

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Ryan Eldred,

Respondent.

Case No. H-37125 LA

OAH No. 2011061227

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 6, 2011. It was consolidated for hearing with *In the Matter of the Application of Ryan Eldred*, Case No. H-37599 LA, OAH No. 2011110380.

Lisette Garcia, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Ryan Eldridge represented himself.

Oral and documentary evidence was received and the matter was submitted December 6, 2011.

The Department of Real Estate brings this Second Amended Accusation ("Accusation") to revoke Respondent's real estate salesperson license. For the reasons set out below, respondent's license is revoked.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the Second Amended Accusation in her official capacity.
2. Respondent obtained a real estate salesperson license in February 2007. The Department brought this Accusation March 10, 2011. Respondent timely requested a hearing. The expiration date of respondent's license was September 11, 2011. There was no evidence as to whether he attempted to renew the license while the Accusation was pending, but under Business and Professions Code section 10201, he retains renewal rights for two years after it expires, and under Business and Professions Code section 10103, the Department retains jurisdiction to bring disciplinary actions against expired licenses.

Criminal Convictions

3. On September 24, 2009, in Orange County Superior Court, Case No. 09SF0761, respondent was convicted on his guilty plea of possessing marijuana for sale, in violation of Health and Safety Code section 11359, a felony. Respondent was arrested after sheriff's deputies discovered marijuana in his home while executing a search warrant, and respondent admitted (to the court in 2009 and at hearing of this matter) that he sold marijuana to make money. The court sentenced respondent to 60 days in county jail, three years of formal probation, and fines and assessments of \$290. The jail time was to be served on 20 alternating weekends, totaling 40 days. The remaining 20 days were to be served under electronic supervision.

4. On September 24, 2009, in Orange County Superior Court, Case 09SM03110, respondent was convicted on his guilty plea of contempt of court by disobeying a court order (Penal Code section 166, subdivision (a)(4)), and making a threatening telephone call (Penal Code section 653m, subdivision (a)). Both convictions were misdemeanors. Respondent's wife had left him for another man in late 2008. On May 21, 2009, the new boyfriend got a restraining order prohibiting respondent from contacting, threatening or approaching him. On June 21, 2009 the boyfriend and respondent's wife were driving from Orange County to Lego Land in San Diego County. Respondent, upset that his children were spending Father's Day with the boyfriend instead of him, called the boyfriend's cell phone and said, according to the Sheriff's report "Your dog is going to die and I'm gonna kill you." The matter was heard the same day as the possession for sale case noted in Factual Finding 3 above, and respondent was sentenced to the same jail time and probation as in the possession case, to be served concurrently, and an additional \$320 in fines and assessments.

5. On February 18, 2011, in Orange County Superior Court, Case No. 11HF0098, respondent was convicted on his guilty plea of being an accessory after the fact (in violation of Penal Code section 32) to aggravated assault (in violation of Penal Code section 245, subdivision (a)(1), by aiding the principal in the felony to avoid arrest, a felony. Respondent's friend's car was towed and impounded after being parked illegally. On November 4, 2010, the friend drove the car off the impound lot without paying the impound fee, in the process actually striking the worker at low speed, injuring her arm. Respondent abetted by opening the lot gate, and then by bringing gasoline after his friend's car ran out of gasoline on the way home. Respondent was sentenced to 60 days in county jail (with credit for 24 days served), three years of formal probation and \$270 in fines and assessments.

6. On May 17, 2011, in Orange County Superior Court, Case No. 11MC04447, respondent was convicted on his guilty plea of contempt of court by disobeying a court order (Penal Code section 166, subdivision (a)(4)), a misdemeanor. Respondent confronted his ex-wife and her boyfriend on January 31, 2011, outside Department 71 at the Lamoreaux Justice Center in Orange, where the three of them were present for a child custody hearing. This conduct violated the same restraining order that respondent had violated in June 2009 (Factual Finding 4). He was sentenced to three years' informal probation, \$270 in fines and assessments, and 30 days of "Cal Trans/Physical Labor in lieu of 30 days jail." The court reissued the restraining order for another three years.

Mitigation and Aggravation

7. Respondent's criminal convictions began when his wife left him for another man. According to respondent, he began selling marijuana only after his marriage broke up and he was left with the two children, aged two and four at the time. Respondent also attributed some of his difficulties to abuse of marijuana, though nothing in the police reports or court records mention substance abuse.

