

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUL 27 2010

DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

) NO. H-34879 LA

)
)
) MICHAEL LAWRENCE GUTIERREZ)

)
) Respondent.)

ORDER SUSPENDING RESTRICTED REAL ESTATE LICENSE

TO: MICHAEL LAWRENCE GUTIERREZ, Respondent
7877 Marshall Court
Fontana, CA 92336

On March 19, 2009, a restricted real estate salesperson license was issued by the Department of Real Estate to Respondent on the terms, conditions and restrictions set forth in the Real Estate Commissioner's Order of October 9, 2008, in Case No. H-34879 LA. This Order, which was effective October 30, 2008, granted Respondent the right to the issuance of a restricted real estate salesperson license subject to the provisions of Section 10156.7 of the California Business and Professions Code (hereinafter "Code") and to

1 enumerated additional terms, conditions and restrictions imposed
2 under authority of Section 10156.6 of said Code. Among those terms,
3 conditions and restrictions, Respondent was required to take and
4 successfully complete the continuing education requirements of
5 Article 2.5 of Chapter 3 of the Real Estate Law within nine (9)
6 months from the effective date of the Decision. The Commissioner
7 has determined that as of July 30, 2009, Respondent has failed to
8 satisfy this condition, and as such, is in violation of Section
9 10177(k) of the Code. (Respondent has no right to renew the
10 restricted license if this condition isn't satisfied by the date of
11 its expiration. (Section 10156.7 of the Business and Professions
12 Code.)

13 NOW, THEREFORE, IT IS ORDERED under authority of Section
14 10156.7 of the Business and Professions Code of the
15 State of California that the restricted real estate salesperson
16 license heretofore issued to Respondent and the exercise of any
17 privileges there under is hereby suspended until such time as
18 Respondent provides proof satisfactory to the Department of
19 compliance with the condition(s) referred to above, or pending final
20 determination made after hearing (see "Hearing Rights"
21 set forth below).

22 ///

23 ///

24 ///

25 ///

26 ///

1 IT IS FURTHER ORDERED that all license certificates and
2 identification cards issued by Department which are in the
3 possession of Respondent be immediately surrendered by personal
4 delivery or by mailing in the enclosed, self-addressed envelope
5 to:

6 Department of Real Estate
7 Attn: Flag Section
8 P. O. Box 187000
9 Sacramento, CA 95818-7000

10 HEARING RIGHTS: Pursuant to the provisions of Section
11 10156.7 of the Business and Professions Code, you have the right to
12 a hearing to contest the Commissioner's determination that you are
13 in violation of Section 10177(k) of the Code. If you desire a
14 hearing, you must submit a written request. The request may be in
15 any form, as long as it is in writing and indicates that you want a
16 hearing. Unless a written request for a hearing, signed by or on
17 behalf of you, is delivered or mailed to the Department at 320 West
18 4th Street, Suite 350, Los Angeles, California, within 20 days after
19 the date that this Order was mailed to or served on you, the
20 Department will not be obligated or required to provide you with a
21 hearing.

22 This Order shall be effective immediately.

23 DATED: 7/21/2010.

24 JEFF DAVI
25 Real Estate Commissioner
26
27

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

MICHAEL LAWRENCE GUTIERREZ,

Respondent.

Case No. H-34879 LA

OAH No. L-2008060147

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on August 12, 2008, in Los Angeles. Complainant was represented by James A. Demus, Counsel. Respondent Michael Lawrence Gutierrez was present and represented himself.

Oral and documentary evidence having been received, the Administrative Law Judge submits this matter for decision on August 12, 2008, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on April 23, 2008, the Accusation, Case No. H-34879 LA, was made and filed by Robin Trujillo in her official capacity as Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter Department).

2. On or about May 1, 2006, the Department issued real estate salesperson's license no. S01748601 to Michael Lawrence Gutierrez (hereinafter respondent). On issuance of the license, respondent's employing broker was listed as Rosa Salazar of Rancho Cucamonga. On August 22, 2007, respondent's employing broker was changed to Fusion Business Group of Rancho Cucamonga. At all times relevant herein, respondent has held a real estate license and licensing rights under the Real Estate Law.

