

John Nash

DEPARTMENT OF REAL ESTATE
BY: *James B. Miller*

BY: Laura B. Cron

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In the Matter of the Accusation of) Case No. H-37828 LA
)
PIERRE VARTAN YENOKIAN,) OAH No. 2012040075
)
)
Respondent.)
)

DECISION

The Proposed Decision dated September 10, 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 NOV - 1 2012.

10/9/2012

Real Estate Commissioner

Real Estate Commissioner



By **WAYNE S. BELL**
Chief Counsel

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

In the Matter of the Accusation of:

PIERRE VARTAN YENOKIAN

Respondent.

Case No. H-37828 LA

OAH No. 2012040075

PROPOSED DECISION

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

Complainant was represented by James Demus, Counsel for the Department of Real Estate (Department).

Pierre Vartan Yenokian (respondent) appeared personally and was represented by Frank Buda, 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 Accusation in her official capacity as Deputy Real Estate Commissioner of the State of California.
2. Respondent is presently licensed and/or has licensing rights as a real estate broker under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code.
3. On March 2, 2005, respondent's wife called him and asked him to come home because their 12-year-old daughter had locked respondent's wife in the garage. Respondent's daughter had a history of defiance and disobedience. When respondent arrived, he sent his daughter to her room. He later went up to his daughter's room to confront and reprimand her. The only percipient witnesses as to what happened next are respondent and his daughter. The following day while at school, respondent's daughter told her teacher that respondent entered the room, kicked and choked her, then pointed a loaded handgun at her.

4. Respondent's daughters were taken from their parent's home and placed with other family members then placed in foster care for a period of time.

5. Respondent was questioned by police officers and during the questioning he told police officers that he owned a handgun but the gun was kept at his brother-in-law's gas station. Police officers confiscated the handgun, which was later introduced and admitted as an exhibit in respondents' criminal case. Respondent was charged with certain crimes including corporal injury to a child, assault with a firearm, brandishing a firearm, and causing physical pain and mental suffering upon a child. While the criminal charges were pending, respondent and his family were engaged in two separate legal proceedings, in the dependency court and in the criminal court.

6. Respondent denied the allegations against him in every court proceeding, including his criminal trial. Respondent's daughter recanted her accusations against respondent during the criminal jury trial. On October 12, 2006, in the Superior Court of California, County of Los Angeles, Case No. 05SF04035, respondent was convicted after a jury found respondent guilty of violating Penal Code sections 242, battery; 273d, subdivision (a), corporal injury to a child (two counts); 273a, subdivision (b), unjustifiable physical pain and mental suffering upon a child; 245, subdivision (a)(2), assault with a firearm; and 417, subdivision (a)(2), brandishing a firearm. The above crimes are misdemeanors that are substantially related to the duties, functions and qualifications of a real estate salesperson. Judgment of conviction was entered and the court sentenced respondent to serve 365 days in state prison. The court suspended the sentence and placed respondent on summary probation for 48 months on certain conditions, including serving 365 days in the county jail and completing a one-year parenting/child abuser's treatment program.

7. Respondent appealed the judgment of conviction. The jail time was stayed during the appeal. Respondent has always denied committing the crimes and continues to maintain his innocence to this day. On September 22, 2009, the Appellate Division of the Superior Court affirmed the judgment of conviction. On August 17, 2010, the Court of Appeal affirmed the conviction. After the conviction was affirmed, respondent served his jail sentence. He served approximately 180 days of his jail sentence and was released on April 13, 2011.

8. Respondent's daughter testified at the hearing that she lied when she accused respondent of hitting her and pointing a loaded firearm at her. When her teacher called law enforcement to report the incident, respondent's daughter felt that she had to continue to lie so that she wouldn't get into serious trouble; so she told police officers the same story that she told her teacher. She testified that she also convinced her brother and sister to lie to corroborate her story. Respondent's daughter further testified that she wishes that she could have that day back because her accusations affected not only respondent but everyone in her family.

9. Respondent testified that on the day of the incident he entered the house and sent his daughter to her room. He verbally reprimanded her but did not strike her, choke her, or point a gun at her. He understands that exhibiting remorse and accepting responsibility for his conviction are important factors in determining whether a person is rehabilitated. However, he testified that he cannot admit to crimes he did not commit even if it could result in a loss of his license. To do so, he asserts, would be a false act of contrition.¹

10. The true facts and circumstances underlying respondent's conviction are difficult to ascertain. Respondent's daughter either lied to her teacher and police investigators or she lied during the hearing in this matter. Respondent on the other hand has consistently denied culpability since he was first interviewed by social workers and police investigators. However, in the final analysis, respondent was found guilty by a jury of violating the Penal Code sections set forth in Factual Finding 4. In respondent's criminal case, the prosecution proved to the jury beyond a reasonable doubt that respondent committed the crimes of which he was accused.

11. Respondent's children were reunited with respondent and his wife in September 2006. The family has engaged in extensive therapy since 2006. The family unit remained together until this year when respondent and his wife separated. They are in the process of getting a divorce. Respondent's three children chose to live with him after the separation. All three children testified on respondent's behalf and attested to his caring and supportive behavior as a father. His daughter who made the accusations now works for him in her spare time.

12. Respondent is also quite involved in community organizations. He currently serves on the Board of Regents of the Prelacy Armenian Schools and has been a board member since 2008. He has volunteered his time to the Shriner's Hospital and the Masonic Lodge. In addition, respondent has coached his son's soccer teams.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b), for respondent's conviction of the crimes set forth in Factual Finding 6.

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¹ The California Supreme Court has held that refusal to retract claims of innocence and make a showing of repentance appears to reinforce rather than undercut a showing of good character. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.)

2. California Code of Regulations, title 10, section 2911, sets forth criteria for establishing rehabilitation. The rehabilitation criteria set forth in California Code of Regulations, title 10, section 2911, are applicable to this case 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 was convicted of the offenses six years ago. The underlying offenses occurred seven years ago.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee. This factor is not applicable to this case.

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action. Respondent's conviction has not 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 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 because there was no evidence that respondent has an alcohol or substance abuse problem.

(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. This factor is not applicable to this case.

(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. This factor is not applicable to this case.

(j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction. Although respondent has separated from his wife, he has an excellent relationship with his children, including his daughter who made the accusations six years ago.

(k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. Respondent has taken courses satisfying Business and Professions Code section 10153.2.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Respondent has significant community involvement as noted in Factual Finding 12.

(m) Change in attitude from that which existed at the time of the commission of the criminal acts. . . . Respondent continues to assert that he is not guilty of the crimes of which he was convicted.

3. Respondent established rehabilitation pursuant to regulation section 2911. He has no other convictions, and there was no evidence that respondent has engaged in any violent behavior before or since the incident in 2005. He has conscientiously performed his duties as a real estate salesperson and broker over the past 25 years with no previous discipline or complaints. He has repaired his relationship with his daughter. The imposition of discipline in this case required a balancing of public protection and an understanding of respondent's family situation at the time of the incident and a realization that a one-time act in a family situation does not prove a propensity for violence. The family has undergone therapy for a number of years since the incident, which has helped respondent and his daughter to repair their relationship. Based on all of the facts and circumstances of this case, the public would be adequately protected by allowing respondent to continue working as a real estate broker under a restricted real estate broker's license.

ORDER

All licenses and licensing rights of respondent Pierre Vartan Yenokian, under the Real Estate Law are revoked. However, a restricted real estate broker's license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent makes application thereof 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 three years have elapsed from the effective date of this Decision.

4. 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.

5. 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, California 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 suspension or revocation of that license.

DATED: September 10, 2012



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings