

FEB 28 2012

STATE OF CALIFORNIA

BY:

* * * * *

No. H-36826 LA

L-2010120099

Respondent.

The Proposed Decision dated February 8, 2012, 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 MAR 19 2012.

IT IS SO ORDERED

BARBARA J. BIGBY

Acting Real Estate Commissioner

Barbara J. DeFaz

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOSHUA DAVID CARPENTER,

Respondent.

Case No.: H-36826 LA

OAH No.: 2010120099

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 12, 2012.

Julie L. To, Real Estate Staff Counsel, represented the Complainant.

Respondent appeared and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Accusation in his official capacity.

2. Respondent is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate salesperson.

Prior Conduct

3. Five years prior to the misdemeanor set forth in Finding 6, on January 26, 2004, in the Superior Court of the State of California, County of San Bernardino, in Case No. MVI038584, Respondent was convicted of violating Penal Code section 415 (fighting/making noise/offensive words), an infraction, for engaging another in fisticuffs.

Respondent was sentenced to 36 months probation; ordered to attend and complete a twelve-week anger management program; and ordered to pay fines. Respondent fully complied with all sanctions and successfully completed probation. In mitigation of the infraction Respondent had a subjective but good faith belief that the other person was stalking his wife and he took action to protect his wife.

4. Respondent truthfully revealed the infraction or his application and was granted plenary licensure by the Department in June, 2004. The infraction is not a factor in aggravation to the misdemeanor set forth in Finding 6.

Criminal Conviction

5. On May 24, 2009, in the vicinity of his residence Respondent engaged in a verbal argument with another (victim) and during the course of the argument Respondent exhibited a weapon and placed the other victim in fear for his safety. Respondent's conduct resulted in the following Count in San Bernardino Superior Court Case No. FV1901394 filed on June 25, 2009.

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On or about May 24, 2009, in the above named judicial district, the crime of Exhibiting a Firearm, in violation of Penal Code section 417(a)(2), a misdemeanor, was committed by Joshua David Carpenter, who did unlawfully, in the presence of another, draw and exhibit a firearm in a rude, angry and threatening manner and did use a firearm in a fight and quarrel.

6. On August 25, 2009, in the Superior Court of the State of California, County of San Bernardino, in Case No. FVI901394, Respondent was convicted of violating Penal Code section 417, subdivision (a)(2) (exhibiting a firearm), a misdemeanor, upon his plea of nolo contendere to the Count set forth in Finding 5.

Mitigation

7. (1) The Court ordered minimal sanctions (Finding 8) as a result of Respondent's plea having determined there was no need for anger management or like counseling.
(2) Respondent had a subjective but good faith belief that he was protecting his wife and children by exhibiting the weapon, which Respondent legally purchased, legally owned and had properly registered. Circumstances (1) and (2) do not excuse Respondent's conduct but do mitigate same.

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Rehabilitation and Character

8. On August 25, 2009, Respondent was sentenced to 36 months summary probation; ordered to pay fines; and ordered to refrain from negative contact with the victim. Respondent is in full compliance with probation.

9. Respondent has been recently active under his license with Blaine Associates and has been a licensee for seven years with no record of discipline. He is an honest and trustworthy licensee as is demonstrated by the following credible character references.

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- From Dale Brown – Mesa Electric

I have known Joshua Carpenter for three years. I had the opportunity to get to know him and his lovely family. He is a very responsible man. He has done some jobs for me. And now he's my real estate agent. He's selling my commercial property. And in the Process, finding me rental properties to invest in. He's a wonderful person and a good family man. I trust Joshua opinions and with my finances. I can't say that with anyone else. He's truly a good honest person that loves his wife and children. He's hard working and dedicated.

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- From Benny Torrez – Realtor

My name is Benny Torrez I am a Realtor at Exit Blaine and Associates in Apple Valley California. I am writing this letter on behalf of my friend and Colleague Joshua Carpenter, I have known Joshua for about seven years I first met Joshua at the Age of 23 and took him under my wing in the real estate profession. We worked side by side for Peterson land and Development as real estate agents, Joshua was also in charge of the construction department, he is a hard worker and fast learner always on time, committed to excellence, I know Joshua to be every family orientated, he told me when I meet him he wanted to have all boys, shortly after his first son was born Joshua Jr., and he purchased his families first home from his hard work and willing to achieve in life. In short he is a very well mannered and professional person willing to help out those in need before his own interest if he can.

10. Respondent's wife, Krystyna Carpenter gave credible testimony on Respondent's behalf attesting to his character traits of honesty, trustworthiness and dependability. She credibly testified, in paraphrase that "... he is a good provider, a role model for the children ... very protective ... a good real estate agent ...". Krystyna and Respondent have three boys, aged 9, 3 and 2. Respondent, a loving husband and father, has stability of family life and fulfills all parental and familial obligations.

11. Respondent's testimony was open, honest and candid. Respondent in testimony and demeanor demonstrated a change in attitude from that which existed at the time of the misdemeanor. He is contrite and remorseful and takes full responsibility for his wrongful act. His change in attitude was corroborated by the credible testimony of Krystyna.