3. (A) On or about August 6, 2007, before the Superior Court of California, County of Los Angeles, in *People v. Michael Lawrence Gutierrez*, Case No. 7AH02615, respondent was convicted on his plea of nolo contendere of false

imprisonment in violation of Penal Code section 236, a misdemeanor and crime involving moral turpitude.

(B) As a result of his plea, imposition of sentence was suspended and respondent was placed on summary probation for 36 months on condition, in part, that he perform 10 days of work with Cal Trans, pay a restitution fine of \$120, enroll in and successfully complete a 26-week anger management program, submit his person and property to search and seizure at any time, and pay attorney's fees of \$109.38 for services of a court-appointed attorney.

4. (A) The facts and circumstances of respondent's offense and conviction began in the evening of June 2, 2007, when he went to the Alhambra home of his former girlfriend and the victim J.N. after having drunk beers with friends at a pizza restaurant in Arcadia. Respondent and JN had been involved in a romantic or close relationship for a number of years but JN had ended their relationship three months earlier. The couple met when respondent was a student at the University of San Diego and JN was a student at the University of California at Santa Cruz. JN later transferred to California State University at Los Angeles to study fashion design and merchandising and her parents obtained the Alhambra home for her. In June 2007, respondent, who was five years older, was working as a real estate salesperson in Rancho Cucamonga. He still had feelings for JN and wanted to continue having a relationship with her.

(B) On June 2, 2007, JN was supposed to have met respondent at the restaurant but she worked late at her job at a clothing store and went straight home. Respondent left the restaurant at 11:45 p.m. and arrived at JN's home at about 12:30 a.m., expecting to spend the night. The two of them talked about their relationship in the bedroom of her house. After one hour, they began arguing with each other. JN became angry and asked respondent to leave. Respondent refused to leave. JN started to walk out of the bedroom. Respondent blocked the bedroom door by placing his back against the door and stopped JN from leaving the room. JN said she was going to call the police. Respondent then tried to grab JN's cellular telephone from her and the telephone broke during their struggle for it. Respondent offered to pay for the telephone. JN tried to leave the bedroom again but respondent blocked the door. JN became incensed and hit him in the face and neck, bit him on the arm, and scratched his arm and neck. Respondent fell to the floor, covering his head from JN's blows. JN threatened to cut off his short pants with scissors to get his telephone. Respondent replied that he only wanted to talk to her. JN agreed to talk some more and the two of them then talked for another hour. At approximately 3:30 a.m., JN became upset again, threw respondent's telephone on the floor, and broke his glasses. JN then called her mother and the police.

(C) When the police arrived at her home at approximately 3:45 a.m., JN let the officer into the house. Respondent was sitting outside on the back porch. JN told the officer that she wanted respondent arrested for keeping her from leaving her

bedroom. At the jail, photographs were taken of respondent's injuries. He did not file charges against JN for hitting and biting him.

5. Based on the facts and circumstances and the elements of the underlying offense, respondent's conviction for false imprisonment was for a crime involving moral turpitude and substantially related to the qualifications, functions, or duties of a real estate salesperson under California Code of Regulations, title 17, section 2910, subdivision (a)(8). Respondent committed an unlawful act with the intent or threat of doing substantial injury to the person or property of another.

6. Respondent is currently in compliance with the terms and conditions of the probation for his offense. He completed the anger management class. On September 7, 2007, he paid the attorney's fees. On December 7, 2007, respondent was found in violation of probation for not completing the court-ordered work with Cal Trans. The court revoked and reinstated his probation and ordered that he serve 10 days in jail with credit for one day served in lieu of the Cal Trans work. On December 27, 2007, respondent paid the restitution fine of \$120 and the court ordered that all other fines and fees be deleted or suspended from respondent's probationary order. Under his sentencing order, respondent is to remain on summary probation until August 2010 for his conviction.

7. Respondent admits his crime and conviction. He admits that he argued with his ex-girlfriend and prevented her from leaving the bedroom when she wanted. He realizes that he should have left her house when she told him to leave. Respondent regrets his conduct and demonstrates remorse. He no longer associates with his ex-girlfriend.