8. Respondent's two convictions in 2011 were violations of his probation. The court records do not state whether his punishment was enhanced for that reason.

Rehabilitation

9. Respondent has paid all the fines imposed for his convictions, and completed the jail time imposed for the first three convictions. He has not completed the community service for his most recent conviction. At the time of hearing, he had completed 114 hours of his Cal Trans service, and thus had 126 hours remaining to serve. He remains on probation until 2014. None of his convictions has been expunged.

10. Respondent enrolled in a faith-based recovery program at Saddleback Church to address his marijuana problem in about 2009, and testified at hearing that he has been sober since. He did make it clear whether "sobriety" meant abstinence from alcohol as well as drugs, but he introduced a printout of drug screen results from March 2011 to show his sobriety. The test did not include a screen for alcohol, and nothing in his testimony or elsewhere in the record specifically mentions using, or abstaining from, alcohol.

11. In August 2010 respondent joined the Orange County Church of Christ. He participates in two of that church's programs: a program to help members cope with divorce and separation, and a church-sponsored 12-step sobriety program. There was no evidence of how frequently he attended either program.

12. Respondent has also participated in his church's program to distribute food to the homeless on Sundays. He estimates that he took part on ten Sundays in 2011.

13. In August 2011, respondent went to Haiti under the auspices of the Hope Worldwide organization, teaching mathematics and English to Haitian children, and participating in house building.

14. In December 2010, respondent was cleared as a volunteer driver for the Hope Driving Program of the Los Angeles Department of Children and Family Services. Volunteer drivers transport children to events.

15. Respondent enrolled in an anger management course on November 15, 2011 and completed the 40-session course, according to the certificate he submitted, on December 5, 2011, the day before the hearing of this matter. He did not indicate how the anger management course benefited him. He began therapy sessions with Kathy Escher, a marriage and family therapist, a week before the hearing, and had seen her twice before the hearing. He has not enrolled in formal education or vocational training.

16. Respondent's former employer Lawrence Leal, a licensed broker in the mortgage loan business, testified at hearing, as did Donald Tilly, respondent's current employer and Suzanne Lopez, a current supervising co-worker. All of them were aware of the specific crimes for which respondent had been convicted. They described respondent as responsible, ethical and highly professional, and said his personal problems never affected his work. Respondent's current job duties do not require a license.

17. Respondent no longer associates with the friend who drove the car in the aggravated assault case. Respondent now has what he describes as a "50/50" child custody arrangement with his ex-wife, and describes his relationship with her as calm and healthy.

LEGAL CONCLUSIONS

1. Cause exists to revoke respondent's license under Business and Professions Code sections 490 and 10177,¹ as alleged in paragraph 3 of the Accusation. Section 490, subdivision (a) allows a board to suspend or revoke a license if the licensee has been "convicted of a crime" that is "substantially related to the qualifications, functions, or duties of the business or profession for which license was issued." Section 10177, subdivision (b), which applies specifically to the Department, similarly allows it to suspend or revoke a license if the licensee has been convicted of "a crime substantially related to the qualifications, functions, or duties of a real estate licensee[.]"

2. Respondent conceded at hearing that his crimes are substantially related to the qualifications, functions, or duties of a real estate licensee. Under California Code of Regulations, title 10, section 2910,² subdivision (a)(8), "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" is substantially related. Illegal trafficking in marijuana (Factual Finding 3) is an unlawful act with the intent of conferring a financial benefit on the perpetrator. The threatening phone call for which respondent was convicted under Penal Code section 653m (Factual Finding 4) constituted a threat of substantial physical injury. Abetting a vehicular assault (Factual Finding 5) involves an act with intent of doing substantial injury.

3. Under CCR section 2910, subdivision (a)(9), contempt of court or willful failure to comply with a court order is substantially related. Respondent was twice convicted of contempt for disobeying a restraining order (Factual Findings 4 and 6). Respondent's criminal conduct is also substantially related under CCR section 2910, subdivision (a)(10), in that it "demonstrates a pattern of repeated and willful disregard of law."

4. Respondent has the burden of showing rehabilitation. The applicable criteria for rehabilitation are set out in CCR section 10, section 2912:

¹ All further statutory references are to the Business and Professions Code, unless otherwise provided.

² Further references to the California Code of Regulations are cited as "CCR."

(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.)

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

[¶]...[¶]

(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.

[¶]...[¶]

(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.

(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.

(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 applicant's social adjustments.

[9]...[9]

(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.

6. While it has been more than two years since respondent's first two convictions (Factual Findings 3 and 4), he was convicted of a felony less than a year ago and convicted of misdemeanor contempt of court seven months ago (Factual Findings 5 and 6). Under criterion (a), a period of longer than two years without convictions would be necessary for respondent, who had four convictions in less than two years. He has paid the required fines (criterion (g); Factual Finding 9). He has not completed probation (criterion (e), and has violated probation twice (Factual Finding 5, 6 and 8). None of his convictions have been expunged (criterion (c), Factual Finding 9). He has not been enrolled in formal education or vocational training (criterion (k), Factual Finding 15).

6. Respondent has abstained from marijuana for more than two years (criterion (f), Factual Finding 10). He has ended the social relationship that was involved in his assault conviction (criterion (i), Factual Finding 17). He has a stable family life and is fulfilling parental responsibilities (criterion (j), Factual Finding 17). He has shown significant involvement in programs to ameliorate social problems (criterion (l), Factual Findings 12 through 14). His own testimony and many of his actions show a changed attitude (criterion (m)), but his recent convictions (Factual Finding 5 and 6)) indicate that he may still have significant problems in obeying the law.

7. Respondent presents a very mixed picture: on the one hand, a person striving to get his life in order and rehabilitate; on the other hand, a person who has two convictions in the last year for crimes committed while he was on probation for earlier convictions. More time is necessary to determine whether respondent has put a bad stretch of his life behind him, or whether he still in the middle of it. If more time had passed and respondent were no longer on probation, his showing of rehabilitation would be compelling, but the two 2011 convictions cast sufficient doubt on his rehabilitation that it would not be in the public interest for him to retain his license.

ORDER

The real estate salesperson license of Ryan Eldred is revoked.

DATED: January 5, 201~~1~~²



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings

1 II

2 From September 12, 2007 through the present,
3 Respondent was licensed or has license rights under the Real
4 Estate Law (Part 1 of Division 4 of the California Business and
5 Professions Code ("Code")) as a real estate salesperson.

6 III

7 On or about September 24, 2009, in the Superior Court
8 of California, Orange County, Case No. 09SF0761, Respondent was
9 convicted of violating Health & Safety Code Section 11359
10 (possession of marijuana for sale), a felony. Said crime bears
11 a substantial relationship to the qualifications, functions or
12 duties of a real estate licensee under Section 2910, Title 10,
13 Chapter 6, California Code of Regulations.

14 IV

15 On or about September 24, 2009, in the Superior Court
16 of California, Orange County, Case No. 09SM03110, Respondent
17 was convicted of violating Penal Code Sections 166(a)(4)
18 (disobey court order) and 653m(a) (harassing telephone calls),
19 both misdemeanors. Said crimes bear a substantial relationship
20 to the qualifications, functions or duties of a real estate
21 licensee under Section 2910, Title 10, Chapter 6, California
22 Code of Regulations.

23 V

24 On or about February 18, 2011, in the Superior Court
25 of California, Orange County, Case No. 11HF0098, Respondent was
26 convicted of violating Penal Code Section 32 (accessory after
27 the fact: harbor, conceal or aid another with intent that he

1 avoid and escape arrest, trial conviction or punishment for
2 violation of PC 245(a)(1) (aggravated assault)), a felony.
3 Said crime bears a substantial relationship to the
4 qualifications, functions or duties of a real estate licensee
5 under Section 2910, Title 10, Chapter 6, California Code of
6 Regulations.

7 VI

8 On or about May 17, 2011, in the Superior Court of
9 California, Orange County, Case No. 11MC04447, Respondent was
10 convicted of violating Penal Code Section 166(a)(4) (disobey
11 court order), a misdemeanor. Said crime bears a substantial
12 relationship to the qualifications, functions or duties of a
13 real estate licensee under Section 2910, Title 10, Chapter 6,
14 California Code of Regulations.

15 VII

16 The crimes of which Respondent was convicted, as
17 alleged in Paragraphs III, IV, V, and VI above, constitute
18 cause under Code Sections 490 and 10177(b) for the suspension
19 or revocation of all licenses and license rights of Respondent
20 under the Real Estate Law.