12. Respondent is not a drug abuser. Respondent is not an alcohol abuser. He is in conformity to society's norms and rules of civil behavior. He is – following the sole misdemeanor in his life – a socially and professionally responsible person.

LEGAL CONCLUSIONS

Applicable Statutes

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

(a) ... 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.

(c) ... a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. ...

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2. Business and Professions Code section 10177, subdivision (b) provides:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, 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.

Substantial Relationship

3. California Code of Regulations, title 10, section 2910, provides in part:

- (a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in section 480, (a)(2) or 480, (a)(3) of the Code, the crime or act 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:

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- (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

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4. The necessary elements of a crime under Penal Code section 417, subdivision (a)(2) include the threat of doing substantial injury to the person or property of another. Accordingly, the crime set forth in Finding 6 bears a substantial relationship under California Code of Regulations, title 10, section 2910, subdivision (a)(8), to the qualifications, functions or duties of a real estate licensee.

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Violation

5. Respondent's conviction for the substantially related crime set forth in Finding 6 constitutes grounds to discipline his real estate salesperson license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b).

Penalty Considerations

6. California Code of Regulations, title 10, section 2912, sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of a licensee who is subject to disciplinary action on account of a crime or act committed by the Respondent. Additionally, the public interest must be considered in that the objective of an administrative proceeding relating to licensing is to protect the public.¹

7. Respondent is still on probation and the crime has not been expunged or otherwise abrogated. However, Respondent's conviction is more than two years remote and by reason of Findings 8 through 12 Respondent has complied with most of the remaining applicable criteria. Respondent has suffered no other misdemeanor or felony conviction. At present Respondent is a person of good character. Accordingly, by reason of Respondent's record of rehabilitation to date, licensure of Respondent, on a restricted status for a two year period, is consistent with the public interest.

ORDER

All licenses and licensing rights of Respondent Joshua David Carpenter 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 of 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.

¹ *Fahmy v. MBC* (1995) 38 Cal.App. 4th 8107, 817; *Ex Parte Brounsall* (1778) 2 Cowp. 829, 98 Eng.Rep. 1385.

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 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 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.

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 activities for which a real estate license is
granted.

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 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: February 8, 2012


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

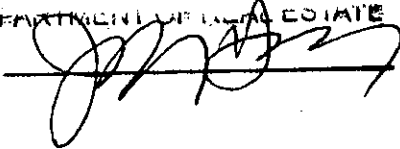
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FILED

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DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	No. H- 36826 LA
JOSHUA DAVID CARPENTER,)	<u>A C C U S A T I O N</u>
Respondent.)	

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against JOSHUA DAVID CARPENTER, ("Respondent") alleges as follows:

1.

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the

1 California Business and Professions Code ("Code"), as a real
2 estate salesperson.

3 3.

4 On or about August 25, 2009, in the Superior Court of
5 the State of California, County of San Bernardino, in Case No.
6 FVI901394, Respondent was convicted of violating Penal Code
7 Section 417(A)(2) (exhibiting a firearm), a misdemeanor.
8 Respondent was sentenced to 36 months probation; 30 days in
9 jail; ordered to pay fines; and ordered to refrain from negative
10 contact with the victim.

11 4.

12 In aggravation, on or about January 26, 2004, in the
13 Superior Court of the State of California, County of San
14 Bernardino, in Case No. MVI038584, Respondent was convicted of
15 violating Penal Code Section 415 (fighting/making
16 noise/offensive words), an infraction. Respondent was sentenced
17 to 36 months probation; ordered to attend and complete a twelve-
18 week anger management program; and ordered to pay fines.

19 5.

20 The conviction described in Paragraph 3, by its facts
21 and circumstances, bears a substantial relationship under
22 Section 2910, Title 10, Chapter 6, California Code of
23 Regulations to the qualifications, functions or duties of a real
24 estate licensee.

25 6.

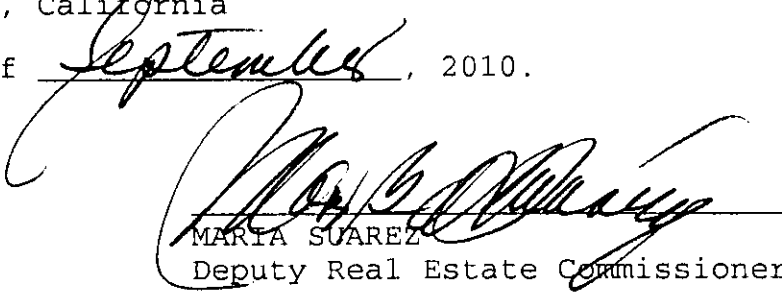
26 The crime of which Respondent was convicted
27 constitutes cause under Sections 490 and 10177(b) of the Code

1 for the suspension or revocation of the license and license
2 rights of Respondent under the Real Estate Law.

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

11 Dated at Los Angeles, California

12 this 23rd day of September, 2010.

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15 MARIA SUAREZ
16 Deputy Real Estate Commissioner
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26 cc: JOSHUA DAVID CARPENTER
27 Maria Suarez
Sacto.