

**FILED**

MAY 25 2012

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

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In the Matter of the Application of )	No. H-37641 LA
)	
MICHAEL ANTHONY NITTI, )	L-2012021014
)	
Respondent. )	
)	

DECISION

The Proposed Decision dated April 23, 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 application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on JUN 14 2012.

IT IS SO ORDERED May 11, 2012

Real Estate Commissioner

*[Signature]*

By WAYNE S. BELL  
Chief Counsel

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

In the Matter of the Application of:

MICHAEL ANTHONY NITTI,

Respondent.

Case No. H-37641 LA  
OAH No. 2012021014

**PROPOSED DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on April 9, 2012, in Los Angeles, California.

Complainant was represented by Diane Lee, Counsel for the Department of Real Estate (Department).

Michael Anthony Nitti (respondent) appeared personally and was represented by Mary Work, Attorney at Law. Evidence was received and the matter was submitted for decision. The Administrative Law Judge finds as follows:

**FACTUAL FINDINGS**

1. Complainant, Maria Suarez, made the Statement of Issues in her official capacity as Deputy Real Estate Commissioner of the State of California.
2. On May 2, 2011, respondent submitted an application to the Department for a real estate salesperson license.
3. On March 3, 2006, in the Superior Court of California, County of Orange, Case No. 04WF3632FA, respondent entered a plea of guilty and was convicted of violating Penal Code section 245, subdivision (a)(1), aggravated assault, a felony that is substantially related to the duties, functions and qualifications of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on formal probation for three years on certain conditions, including prohibiting respondent from having any contact or communication with the victim, and ordering respondent to serve 180 days in the Orange County Jail (respondent was allowed to serve the jail sentence under home confinement). Respondent completed all terms and conditions of probation.

4. The facts and circumstances underlying the conviction occurred during the early morning hours of December 17, 2004. At approximately 2:00 a.m., the victim and two friends left a bar where they had been drinking. As the victim and his friends were walking on the street, they encountered respondent and a friend who were also walking. Words were exchanged between the two groups and respondent and his friend kept walking. At that point, the victim and one of his friends decided to have a foot race. The other young man in the victim's group walked approximately 40 yards ahead to act as the starter and to establish the finish line. The two started the race, and while racing, respondent came out from behind a parked car and kicked the victim in the stomach with such force that the kick ruptured the victim's bladder. The victim doubled over in pain and fell to the ground as respondent ran from the scene. The victim was somehow able to get up and walk to a friend's house.

5. The intense pain that the victim was experiencing did not subside so he called paramedics at approximately 5:00 a.m. The paramedics called the Police Department after respondent informed them of the facts of the incident. After giving a statement to the investigating police officer, respondent was taken to Hoag Hospital in Huntington Beach where he underwent surgery to repair his bladder. He spent three days in the intensive care unit and was released two days later.

6. Respondent testified that he and an acquaintance were walking when they encountered the victim and his friends. Words were exchanged between the two groups and respondent kept walking. While he was walking, respondent heard footsteps from behind. He was startled and turned around and saw the victim and another man running toward him in a full sprint. He said he feared for his safety, so he threw his leg up in defensive move and kicked the victim. Respondent's version is not credible. His version of the incident is not supported by any of the statements attributed to eye witnesses who were interviewed by the investigating police officer. Rather, the witnesses' statements were consistent with the victim's version of the incident. Even the statement attributed to respondent's acquaintance was not consistent with respondent version.<sup>1</sup> Finally, the sheer force of the kick and the resulting injuries to the victim are inconsistent with respondent's testimony that he lifted his leg and kicked at the victim in a defensive maneuver to ward off the oncoming victim.

7. Since his misconduct, respondent has earned a Bachelor of Science degree in International Business from California State University, Long Beach. Respondent has not been accused, arrested or charged with any offense since his March 2006 conviction. On February 10, 2009, the Superior Court reduced respondent's felony conviction to a misdemeanor pursuant to Penal Code section 17, subdivision (b)(3), set aside respondent's guilty plea, and dismissed the case pursuant to Penal Code section 1203.4.

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<sup>1</sup> Pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, the statements in a police report attributed to third party witnesses are administrative hearsay. These statements are admissible under Government Code section 11513, subdivision (d), to supplement or explain other evidence.

8. Sometime after respondent's conviction, the victim filed a law suit against respondent for the injuries he sustained. Respondent paid \$22,500 to settle the law suit.

9. Respondent currently works at Centers Business Management, a retail property leasing company specializing in shopping center leasing and property management. Respondent works as an assistant to the leasing agents. Respondent informed his current employer of his criminal record when he applied for the job. Richard Rivera, the CEO of the company, testified that respondent is a hardworking, dedicated employee who has performed his duties competently over the past 18 months. Mr. Rivera further testified that respondent has not exhibited any temper problems and has not engaged in any misconduct in performing his job duties since he began working for Centers Business Management. Mr. Rivera stated that he supports respondent's application for licensure and would provide the required supervision of respondent's licensed activities in the event that respondent is granted a restricted license.

10. Respondent also works two nights per week as a waiter for a local restaurant. The restaurant manager wrote a letter of reference for respondent attesting to respondent's work ethic, discipline, and of his ability to attend to customers.

11. Respondent shares custody of a young daughter and spends most of his spare time with her. Respondent currently lives with his parents in a stable environment. He no longer frequents bars or engages in late-night activities.

#### LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, for the conviction of the crime set forth in Factual Finding.

2. California Code of Regulations, title 10, section 2911, sets forth criteria for rehabilitation. Respondent has met the applicable factors set forth in section 2911, as follows:

*(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. Respondent's conviction is almost six years old.*

*(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee. Respondent paid \$22,500 to settle the lawsuit filed by the victim against respondent.*

(c) *Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.* Respondent's conviction has been expunged.

(d) *Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code.* This factor is not applicable to this case.

(e) *Successful completion or early discharge from probation or parole.* Respondent has completed his probation.

(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.* This factor is not applicable to this case.

(g) *Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.* Respondent has paid all fines and fees imposed by the Superior Court.

(h) *Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.* Respondent has been working for a real estate leasing company for the past 18 months. He has performed his duties honestly and competently, and has not exhibited a loss of temper in performing these duties.

(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.* Respondent focuses on his work and spending time with his daughter. He no longer frequents bars or engages in other late-night activities.

(j) *Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.* Respondent lives with his parents and has regularly scheduled visitation with his daughter. His family life is stable.

(k) *Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.* Respondent earned a Bachelor's Degree in International Business in 2006.

(l) *Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.* Respondent did not present evidence of his community involvement.

*(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . . Respondent has changed his attitude since he committed the crime set forth above. This is evidenced by his steady employment history, and the fact that he has not engaged in any violent behavior since he committed the crime in 2004.*

3. Respondent has met most of the criteria for rehabilitation set forth in regulation section 2911. However, even though respondent committed the crime almost eight years ago, his testimony that his actions were defensive is evidence that he is not completely rehabilitated. Therefore, any license issued to respondent should be on a restricted basis with conditions.

### ORDER

The application of Michael Anthony Nitti, for a real estate salesperson license is denied; provided however, that a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. 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 said Code:

1. The restricted license issued to respondent shall not confer any property right in the privileges to be exercised, and the Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

- (a) The conviction of respondent (including a plea of nolo contendere) to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
- (b) The receipt of evidence 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 this restricted license.

2. 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.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on form RE 552 (Rev 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision of the Commissioner which was the basis for the issuance of the restricted license.

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a real estate license is required.

DATED: April 23, 2012

*Humberto Flores*  
HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings