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FILED
AUG 22 2011

DEPARTMENT OF REAL ESTATE

By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)	No. H-34891 LA
)	
FREDERICK OLIVIER MAKAPUGAY,)	
)	
Respondent.)	

ORDER GRANTING REINSTATEMENT OF LICENSE

On October 31, 2008, a Decision was rendered herein revoking the real estate salesperson license of Respondent.

On or about April 15, 2010, Respondent petitioned for reinstatement of said real estate salesperson license. The Attorney General of the State of California has been given notice of the filing of Respondent's petition.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition is granted
2 and that an unrestricted real estate salesperson license be issued to Respondent subject to the
3 following understanding and conditions:

4 1. Submits a completed application and pays the fee for a real estate salesperson
5 license within the 12 month period following the date of this Order; and

6 2. The license issued pursuant to this order shall be deemed to be the first renewal
7
8 of Respondent's real estate salesperson license for the purpose of applying the provisions of
9 Section 10153.4.

10 2. Within twelve (12) months from the date of this order Respondent shall:

11 (a) Submit a completed application and pay the appropriate fee for a real estate
12 salesperson license, and

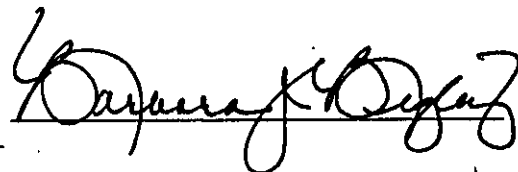
13 (b) Submit evidence of having taken and successfully completed the courses
14 specified in subdivisions (a)(1), (2), (3), (4) and (5) of Section 10170.5 of the Real Estate Law
15 for renewal of a real estate license.

16 3. Upon renewal of the license issued pursuant to this order, Respondent shall
17 submit evidence of having taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
19 license.
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22 This Order shall be effective immediately.

23 Dated: 8/3/11

24 BARBARA J. BIGBY
25 Acting Real Estate Commissioner

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FILED
NOV. 5, 2008
DEPARTMENT OF REAL ESTATE

By C.S.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Accusation of)	No. H-34891 LA
FREDERICK OLIVIER MAKAPUGAY,)	
Respondent.)	L-2008061052

DECISION

The Proposed Decision dated October 2, 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 November 25, 2008..

IT IS SO ORDERED

10/31/08

JEFF DAVI
Real Estate Commissioner

Jeff Davi

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

**In the Matter of the Accusation of
FREDERICK OLIVIER MAKAPUGAY,
Respondent.**

**Case No. H-34891 LA
OAH No. L2008061052**

PROPOSED DECISION

This matter came on regularly for hearing on August 28, 2008, at Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Maria Suarez (Complainant) was represented by Lissete Garcia, Counsel, California Department of Real Estate.

Frederick Olivier Makapugay (Respondent) was present and represented himself.

During the hearing, Complainant amended the Accusation at page 2, line 22, by changing "Case No. 1451489" to "Case No. CR-20018793."

Oral and documentary evidence was received. The record was held open to and including September 18, 2008, for Respondent to submit an updated report from Beverly Hills Counseling International indicating completion of a 52-week domestic violence program, and for Complainant to object to the admissibility of that document. Respondent timely submitted the document, which was marked as Respondent's Exhibit "A" for identification. Complainant timely objected to the document on hearsay grounds but requested that it be admitted as "administrative hearsay."¹ That request is granted. Complainant's objection is marked as Complainant's Exhibit 8 for identification.

On September 18, 2008, the record was closed, and the matter was deemed submitted for decision.

¹ Government Code section 11513, subdivision (d).

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Complainant made the Accusation in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent was issued a conditional salesperson license by the Department of Real Estate (Department) on September 6, 2005. That license expired on March 6, 2007. On March 7, 2007, Respondent's salesperson license was suspended indefinitely pursuant to Business and Professions Code² section 10153.4, subdivision (c). On February 14, 2008, the license was reinstated following Respondent's completion of certain educational requirements. The license will expire on September 5, 2009, unless renewed.

3. On June 14, 2006, in the Superior Court of California, County of Los Angeles, in Case No. SA058890, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 273.5, subdivision (a) (Infliction of Corporal Injury on a Spouse), a misdemeanor involving moral turpitude, and a crime substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8).

4. Respondent was placed on summary probation for a period of three years under various terms and conditions including payment of a \$100 restitution fine and completion of a domestic violence counseling program. Respondent paid the fine and successfully completed the program.

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² All statutory references are to the Business and Professions Code unless otherwise indicated.

5. The facts and circumstances underlying the conviction occurred on New Years Eve 2005-2006. Respondent and his girlfriend, having consumed alcoholic beverages, became embroiled in an argument. Respondent pulled a knife from a nightstand and began striking it against furniture and other wooden objects in their home. His girlfriend attempted to leave the home, and Respondent physically stopped her. During that process, Respondent's girlfriend suffered a substantial cut from the knife.³ Sutures were required to close the wound. Respondent also suffered a cut during the incident. At the administrative hearing, Respondent testified that his girlfriend fell on the knife. His girlfriend (now his fiancée) testified that Respondent did not "realize what he had" and cut her as she attempted to leave. The testimony of Respondent's fiancée is given greater weight because (1) she testified that she had consumed only "a couple of glasses of wine" while Respondent admitted he was intoxicated at the time of the incident, and (2) because Respondent attempted to minimize the severity of his actions by referring to them as "poor judgment" and "unwanted actions" that resulted in his arrest, and by stating "a knife was involved" instead of admitting that he wielded the knife resulting in his girlfriend's injury.

6. As referenced above, Respondent successfully completed the 52-week domestic violence counseling program. However, in order to ensure his rehabilitation, to prevent another similar incident from occurring, and in order "to show the court [he] took responsibility for what [he] did," Respondent went beyond the court order in connection with his conviction. On his own volition, he entered and successfully completed a 30-day inpatient drug and alcohol rehabilitation program. Immediately following his completion of that program, he entered and successfully completed an intensive outpatient program which ran from June 2, 2006 to January 10, 2007.

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³ The police report for the incident was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal. 4th 448. Other details of the incident are referenced in that report, but were provided by Respondent's girlfriend and other third party witnesses. Those statements constitute hearsay and are inadmissible unless offered under an exception to Evidence Code section 1200. No such exceptions were offered.

7. As a factor in aggravation, Complainant alleged that Respondent suffered a conviction in 2000, in Scottsdale, Arizona, for "disorderly conduct-domestic violence." Although he did suffer that conviction, the facts and circumstances did not involve violence against a domestic partner (in this case, Respondent's wife at that time). Respondent had become angry with his wife while they were at a social event in a bar. Respondent left the bar, uprooted a business sign in the parking lot, and threw it against a tree. His wife was present at that time and witnessed the incident. However, Respondent did not throw the sign toward his wife. In the court records, an August 6, 2002 "Notice to Defendant" reads in part:

Pursuant to A.R. S: [Arizona Revised Statutes] § 13-3601(M), your sentencing has been deferred and no judgment has been entered for an offense included in domestic violence. You are now on notice that:

1. If you successfully complete the terms and conditions of your deferred sentencing, the Court will discharge you and dismiss the proceedings against you.
2. If you fail to successfully complete the terms and conditions of your deferred sentencing, the Court may enter an adjudication of guilty as provided by law.

8. Complainant bore the burden of proving the factor in aggravation. (Evid. Code, §500.) She did so by establishing the fact of the conviction. However, the facts and circumstances underlying the conviction are given only marginal weight.

9. Respondent has been sober for between two and two and one-half years. He participated in Alcoholics Anonymous (AA) meetings while in the outpatient program, but has not attended one for approximately six months.

10. Respondent acknowledges that he has had a "bad temper" in the past. However, through the inpatient program, the outpatient program, and his present employment, he has learned to manage his temper by not allowing a situation to overcome him. When faced with a provocative situation, he considers the actions to be taken in order to accomplish a solution.

11. Respondent has been employed as a residential mortgage consultant for a large mortgage broker for two years and three months. He supervises approximately 200 agents.

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12. Respondent is now engaged to be married to the same woman who was involved in the incident that led to his 2006 conviction. They are putting the past behind them and they intend to start a family. Respondent's fiancée believes Respondent is now able to control his anger, and that he has learned how to better live with her. Respondent and his fiancée disagree over whether they have undergone any couples counseling to date. (Respondent testified they had; his fiancée testified they had not.) However, they intend to do so to ensure they "maintain what [they] worked for." (Respondent's term.)

