he has violated the terms of his probation.


5. 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.

6. 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 has already done so in compliance with the Real Estate Law, at or by the time of this Decision, he shall present evidence of such for a determination by the Commissioner. If Respondent fails to satisfy this condition, however, 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: August 13, 2008


ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

Sacto June 2

JAMES DEMUS, Counsel (SBN 225005)
Department of Real Estate
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FILED
APR 14 2008
DEPARTMENT OF REAL ESTATE

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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-34839 LA
12 VICTOR M. LOZA,) A C C U S A T I O N
13 Respondent.)
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15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against VICTOR M. LOZA, ("Respondent") alleges as follows:

18 1.

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

22 2.

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

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1 3.

2 On or about April 13, 2007, in the Superior-Court of
3 California, County of Orange, in case no. 06NM12671, Respondent
4 was convicted of violating California Penal Code Section 653(m)
5 (harassing telephone calls), a misdemeanor. The facts
6 underlying this crime involve moral turpitude and bear a
7 substantial relationship under Section 2910, Title 10, Chapter
8 6, California Code of Regulations to the qualifications,
9 functions or duties of a real estate licensee.

10 4.

11 In aggravation, on or about April 13, 2007, in the
12 Superior Court of California, County of Orange, in case no.
13 07NM03481, Respondent was convicted of violating California
14 Penal Code Section 273.6(a) (violation of a protective order), a
15 misdemeanor.

16 5.

17 The crime of which Respondent was convicted, as
18 described in Paragraph 3 above, constitutes cause under Sections
19 490 and 10177(b) of the Code for the suspension or revocation of
20 the license and license rights of Respondent under the Real
21 Estate Law.

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

9 Dated at Los Angeles, California

10 this 9 day of April, 2008.

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12 _____
13 Robin Trujillo
14 Deputy Real Estate Commissioner

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25 cc: VICTOR M. LOZA
26 Silver Oak Real Estate of Orange County
27 Robin Trujillo
Sacto.