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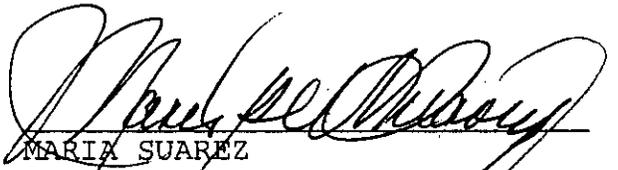
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and/or license rights of
5 Respondent, RYAN ELDRED, 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
8 applicable provisions of law.

9 Dated at Los Angeles, California
10 this 22nd day of September, 2011.

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14 MARIA SUAREZ
15 Deputy Real Estate Commissioner
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23 cc: Ryan Eldred
24 Donald Walter Joseph Tilly
25 Maria Suarez
26 Sacto.
27 OAH

1 II

2 From September 12, 2007 through the present,
3 Respondent was licensed or has license rights under the Real
4 Estate Law (Part 1 of Division 4 of the California Business and
5 Professions Code ("Code")) as a real estate salesperson.

6 III

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16 of California, Orange County, Case No. 09SM03110, Respondent
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20 to the qualifications, functions or duties of a real estate
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22 Code of Regulations.

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25 of California, Orange County, Case No. 11HF0098, Respondent was
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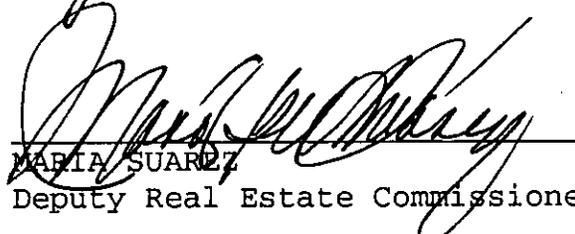
7 VI

8 The crimes of which Respondent was convicted, as
9 alleged in Paragraphs III, IV and V above, constitute cause
10 under Code Sections 490 and 10177(b) for the suspension or
11 revocation of all licenses and license rights of Respondent
12 under the Real Estate Law.

13 WHEREFORE, Complainant prays that a hearing be
14 conducted on the allegations of this Accusation and that upon
15 proof thereof, a decision be rendered imposing disciplinary
16 action against all licenses and/or license rights of
17 Respondent, RYAN ELDRED, under the Real Estate Law (Part 1 of
18 Division 4 of the Business and Professions Code) and for such
19 other and further relief as may be proper under other
20 applicable provisions of law.

21 Dated at Los Angeles, California
22 this 11th day of May, 2011.

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25 cc: Ryan Eldred
26 Franklin Advantage Inc.
27 Maria Suarez
Sacto
OAH


MARIA SUAREZ
Deputy Real Estate Commissioner

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II

From September 12, 2007 through the present, Respondent was licensed or has license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code ("Code")) as a real estate salesperson.

III

On or about September 24, 2009, in the Superior Court of California, Orange County, Case No. 09SF0761, Respondent was convicted of violating Health & Safety Code Section 11359 (possession of marijuana for sale), a felony. Said crime bears a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

IV

On or about September 24, 2009, in the Superior Court of California, Orange County, Case No. 09SM03110, Respondent was convicted of violating Penal Code Sections 166(a)(4) (disobey court order) and 653m(a) (harassing telephone calls), both misdemeanors. Said crimes bear a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

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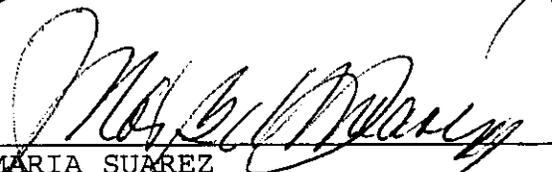
The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV above, constitute cause under Code Sections 490 and 10177(b) for the suspension or revocation

1 of all licenses and license rights of Respondent under the Real
2 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 licenses and/or license rights of
7 Respondent, RYAN ELDRED, under the Real Estate Law (Part 1 of
8 Division 4 of the Business and Professions Code) and for such
9 other and further relief as may be proper under other
10 applicable provisions of law.

11 Dated at Los Angeles, California

12 this 9th day of March, 2011.

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16 MARIA SUAREZ
17 Deputy Real Estate Commissioner
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23 cc: Ryan Eldred
24 Franklin Advantage, Inc.
25 Maria Suarez
26 Sacto.
27