13. Respondent attends a Catholic church and frequently prays during the week. He participates with a co-worker in charitable work.

14. Respondent sees his life as having substantially changed. His work and his fiancée are important to him, and he has learned from his mistakes.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to discipline Respondent's real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), for conviction of a crime involving moral turpitude and substantially related to the qualifications, functions and duties of the licensed activity, as set forth in Findings 3, 4 and 5.

2. 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) Abstinence 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.

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(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^[4].

(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^[5] 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.

3. Respondent has satisfied most of the Department's applicable criteria for rehabilitation. More than two years have passed since his June 2006 conviction. He paid the court-ordered fine. He has abstained from alcohol for over two years. He enjoys a stable family life with his fiancée and is significantly and conscientiously involved in his church and charitable causes. He has changed his attitude from that which existed at the time he committed the crime.

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⁴ The term "applicant" is apparently an error. The regulation addresses only Department licensees. Criteria for rehabilitation for license applicants are listed in California Code of Regulations, title 10, section 2911.

⁵ See Footnote No. 4, above.

4. Although Respondent remains on criminal probation, he has proven that he takes his rehabilitation seriously. He not only took steps to improve his relationship with his fiancée and to comply with the terms and conditions of probation, he voluntarily entered and completed both inpatient and outpatient alcohol treatment programs. His participation in those programs has resulted in his sobriety for the past two to two and one-half years. Based on the evidence presented, the public safety, welfare and interest should be adequately protected by the issuance of a properly-conditioned restricted real estate salesperson license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondent, Frederick Olivier Makapugay, 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 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.

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4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

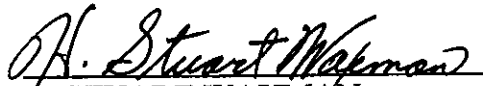
5. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(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 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.

DATED: October 2, 2008


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
April 30, 2008
DEPARTMENT OF REAL ESTATE

By C. E.

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of) NO. H-34891 LA
)
FREDERICK OLIVIER MAKAPUGAY,) A C C U S A T I O N
)
Respondent.)

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against FREDERICK OLIVIER MAKAPUGAY ("Respondent"), is informed
and alleges in her official capacity as follows:

I

At all times herein mentioned, Respondent was and is
presently licensed by the Department of Real Estate of the State
of California ("Department") as a real estate salesperson under
the Real Estate Law, Part 1 of Division 4 of the California
Business and Professions Code ("Code").

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II

Pursuant to the provisions of Code Section 10153.3, Respondent was originally licensed as a salesperson with the Department on or about September 6, 2005.

III

On or about June 14, 2006, in the Superior Court of California, County of Los Angeles, in Case No. SA058890, Respondent pled nolo contendere to and was convicted of violating Penal Code Section 273.5(a) (inflict corporal injury on spouse/cohabitant), a misdemeanor. Said 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. Respondent was sentenced to three years summary probation, the terms and conditions which included, payment of \$100.00 restitution fine, completion of a 52-week domestic violence counseling program, and obey all laws and court orders.

IN AGGRAVATION

IV

In aggravation, on or about August 5, 2000, Respondent was convicted in Scottsdale, Arizona, Case No. 1451489 of violating 13-2904(A)(1) (disorderly conduct-domestic violence), a misdemeanor. Respondent was sentenced to 12 months county jail.

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2 The crime of which Respondent was convicted, as
3 alleged in Paragraph III above, constitutes cause under Code
4 Sections 490 and 10177(b) for the suspension or revocation of
5 all licenses and license rights of Respondent under the Real
6 Estate Law.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and, that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and/or license rights of Respondent,
11 FREDERICK OLIVIER MAKAPUGAY, under the Real Estate Law (Part 1
12 of Division 4 of the Business and Professions Code) and for such
13 other and further relief as may be proper under other applicable
14 provisions of law.

15 Dated at Los Angeles, California

16 this 25th day of April, 2008.

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20 
21 Deputy Real Estate Commissioner
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23

24 cc: Frederick Olivier Makapugay
25 Sacto.
26 Maria Suarez
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