8. Since on or about August 22, 2007, respondent has worked as a real estate salesperson for the realty office of Fusion Business Group of Rancho Cucamonga. He is one of two real estate salespersons in the office. Chris Collins, the real estate broker for the office, has known respondent since they were classmates at Bishop Amat High School in La Puente and he has never seen respondent fight or argue with anyone. Collins is aware of respondent's conviction. He indicates that respondent has a calm personality, always thinks about the welfare of clients, and would not ever touch or hurt another person.

9. Respondent is 29 years old. He is single and wants to concentrate upon achieving success as a real estate salesperson. He has no other convictions. He testified in a sincere and credible manner.

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's real estate salesperson's license under Business and Professions Code section 490 and section 10177, subdivision (b), for conviction of a crime involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate licensee, based on Findings 4 – 5 above.

2. Rehabilitation--Based on Findings 1 – 9 above, respondent did not establish that he is rehabilitated from his conviction under the criteria set forth in California Code of Regulations, title 10, section 2912. On one hand, respondent is currently in compliance with his probation even though he violated his probation last year shortly after his sentencing for failing to complete the court-ordered work with Cal Trans. Respondent did complete the anger management class and paid the court-ordered fine and fees and has stopped seeing the victim of his offense.

On the other hand, respondent remains on probation for his offense. His conviction occurred only one year ago. He did not show that he is involved in any community or social activities, enrolled in any coursework for economic self-improvement, or has a relationship with a new girlfriend that is different from that which he had with his ex-girlfriend. Still, respondent's remorseful demeanor and candid testimony strongly suggest that he has learned a difficult lesson from his domestic incident. He realizes that he was wrong in trying to force the victim to talk to him and to keep her from leaving her own bedroom. He regrets his conduct. He is performing well in his job as a real estate salesperson. Public interest and welfare will not be harmed if respondent is allowed to retain his real estate license under terms and conditions of a restricted license.

* * * * *

Wherefore, the following Order is hereby made:

ORDER

All licenses and licensing rights previously issued to respondent Michael Lawrence Gutierrez under the Real Estate Law are revoked, based on Conclusions of Law nos. 1 and 2, jointly and for all; provided, however, a restricted real estate

salesperson's license will be issued to respondent pursuant to Business and Professions Code section 10156.5 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 and Order. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions, and restrictions imposed under the authority of Business and Professions Code sections 10156.6 and 10153.4:

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 (2) years have elapsed from the effective date of this Decision.

4. 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

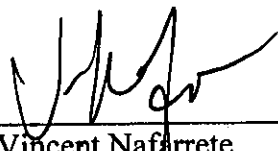
(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

5. 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 respondent presents such evidence. The Commissioner

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

6. Within six months from the effective date of this Decision, respondent shall take and pass the Professional Responsibility Examination administered by the Department, including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order the suspension of respondent's license until he passes the examination.

Dated: Sept. 9, 2008



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

1 JAMES DEMUS, Counsel (SBN 225005)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6910

FILED
APR 29 2008
DEPARTMENT OF REAL ESTATE

By Laura B. Dion

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-34879 LA
12 MICHAEL LAWRENCE GUTIERREZ,) A C C U S A T I O N
13 Respondent.)
14

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against MICHAEL LAWRENCE GUTIERREZ, ("Respondent") alleges as
18 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.

23 2.

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

3.

On or about August 6, 2007, in the Superior Court of California, County of Los Angeles, case no. 7AH02615, Respondent was convicted of violating California Penal Code Section 236 (false imprisonment), a misdemeanor. This crime involves moral turpitude and bears 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.

///

///

///

///

///

///

///

///

///

///

///


///

///

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, MICHAEL LAWRENCE GUTIERREZ, under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code)
7 and for such other and further relief as may be proper under
8 other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 23 day of April, 2008.

11 
12 Robin Trujillo
13 Deputy Real Estate Commissioner
14
15
16
17
18
19
20
21
22
23
24

25 CC: MICHAEL LAWRENCE GUTIERREZ
26 Fusion Business Group
27 Robin Trujillo
Sacto.